Fallāḥīn on Trial in Colonial Egypt:
Apprehending the Peasantry through Orality, Writing, and Performance
(1884-1914)

by

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for the degree of doctor of philosophy
Department of Near and Middle Eastern Civilizations
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Abstract

This dissertation explores the experiences of Egyptian peasants from the Delta province of Minūfiyya who were tried for murder by newly created “native” or “national” courts between 1884 and 1914. Through the study of 2,000 pages of criminal files, I deconstruct how the colonial state used the modern techniques of judicial orality, writing, and performance, both to justify a series of reforms that turned the entire legal process into a parody of justice, and to develop a grand narrative that essentialized peasants as revengeful, greedy, and passionate and ultimately linked their alleged immorality to their illiteracy.

Furthermore, my work sheds light on how peasants reacted to this process of moralization of the law by promoting the “honor of the brigand” through violence and poetry. Finally, by focusing
on the many petitions contained in the judicial files, my dissertation provides new insight into
the development of a “vernacular” culture of the law that betrays the peasants’ awareness of the
highly political nature of the legal process.

By presenting and analyzing an untapped wealth of Egyptian archives produced by the native
courts, this research not only sheds invaluable light on the workings and hence the very nature of
British colonial justice in Egypt, but also represents a significant advance in the knowledge of
the origins of Egypt’s current legal system. On a more theoretical level, this study also
constitutes an important contribution to the reflection on the subaltern subject initiated by
Rosalind O’Hanlon and Talal Asad, by showing how the peasants’ agency paradoxically lies in
their “disempowerment.”
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Accused in the murder of Ḥasan ‘Alī al-Ma’addāwī, ‘umda (headman) of the village of Masjid al-Khiḍr
As part of the appeal trial held by the Cairo Native Court of Appeal
In a special session at the Ṭanṭā Native Court of First Instance - May 18th, 1905

Q.: What is your name, etc.?
A.: My name is Khaḍra ‘umm Rıḍwān, I live in Masjid al-Khiḍr, I am 25 years old, and I am single. And she took the oath that she will testify the truth.

Q.: What do you know in this case?
A.: The ‘umda, they brought him dead from the mosque, and the first notification, they wrote in it that he died from God’s knowledge. And in the second notification, it is confirmed. [In] the third notification, they said that al-Kīlānī killed him. And the witnesses gathered one another, and they agreed to say that al-Kīlānī killed him. And me, they put me with them. The ma’mūr (police superintendent) was saying to the ‘umda’s brother: […] with money. So my brother forced me, and I testified out of my fear. And my initial testimony is false, and I clear my conscience before God: I didn’t seen anything. (…)

Q.: You wrote a petition and you said that they took land from the ‘umda, [by they] I mean the witnesses.
A.: Yes, and I also took eight kīlāt (grain measurement) of corn, and the one who gave them to me is al-Ma’addāwī, and one pound from Muḥammad. And Muḥammad Khalīl took half a feddan without rent for the false testimony.

Q.: Who killed the ‘umda?
A.: I don’t know, and I haven’t seen the one who killed him. And what? Am I going to do [al-Kīlānī] an injustice? (…)

Q.: Why didn’t you say that before the court?
A.: I was afraid.

Q.: You presented petitions by telegraph?
A.: One in Cairo and one in Banhā.

Q.: To who [sic] did you send the telegraph?
A.: To the great judge, and I attached the petition to it.

Q.: To who [sic] did you send [it] as well?
A.: I wrote four petitions that I sent to the judge. (…)

Q.: Who wrote [the] petition for you?
A.: One [man] from Banhā, his name is Muṣṭafā, a petition-writer.

Q.: And the one in Cairo, who wrote it?
A.: The [man] who sits outside, next to the court. (…)

Q.: Did you send a telegraph and how much did you pay?
A.: I paid nine ṣāgh and the price of the petitions [that] costs between three piasters and four […]. (…)

Q.: You were afraid first, and why are you confident now?
A.: I was with them in the testimony and I took [the bribe], and I clean my conscience in front of God.

(Case of the Public Prosecutor’s Office # 651 for 1905 - Archives of the National Center for Judicial Studies, Cairo - Film 4/14003 – Frames [6210-6213]).
The archives

In the four different petitions she sent to the judicial authorities on March 27th, April 3rd, May 7th and May 8th 1905, Khaḍra further explained how she had been forced by the ‘umda’s brother (who conveniently succeeded the deceased as village headman) to give a false testimony at the trial, how she had received a bribe and had spent the money on her children, and how she was then motivated to “speak the truth.” She also provided a great amount of detail about all the other witnesses for the prosecution, including the amount of money or land they allegedly received as bribes, and other factors undermining their depositions in the case such as previous instances of false testimony and recorded legal suits or quarrels opposing them to the accused (ibid. Frames [6228; 6229; 6238; 6241]). In his pleading at the trial, the defendants’ lawyer, ‘Abd al-Karīm Afandī Fahīm, used the rather spectacular reversal of Khaḍra’s testimony to denounce the fabricated and biased nature of the evidence in the case and assert that “the ‘umda [was] among the greatest thieves” and that “the brigands gather[ed] at his place.” Kīlānī himself declared to the tribunal: “If you convict me on the basis of the sayings of the witnesses, then you will do me injustice [for] the witnesses are my opponents and they have been hired against me” (ibid. Frames [6219]). He was nonetheless sentenced to death by hanging, and his appeal to the Cassation Court was rejected on May 24th, 1905.

Kīlānī’s judicial file belongs to a corpus of 18 cases of murder in which peasants from the Minūfiyya province in the Nile Delta were accused and sentenced to death by the newly created native court (mahkama ahliyya) of Ṭanṭā (and/or the instances of appeal) between 1892 and 1914. For most of the cases, the complete files are available, from the very first police inquiry to the final verdict issued by the Court of Cassation and the implementation of the sentence. These records are preserved in a microfilm collection at the National Center for Judicial Studies (NCJS), a training center for judges administered by the Egyptian Ministry of Justice. The excerpt quoted above is particularly illustrative of the richness of my corpus that amounts to almost 2,000 pages of documents. More importantly, it also reveals the theatrical nature of the trials and the fundamental ambiguity of the sources. This ambiguity does not only lie in the complex behaviors of the various actors who all play with oaths, false testimonies, fabricated evidence, fears of the ‘umda or of God, invocations of justice or injustice through official reports, testimonies and petitions. It also lies in the nature of the sources themselves, since
interactions between court users and court staff were partly shaped and “translated” on paper by the inquiring power, integrated as legal documents into a judicial file, preserved at the time as a potential source of jurisprudence, and finally reconstituted more than a century later as part of an archival collection by a training center for judges.

As such, this corpus perfectly reflects the specific difficulties involved in the study of archives defined in the Derridean sense. In Mal d’archive, une impression freudienne, Jacques Derrida traces the etymology of the work “archive” back to the Greek term arkheîon that initially designated “the residence of the superior magistrates, the archons, those who were in command.” He further explains that the archons were not only responsible for the custody of papers stored in their homes, but that, due to their political and social authority, they also enjoyed both the right and power to interpret them. By emphasizing the legal dimension of the documents, the political authority of their guardians, and the “hermeneutic competence” granted to the latter, this conception of the etymology of the term “archive” summarizes the challenges I faced when first confronted with this corpus. From this initial understanding of it, my approach to these 2,000 pages of legal files has been dictated by three main research questions:

- How and to what extent is it possible to escape the legal authorities’ interpretation of these documents by deconstructing the two stage constitution process of these judicial files as archives of the cases?
- How and to what extent is it possible to retrieve the fallâhîn’s “voices” from these archives; “voices” that are indirect, constrained, disciplined, and partially silenced a first time by the institution in which they were produced and set down on paper, and a second time by the authority that constituted these documents into archival collections and that thereby reinterpreted them?
- How and to what extent does this search for the peasants’ “voices” provide us with an insight into the very nature of the colonial legal system during the transition period of the first thirty years of the British occupation?

Searching for peasants’ “voices” in the performance

Faced with similar issues in the framework of his research on “the word of the possessed,” Michel de Certeau concluded to the ineluctable loss of the latter’s voice, insofar as “a window of interrogations has determined in advance the answers and fragmented the words of the possessed according to classifications that are not hers, but those of the investigating knowledge.”\(^2\) His more general works on the complexity of the relationships between orality and writing have nonetheless inspired me to pursue other directions. I have thus developed in particular the idea that the “voices” of the peasants, like those of the possessed, should not be looked for in some kind of a sacralized orality/alterity,\(^3\) but rather in the locus that is created between orality and writing, i.e. in the in-between that links and encompasses the physical utterance of speech and its transcription on paper and that I would call *performance*. By performance, I understand here the entire set of practices of the various protagonists present in the police station or the courtroom; practices linked to the interactional production of speech, acts, and writings and which lead to the creation of the judicial file.\(^4\) In this dissertation, I argue that it is possible to partly reconstitute this performance, by analyzing the complex relationships between orality and writing at work in the constitution of the court record. Following in this the example of Sylvain Parasie, I thus show that an “archaeology of the performance” is possible, to a certain extent, from the physical traces left on the archives in the very process of composition and recomposition of the file.\(^5\)

The interactional dimension of the power relationship in performance

On a more theoretical level, my use of the notion of performance relies on the Gramscian-inspired framework developed by Rosalind O’Hanlon in an article entitled “Recovering the

\(^3\) Ibid., 215-287.
\(^4\) As we shall see, this broad definition of the notion includes the narrower conception of the actor’s performance on stage.
subject: Subaltern Studies and Histories of Resistance in Colonial South Asia.” In this essay, O’Hanlon criticizes on the one hand, the essentialization of “the peasant” conceived of on the model of the autonomous humanist subject by the scholars of the Subaltern Studies project; and on the other hand, the Foucaudian conception of a subaltern as created by, and thus totally dependent on modern mechanisms of domination and control. She explains in a compelling manner how, in both cases, the fundamentally dialectical nature of the relation between hegemony and resistance has been overlooked. I argued in a previous article the idea that the dimensions of “mutuality” and “simultaneity,” highlighted by O’Hanlon as essential to the power relationship, may be recovered through the concept of performance, as defined by ethnomusicologists and anthropologists in the context of theories of composition “in performance” and of the ethnography of language. Here, I explore the avenues of research opened up by Talal Asad in his analysis of the “reconfigurations of law and ethics in colonial Egypt.” I use more specifically the notion of performance to approach the colonial situation not as a unidimensional struggle between essentialized categories of “oppressive colonizers” and “resisting colonized,” but rather as a series of complex and multidimensional interactions involving a multiplicity of actors who defined themselves and their roles in police stations and courtrooms, and who through procedures and institutions “converge[d] to create (largely contingently) a new moral [and political] landscape.” Finally, the concept of performance allows me to conceive of subjectivities that do not necessarily find their origins in themselves, or in O’Hanlon’s words to conceive of “presence(s) without essence.” Through the image of the stage actor who plays a role on a scene that she has not really chosen and sometimes expresses

7 O’Hanlon, “Recovering the Subject,” 84, 110.
8 Ibid., 104-106, 110.
11 Asad, Formations of the Secular, 216.
12 O’Hanlon, “Recovering the Subject,” 87.
herself through a language that is not totally hers, the notion of performance also offers the possibility to apprehend a subaltern agency that lies in the interaction rather than in the agent himself, without depriving the latter of her deep creativity. Thereby, it restores to the subaltern her ability to adapt, negotiate, struggle, and resist not outside or “above” the mechanics of power,\textsuperscript{13} but rather within and beyond them.

**Ideologies of language at work in the native courts**

With regard to Egyptian legal history, approaching the archives through the lens of performance allows me to explore the fundamental complexity, ambiguity, and contingency of the system of *mahākim ahliyya*, established in 1884 on the French model partly as a result of an Egyptian initiative that predated the occupation but to be soon deeply reshaped by the British colonial authorities. The history of the creation of the *mahākim ahliyya* has been almost exclusively studied as a complex power struggle between on the one hand invasive British judicial advisers and on the other resisting Egyptian elites (and to a lesser extent uncollaborative masses), mainly on the basis of administrative sources.\textsuperscript{14} The very nature of the court cases on which this dissertation relies entails a shift of focus from the institutional power struggle to the workings of the judicial procedure from below. In this context, an approach focusing more specifically on the interplay between orality, writing, and performance appears all the more relevant that part of the colonial discourse developed by the British authorities to take control of the legal system through reform relied on the idea that only the new techniques of judicial orality, writing, and performance – if implemented by sufficiently trained (understand European) magistrates –

\textsuperscript{13} Khaled Fahmy, *All the Pasha’s Men: Mehmed Ali, His Army and the Making of Modern Egypt* (Cairo: American University in Cairo Press, 2002), 318.

would succeed in putting an end to the lawlessness of the countryside. The face-to-face oral interrogations, the public production of evidence under oath at the trial, and a decision-making process founded on the review of the judicial file, the hearing of witnesses, and the pleadings of all parties would not only remedy the persisting influence of the preceding system defects: the alleged ineffectiveness of an Islamic law (sharī’a) rooted in extremely formal rules of evidence, and the supposed barbarity of the Ottoman-inspired secular law (siyāsa) too often applied on the basis of confessions extracted under torture. They would also, the narrative went, constitute the fallāḥ as a free subject of the law who was offered both the possibility to defend himself or testify unconstrained and the guarantee of a fair trial through the assurance that no one would be sentenced on the basis of “papers that do not speak.” Within the framework of my search for both peasants’ “voices” and an alternative to the legal authorities’ official interpretation of the court records, these claims calls for an analysis of the sources through the lens of linguistic ideologies. The adoption of such perspective proves extremely fruitful. It allows to reveal that, far from liberating the fallāḥ, these new techniques of legal orality, writing, and performance rather contributed to further silence, coerce, and objectify him. It also enables me to show however how the maḥākim ahliyya became to some extent loci of contestation/negotiation around the moral and political nature of the legal system and the colonial management of rural criminality. Finally, it gives me the opportunity to shed light on the development of a “vernacular” culture of the law among the peasants.

Colonial Law: “Representation” or “Performance”?

Since the 1980s, a growing literature on law and colonialism has shed light either on the various manners in which the colonial authorities constructed their rule through the shaping of complex combinations of “invented” native judicial traditions and imported European legal systems; or on the multiple ways in which members of the native elites used law as a resource both in their anti-

15 The maḥākim ahliyya in their criminal dimension came to replace the majālis maḥalliyā, a dual judicial structure characterized by a first ruling based on Islamic law (sharī’a) complemented by a second ruling according to a set of secular laws (siyāsa).
16 For a criminal conviction, the sharī’a required two male Muslim eyewitnesses of the crime or a public confession before the qāḍī.
imperialist struggles and in their attempts to legitimize newly acquired positions of power within their own communities. Relying on various theoretical frameworks from neo-Marxism and political economy to processual approaches and legal pluralism, these studies have greatly contributed to our understanding of the invention of customary law, the administration of local justice, and the evolution of the relationships among law, property, and labor. But although its authors have often conceived of the colonial legal arena as a contested field between colonizers and colonized, this body of literature has generally failed to overcome the dichotomy between perspectives “from above” and “from below,” and has hence largely overlooked the crucial dimensions of simultaneity and mutuality of the power relationship already mentioned. In addition, it has rarely investigated the legal conceptions and practices of ordinary members of the colonized societies, rather focusing on local notables and tribal chiefs. Finally, scholars studying Muslim countries have generally been more interested in the transformations of Islamic law than in the development of “secular” legal systems.

Among the studies more specifically dedicated to the Middle East during the colonial era, a new theoretical trend inspired by Foucault’s ground-breaking analysis of disciplinary power emerged at the turn of the 1990s. But in spite of its ambition to explore both the “micro-” and “metaphysics” of power, I argue that this body of literature has fallen into the same pitfalls as that of the preceding decade.

Although it does not extensively deal with law, the seminal work inaugurating this new theoretical framework is Timothy Mitchell’s *Colonising Egypt*. As I have shown in a previous

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article relying on O’Hanlon’s critique of the Foucauldian perspective, the main limitation of this study lies in the fact that its author conceives of power as an ensemble of discourses and practices that somehow “precedes resistance” and that “will always provide the matrix or set the arena in which resistance will have to operate.”

To be sure, Mitchell significantly contributes to our understanding of the “power to colonise” by shedding invaluable light on the colonial ambition to create “an appearance of order” and shape the colonized world as the visible, legible, and hence manageable exhibition of an abstract truth. Concomitantly, he carefully emphasizes that the effect of a structure/meaning separated from reality induced by these techniques of representation was just an illusion, and that there was actually nothing beyond these practical experiences of the hegemonic relationship. But his somehow de-contextualized conception of power as preceding resistance leads him to fail, on the one hand, to take into account the highly disputed context in which hegemonic discourses and practices were first elaborated, and on the other hand, to investigate the multiple and contested manners in which they actually “operate[d] (…) upon [their] objects.”

In other words, as Khaled Fahmy puts it, he overlooks the fact that “texts do not write themselves” and that “laws and regulations also do not implement themselves.”

In addition to this flawed model of power, I argue that Mitchell’s reflection on the world-as-exhibition based on Derrida’s notion of representation is problematic in another respect. In “Rethinking ‘peasant consciousness’,” I explain this point as follows:

“Besides the question of the articulation of both parts of [the] analysis (the “microphysics” and the “metaphysics” of power) raised by Charles Hirschkind (Hirschkind 1991), the main issue comes from the fact that, although Mitchell’s demonstration essentially relies on the discursive analysis of high cultural texts, he extends its alleged explanatory power to the peasantry without further elaboration. In Colonising Egypt, we are thus told, though in a rather elusive manner, how the effect of power as a system was created among the peasantry by the [institution] of the army, the implementation of extremely pervasive state regulations, the construction of model villages, and the introduction of [modern] schooling (Mitchell 1988: 34–62, 85–94[, 97-98]). In a similar manner, the same sort of demonstration is used in “Everyday Metaphors of Power” to account for the illusion of a [“law-like”] power “external to ordinary life” of which the Malay peasants are said to be the victims (Mitchell 1990: [571,] 566-567). The problem with such an analysis is that peasants in both these instances cannot be the observing subjects

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20 See Clément, “Rethinking ‘peasant consciousness’.”
21 O’Hanlon, “Recovering the Subject,” 110.
22 Mitchell, Colonising Egypt, ix.
23 O’Hanlon, “Recovering the Subject,” 103-104.
24 Fahmy, All the Pasha’s Men, 317.
whom Mitchell describes – the spectators in the theater setting offered by the world-as-exhibition – for they are the actual performers of the “play”.

Subsequently, I further expand on this idea by taking up Mitchell’s own example of the world exhibitions and reinvestigating it from a different perspective. Displacing the focus of analysis from Muḥammad Amīn Fikrī, one of the Egyptian Orientalist scholars who visits the 1889 Paris exhibition, to one of the nameless Egyptian donkey-drivers brought from Cairo to animate the street of the capital that has been reproduced for the occasion, I shed light on the gap that separates the viewpoint of the spectator from that of the performer. I stress in particular that, while the former expresses his amazement at “the realism of the artificial,” the latter cannot but be conscious of both the constructed nature of the performance in which he takes part and the reality of its exploitative character. Drawing on the latest research about the thousands of “indigènes” who participated in the 1931 Paris Colonial Exhibition – and especially the experiences of the Kanaks –, I underline that these actors’ double awareness stemmed both from the fact that most of the allegedly “authentic” activities they were hired to perform had actually been created for the occasion, and from the fact that they were exposed to very oppressive working and living conditions that promptly led them to rebel through petitions, strikes, thefts, fights with the police, and other “subversive” moves. Eventually broadening the scope of the reflection, I argue that “the subalterns cannot really be the victims of the illusion of the “metaphysics” of power, of the deception of the world-as-exhibition.”

“This is not because they lack the distance which separates the visitor of the exhibition from the objects (and subjects) on display (distance that Mitchell greatly emphasizes), but rather, because, being subjected to the most exploitative and repressive modes of operation of power, they directly experience the

25 Clément, “Rethinking ‘peasant consciousness’,,” 76.
26 Ibid., 76-77.
27 Mitchell, Colonising Egypt, 1-10.
28 Mitchell, Colonising Egypt, xiii.
30 De L’Estoile, Le goût des autres, 66.
31 Dauphiné, Canaques, 115-116, 175-179.
32 Clément, “Rethinking ‘peasant consciousness’,,” 77.
“cracks” of the supposed “system”, and are aware of the constructed and negotiated nature of both the practices and the discourses upon which the “mechanics” of power actually rely.”

Although Mitchell does not extensively address the question of law, the direct impact of Colonising Egypt for the field of legal history was acknowledged immediately after its publication with its being included in two major review essays by Sally Engel Merry and Jane Collier. In her assessment of the work, Merry rightly emphasizes:

“Mitchell does not indicate the extent to which these new forms of representation and thinking spread throughout Egyptian society and how deeply they penetrated into the lives and understandings of ordinary Egyptians. (...) Perhaps more struggle took place and greater efforts were made to resist these new ideas through political action or by passive noncompliance than he describes. (...) The ordinary peasant may have discovered modes of resisting this disciplinary order.”

She falls short, however, of further investigating the flaws inherent in his “world-as-exhibition” theory.

More recently, Mitchell’s work – and the Foucauldian framework he develops – has also served as one of the main models for Samera Esmeir’s dissertation entitled The Work of Law in the Age of Empire: Production of Humanity in Colonial Egypt. In this manuscript, Esmeir convincingly argues that the construction of a universal “juridical humanity” through the legal reforms of the turn of the twentieth century was key to the development of colonial rule itself in that “[it] enabled economically productive forms of suffering.” While her work covers the

33 Ibid.
34 He explicitly mentions modern law as part of the world-as-exhibition system on pages 100-101, 126-127, and 175.
37 Merry, “Law and Colonialism,” 914.
38 Mitchell’s world-as-exhibition theory also inspired Michael Gasper’s Power of Representation (Michael Gasper, The Power of Representation: Publics, Peasants, and Islam in Egypt (Stanford: Stanford University Press, 2009)). In this work, Gasper interestingly argues that the modern representation of peasants and the “peasant question” by the urban literate elites served to foster a feeling of national identity in the public sphere, and to substantiate these elites’ claims to social and political power. By totally excluding the fallāḥīn themselves from the analysis, Gasper however ends up both unwillingly reinforcing their image as “voiceless and passive objects of knowledge and reform” and eventually overestimating the elite’s actual “power of representation” (Ibid., 9).
40 Ibid., xi.
period from 1882 to 1936, she refrains from exploring the system of the native courts per se, preferring to focus on the “indefinite legalities” of agricultural administrative commissions and the “spectral legalities” of the large estates. More generally, by remaining within the realm of the modern world-as-representation theory, she fails to apprehend the “staging” of the law as a performance and largely overlooks the discursive mechanisms at play in the workings of the legal procedure itself. This lack of investigation into the modi operandi of the mechanisms of power leads her to interpret peasants’ increasing recourse to violence on the estates as a response to their alleged feeling that state law had “abandoned” them, or in other words to see the fallāḥīn as victims of the illusion of law as “a generalised abstraction,” as “a framework standing outside the real world.”

One of the works inspired by Foucault does investigate the microphysics of disciplinary power involved in modern forms of legal bureaucracy and documentation, thus taking the analysis to another level. Brinkley Messick’s *Calligraphic State* explores very subtly the transformations of the relationships between writing and authority in highland Yemen – or as he puts it the evolution of the “textual polity” of highland Yemen – through a powerful combination of archival research and anthropological fieldwork. The book undeniably constitutes a major source of inspiration for the present dissertation, and this for several reasons. First, Messick apprehends writing very finely, both in its complex and shifting relationships with orality, and as a social and cultural construct bearing crucial implications in terms of power. Such an approach allows him not only to put forward a compelling study, that of the fundamental reshaping of the *sharī‘a* – from a “total discourse” to “something approximating the form and separate status of Western law,” which occurred between the 1872 incorporation of the highlands into the Ottoman Empire and the 1990 creation of the united Republic of Yemen. It also enables him to offer enlightening insights into the socio-political and cultural meanings of key legal procedures and practices such as the face-to-face encounter with the judge (*muwājaha*), the presentation of

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41 Ibid., 306-311.
42 Mitchell, *Colonising Egypt*, xvi.
44 Ibid., 3.
45 See in particular ibid., Chapter 3: “Disenchantment,” 54-72.
petitions (shakāwa), the writing of judgments, and the treatment of written documents as evidence. Finally, this perspective allows him to draw brilliant parallels between the various levels of his analysis from the transformation of the spiral manuscript text into the straight printed form, to the “straightening” of cities, offices, classrooms, military barracks, the nation-state, and ultimately the “space of knowledge.”

Like Mitchell, Messick conceives of the effect of the microphysics of modern power in the legal realm as representing and framing the sharī‘a in terms of an abstract and generalized “law” characterized by “impartiality” and “impersonality.” He acknowledges however the existence of a gap between this desired aim and the actual impact, and explains that his intensive focus on doctrinal texts is only a “[pre]requisite” to understand the nature of textual domination and the “silencing [of] the world of the dominated.” Contrary to Mitchell, Messick does integrate into his analysis the “colloquial understandings” of the transformations of the sharī‘a he traces. The ethnographic dimension of his work allows him in particular to shed light on the experiences of ordinary members of the community, and to reveal the persistence of practices that go against the current of the hegemonic discourse. The contemporary perpetuation of the tradition of visits to the judge’s house even after the creation of courtrooms and legal offices is a very telling example thereof. In spite of this very fine attention to the “world of the dominated,” I would argue that, because of his theoretical grounding in the Foucauldian perspective, Messick’s brilliant study still fails to apprehend the essential dimensions of simultaneity and mutuality of the power relationship.

On this point, I join Sally Engle Merry not only in her assessment of the state of the scholarship on law and colonialism, but also and more importantly in her call for an investigation of the performances taking place in police stations and courtrooms. In the conclusion of her review essay, Merry thus emphasizes:

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46 Ibid., 249.
47 Ibid., 54-66, 195.
48 Ibid., 5.
49 Ibid., 5.
50 Ibid., 186.
51 Merry, “Law and Colonialism,” 892-893, 917-918.
Colonial authorities fostered the transformation of oral and flexible legal systems to written codes and required the construction of bureaucratic courts with formal procedures. These new systems, as Mitchell, Messick, and Cohn point out, often relied on very different forms of knowledge and representation. As courts created by the colonial authorities handled cases, they introduced colonized peoples to different ways of determining truth and making decisions. At the same time, they provided performances in which the experiences of colonized peoples were interpreted according to the rules and categories of metropolitan law. None of the studies under review have looked at the nature of these performances or at the impact they had on the consciousness of the participants or other audiences.  

In her introduction, she had already made a strong case for an increased focus on the “performance” in the following manner:

I argue that moments when cases are handled by police or courts are particularly important in introducing the culture of a dominant group. These moments can be analyzed as cultural performances, events that produce transformations in sociocultural practices and in consciousness. (...) In a court hearing, persons and events are given meaning in a formal and ritualized setting (Yngvesson 1988). The judge or police produce an authoritative interpretation of a person’s life situation. Everyday events and relationships are named and defined, decisions rendered, and penalties imposed. These performances introduce new meanings to those subject to them as well as to the wider audiences who watch or hear about them. Thus, as they handle cases, the courts serve as a critical site of cultural production. (...) The content of these performances depends on ongoing efforts by the state to assert control over local courts and police. In the colonial situation, contests over rules, procedures, and personnel pitted the varied interest groups of the colonial state against one another. (...) The outcome of these contests for control of the local courts determined the shape of the performances in court, and, consequently, the transformations wrought on the culture of the colonized peoples.

This dissertation aims to provide a first step in analyzing the complex dynamics governing the shaping and unfolding of colonial courtroom performances.

While legal anthropologists have since the early 1980s began exploring these performances – and in particular the crucial role of language therein – from direct observation, legal historians

52 Ibid., 917-918.
53 Ibid., 892-893.
have continuously grappled with the difficulty of reconstructing the performance on the basis of the archives. One of the most interesting attempts at investigating the power relations at play within the courtroom through historical records emerged in the late 1980s as part of the Subaltern Studies Project. In “Approver’s Testimony, Judicial Discourse: The Case of Chauri Chaura,” Shahid Amin searches for “the rebels’ view” of the famous 1922 attack on the town police station in the legal proceedings of the trial. Since most of the 228 peasants accused are silenced by the record, Amin chooses to first undertake his quest by analyzing the manner in which the approver’s testimony is constructed in the course of the procedure and the role it plays in the constitution of the broader judicial discourse. He eloquently substantiates his approach as follows:

It is, I feel, quite important for any historian of the subaltern classes to investigate the discursive practices within which statements by the police, administrators, judges, and by the accused themselves, are produced. This is required not in order to discern bias, rectify it and thereby arrive at an untainted, propre narrative of things past, unsullied by the context within which such a narrative was produced: that would be to indulge in a pointless positivist venture. It is necessitated by the fact that most statements about the dominated are produced within well-defined fields of power. (...)

Little attention has been [hitherto] given to the procedural and power grids through which ‘facts’ are admitted into the record of events, the dense web of intertextuality which is characteristic of so much that goes into court records, or the ways in which judicial statements on a particular event – say a mass anti-police riot – are constituted by an interplay between the legality and politics of the trial. In order not to write like a judge one must try to find out how the judge wrote.

In spite of this inspiring agenda, Amin’s study remains however mainly circumscribed to a narrative analysis. Relying on Ricoeur and Barthes, he interestingly conceives of the approver as “a figure of speech” and of his testimony as almost a literary genre. This subsequently allows him to shed light on the intertextuality at play in the construction of the judges’ master-narrative


56 Ibid., 167.
57 Ibid., 167-168.
58 Ibid., 187.
about the criminal rather than political nature of the riot and its “pre-history.” Amin never really attempts, however, to weave the silences and denials of the remaining 225 peasant defendants back into the fabric of his study. In addition, apart from those related to the “making of the approver,” he does not fully investigate the bureaucratic procedures associated with the constitution of the judicial file as archive. Nor does he examine the ideologies of language involved in these procedures. This dissertation undeniably draws on Amin’s pioneering analysis of the proceedings of the Chauri Chaura trial. But it also attempts to remedy its shortcomings first by trying to reconstitute the courtroom performance through a more anthropological approach to the records, and then by exploring the linguistic ideologies that shaped and were being shaped by the interplay between orality, writing, and performance in the very creation process of the archives.

**From the Legal Performance to the Interplay between Orality, Writing, and Performance**

In addition to the common metaphor establishing a parallel between theatre and courtroom and employed by, among many others, Tawfīq al-Ḥakīm in his *Diary of a Country Prosecutor*, the legal process as a whole can be conceived as a *performance* in a variety of different ways. As Bernard Hibbitts underlines, “law is [not only] made,” “applied,” “interpreted,” “fulfilled,” and “taught in performance” – be it in parliaments, notaries’ offices, courtrooms or law classrooms – but it is also, more profoundly, “located,” “embodied,” “memorialized,” “celebrated,” and “subverted in performance.” Regarding more specifically this last assertion, Julie Stone Peters emphasizes that, depending on the manner in which the very notion of *performance* is defined, it is seen in the legal realm as either “assisting law in its work of subjecting us to its authoritarian

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59 Ibid., 186.


commands” (as in Derrida’s or Legendre’s works), or as allowing fairer justice and opening up opportunities for liberation (as in Balkin and Levinson’s and Hibbits’s essays). She thus explains:

We have, on the one hand, a legal performativity complicit with the law’s authoritarian subjugation. Performance is bad because it is an agent of autocratic regulation, producing the law in a dramatic performance meant to conceal its violent origins and its ongoing groundlessness, pointing to an absent authority too terrifying to confront, masking law’s continuing violence with ritual splendor, injecting law into our bodies and souls through invisible pathways. And we have, on the other hand, a legal performativity that is the primary agent of liberation from authoritarian subjugation. Performance is good because it offers collective catharsis, resist formalist textualism, allows one to reconstitute one’s identity free from legal strictures, and gives non-verbal language to the illiterate and inarticulate so that, in the new media age, law is at last in the hands of the people.

In the conclusion of her analysis, Peters rightly underlines the unfoundedness of this binary opposition, the unpredictable character of performance, and the crucial importance of context. She fails however to further investigate the profoundly dual nature of the legal performance that she eventually outlines, preferring to shift her focus to the related but different question of the legal professionals’ simultaneous use and denial of law’s performative dimension. To be sure, Peters initially points to Judith Butler’s work on the performative constitution of gender as a successful attempt to combine John Austin’s speech act theory and Richard Schechner’s concept of restored behavior. But in order to support her presentation of what she calls the “great tradition of legal pro- and anti-theatricality,” she ends up rather simplistically categorizing Butler among the scholars who conceive performance as essentially “good.”

To substantiate my definition of performance as a notion allowing to retrieve the fundamentally dialectical nature of the power relation, I rather draw on social constructionism and more specifically on Michel de Certeau’s *Practice of Everyday Life*. Contrasting his approach with Foucault’s analysis of the “microphysics of power,” de Certeau explains that his book rather

64 Ibid., 196-197.
65 Ibid., 197-200.
66 Ibid., 185.
67 Ibid., 200.
68 Ibid., 191-192, 196.
focuses on the “‘miniscule’ and quotidian” “popular procedures [that] manipulate the mechanisms of discipline,” or in other words, the “‘ways of operating’ [that] constitute the innumerable practices by means of which users reappropriate the space organized by techniques of socio-cultural production.”

In the general presentation of his object of study, de Certeau tellingly refers to Chomsky’s distinction between “performance” and “competence.” This use of one of the linguistic notions of performance allows the French scholar to conceive of ordinary people’s everyday “tactics” of adaptation and resistance to disciplinary power – be they located in language, space, or thought – as “acts of speaking.” The latter are further defined through the four following elements: an act of speaking “operates within the field of a linguistic system; it effects an appropriation, or reappropriation, of language by its speakers; it establishes a present relative to a time and place; and it posits a contract with the other (the interlocutor) in a network of places and relations.” Such an approach focusing on the interactional and contextualized nature of “enunciation,” de Certeau explains, is aimed to “bring to light the clandestine forms taken by the dispersed, tactical, and makeshift creativity of groups or individuals already caught in the nets of ‘discipline.’” Whereas my own research deals more narrowly with the rigid and formal framework of the legal process rather than the broader and more all-pervading structures of everyday life, I have found the emphasis on the dimension of “bricolage” of people’s tactics and the artistic/poetic nature of their “ways of making” offered by this perspective extremely enlightening.

In addition to Chomsky, de Certeau also points to Garfinkel and Sachs as linguistic sources of inspiration for his work. Although he does not cite Bakhtin and while the broader theoretical frameworks in which both scholars evolve are obviously extremely different, I agree with Marvin Carlson’s analysis that de Certeau’s approach can somehow be seen as “the behavioral equivalent of the operations of Bakhtin’s utterance.”

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70 Ibid., xiv.
71 Ibid., xiii.
72 Ibid.
73 Ibid., xiv-xv.
74 Ibid., xv.
75 Ibid., xvi.
follows similar lines. Consequently, rather than drawing on Derrida’s concept of iterability\textsuperscript{77} thus following in Butler’s footsteps,\textsuperscript{78} my work is informed by both Bakhtin’s insights into the notion of utterance\textsuperscript{79} and Vološinov’s study on reported speech.\textsuperscript{80} From the Russian linguists, I have taken up a perspective considering the performative interaction within its social context, a sensitiveness to the dialogic – in Bakhtin’s sense – nature of the performance and the subsequent heteroglossia, a focus on the tension between reproduction and creativity inherent in the performance, an emphasis on the fundamental open-endedness of the performative process, and an attention to its profoundly ideological character. Within this framework, I have focused my analysis more specifically on the question of quotation and ventriloquism in the course of the legal performance. On this point and in addition to Bakhtin/Vološinov, I have also found elements of inspiration in Bauman’s and Brigg’s call for an increased attention to the complex processes of entextualization and (re/)contextualization, and their consideration of the high degree of reflexivity, on the part of all the participants in the performance, that characterizes the power negotiations surrounding these processes.\textsuperscript{81} To sum up, the notion of performance that informs my work can be defined as follows: a contextualized mode of communication which, firstly, is put on display and implies an interaction between performers and audience, all of whom being aware to play a role; that, secondly, entails a creative tension between repetition and innovation, between subjection and subversion, and that hence remains fundamentally open-ended; and, thirdly, that not only “does things with words” in Austin’s sense,\textsuperscript{82} but also reflects and transforms social reality.

As was already mentioned, the historian wishing to explore the performance thus defined is confronted with the difficulty of having to access it indirectly through the archives. I argue in this work that it is possible to partly reconstitute police station and courtroom performances

\textsuperscript{78} Judith Butler, \textit{Bodies That Matter} (New York: Routledge, 1993).
through an “archaeological” approach to the records. From the study of the physical traces left on the pages, this approach aims to deconstruct the very process of creation of the judicial file, and thereby shed light on the interplay between orality, writing, and performance at work in the procedure. Here, performance is meant in a narrower sense closer to the actor’s physical presence on the stage and, as we shall see throughout this dissertation, it includes the magistrates’ “staging” of themselves and of the law; what they would define as the peasants’ “appearances” at the trials; and finally the speech acts of the various participants in the course of the executions. As such, this notion of performance is heavily loaded ideologically. Regarding orality and writing, the works of Ruth Finnegan and Brian Street, among others, have similarly shown the socially, culturally, and ideologically constructed nature of these concepts. More specifically, Finnegan and Street have shed an illuminating light, not only on the ideological character of Western-centric academic definitions of literacy, but also on that of any community’s social practices of speaking, reading, and writing. Street’s general analysis of orality and literacy in terms of an “ideological” model is all the more relevant in the legal context, where notions of “judicial” orality, writing, and performance are being defined and implemented, and where the various participants’ words and appearances are being both transcribed into writing and translated into legal categories. As Woolard and Schieffelin rightly underline:

Transcription, or the written representation of speech, within, for example, academic disciplines and law, is not a neutral mechanical activity, but relies on and reinforces ideological conceptions of language (...). (...) Folklorists, sociolinguists, and conversational analysts who have recorded dialects of English reveal their linguistic biases when they use nonstandard orthography or “eye dialect” to represent the speech of blacks, Appalachians, or southerners more than that of other groups. Given the ideology of the value of the letter, nonstandard speakers thus appear less intelligent (...). In the American legal system the verbatim record is an idealist construction, prepared according to the court reporter’s model of English,

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against which incoming speech is filtered, evaluated, and interpreted. It is considered “information” if a witness speaks ungrammatically, but not if lawyers do, and editing is applied accordingly (…).

Here, Woolard and Schieffelin allude to a last element that is equally ideologically constructed and that deserves special attention in the Egyptian diglossic context: the binary distinction between formal language and dialect. Similarly to the question of the dichotomy between orality and writing, my approach to the issue of colloquial (‘āmmiyya) vs. literary (fuṣḥā) Arabic is informed by the works of scholars such as Steven Caton and Niloofar Haeri who, through extensive ethnographic research and a special attention to ideology, have challenged Ferguson’s simplistic opposition between one “high” language associated with high prestige jobs, culture, education, and classes, and a “low” language linked with informal situations and uneducated/working or marginalized communities. From within this perspective, I conceive of both ‘āmmiyya and fuṣḥā in relationship with each other, emphasize the extent of their actual intermingling in police stations and courtrooms, and explore the ideologies underlying the different ways in which both forms of language were defined and used by the various actors on the scene. Within the general framework exposed above, this dissertation aims more broadly to investigate the linguistic ideologies that shaped, and were being shaped by, the interplay between orality, writing, and performance in the very process of creation of the archives. By analyzing the justice professionals’ – and to a lesser extent the peasants’ – conceptions and practices of language and appearance in legal settings, my aim is to shed a new light on the very nature of British colonial justice in Egypt, by revealing the crucial importance of discursive mechanisms in the construction of the legal system and in the concomitant development, among the fallāḥīn, of a complex vernacular culture of the law.

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Colonial Minūfiyya

Between 1884 and 1914, the fallāḥīn’s world was marked by a profound disruption. The integration of Egypt into the world economy, that had begun with the introduction of long-staple cotton in the early 1820s, was considerably accelerated during this period. In the countryside, the increased foreign investment in land, the growth of the rural population, and the subsequent vicious circle of indebtedness translated into a massive land spoliation to the detriment of small landowners, the multiplication of large estates called ‘izab, and the exacerbation of social inequalities. In addition to these structural changes, a series of crises, among which the low Nile of 1899-1900, the financial crash of 1907, and the dreadful cotton harvest of 1909, led to unrest in the villages and growing anxiety among colonial and local elites over what was perceived as the ever increasing rate of rural crime and ultimately over the fate of the “unruly” or “lawless” countryside.

Against this general background, the province of Minūfiyya, located in the heart of the Nile Delta (Appendices 31 and 32), presented distinctive features. According to the 1897 census, the region was then the second most populated province after Gharbiyya, with 864,206

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92 On the ‘izab, see Owen, The Middle East, 146-148, 228-230.
inhabitants against 570,062 for Cairo. In 1907, the population of Minūfiyya would reach 971,016 against 654,476 in the capital. With a size of 374,926 feddans (around 1,575 km$^2$), the province was also one of the most densely populated. Contrary to other cultivated areas of the country notably on the coast, the Minūfiyya had retained a relatively high diversity in the crops grown, and wheat, maize, and even vegetables, fruits, and clover (birsīm), would still be found alongside cotton. More importantly, the province exhibited a pattern of landownership very different from that of the rest of the Delta with a limited development of large estates and a strikingly high number of small landowners. The socio-economic situation of the latter was extremely precarious and characterized by the highest level of indebtedness of the country in terms of the amount owed to creditors. In 1913, the province had 253,442 owners of five feddans or less (i.e. less than 21,000 m$^2$). 42 per cent of them were debtors, and 72.5 per cent of the total amount of their debt was owed to local usurers rather than to the Agricultural Bank. Within this socio-economic context, the Minūfiyya presented one of the highest rates of “criminality” throughout the period. In 1906, 290 crimes were recorded within the province, among which 76 homicides, and this number denoted a more than 35% increase in comparison with the preceding year. The criminality rate of Minūfiyya was then comparable to that of Cairo. That same year, 1906, the province also provided three of the 16 men sentenced to death by the native courts in the entire country.

Finally, the Minūfiyya of the turn of the twentieth century would also be durably marked by the executions of four peasants from the village of Dinshāwāy following the eponymous “incident”

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97 Owen, Cotton, 238; for details regarding the size and population of the five districts or marākiz that constituted the province, see the periodical: Rawḍat al-bahrāyn (Shibīn al-Kūm: January 1899).
98 Rawḍat.
99 Shalabī, Šīghār mullāk; Baer, A History, 67 (Table 5).
100 Owen, The Middle East, 232 (Table 53).
101 Egypt, Egyptian National Archives, Majlis al-wuzarā’ - nizzārat al-ḥaqqāniyya, [0075-040100], Rapport pour l’année 1906 (Cairo: National Printing Department, 1907), Appendice III (Tableaux statistiques), Tableau No. II.
102 Ibid., Appendice III (Tableaux statistiques), Tableau No. III.
103 Ibid., Appendice I (Note sur la criminalité), Tableau No. 1, 26.
104 Ibid., Appendice III (Tableaux statistiques), Tableau No. IX.
On June 13th of that year, five British officers went pigeon hunting in the vicinity of the hamlet. In addition to directly threatening one of the fallāḥīn’s sources of revenues, the soldiers accidentally set a threshing-floor on fire and wounded a woman, which angered the villagers. In the uprising that followed, four peasants were injured, and one was killed. On the side of the officers, three were wounded, among whom one subsequently died from sunstroke while trying to seek reinforcements. The response of the British administration to this episode was swift and extremely severe. A Special Court was set up, and for four days, between June 24th and 27th, 52 peasants accused of “premeditated murder” faced ten prominent British and Egyptian judges and lawyers and around 400 local and foreign journalists. 21 of these fallāḥīn were eventually found guilty. Four of them were sentenced to death by hanging, the others to various punishments of penal servitude and flogging. The parody of justice that was displayed during the trial, the inconceivable severity of the sentences, as well as the cruelty with which the latter were carried out provoked outrage in Egypt, as well as in many liberal circles in Europe. The young nationalist leader Muṣṭafā Kāmil published countless articles both in Egyptian and European newspapers, thus contributing to the internationalization of the affair. Furthermore, numerous artists, among whom George Bernard Shaw, Ḥāfiẓ Ibrāhīm, Aḥmad Shawqī and many Egyptian rural poets, composed literary works on the ordeal of the fallāḥīn of Dinshawāy. By the extent and the diversity of this literature, Dinshawāy was soon incorporated into the collective memory of Egyptian nationalism as a foundational event. While the Dinshawāy incident thus became the symbol of colonial (in)justice as embodied in special tribunals, I have chosen to approach the question of colonial justice in Egypt by precisely shifting the focus from these exceptional jurisdictions to the regular court system, that of the native or national tribunals, the

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mahākim ahliyya. As we shall see, such a move has proved extremely fruitful in showing in particular the profound permeability and similarity of nature between the two structures.

**Thesis**

By focusing on the interplay between orality, writing, and performance apprehended through the lens of language ideology, the approach adopted throughout this dissertation allows me to emphasize the crucial importance of discursive mechanisms in the construction of the colonial legal system and through it in the consolidation of the colonial political and socio-economic order.

Within this perspective, I show in particular how both the colonial discourse on the new notions of legal orality, writing, and performance and the invocation of peasants’ allegedly pernicious (mis)uses of language when confronted with the law were mobilized by the British authorities not only to tighten their grip over the judiciary, but also to justify a series of reforms that profoundly reshaped the native court system. At the institutional level, the colonial linguistic ideology thus helped substantiate both the 1897 removal of the *sharī‘a* constraints on the death penalty and its consequent increase in executions, and the 1905 transformation of the native courts of first instance into courts of assizes, a reform that eliminated the possibility of appeal but without introducing the guarantee of a people’s jury. Colonial assumptions about the relationships between magistrates, peasants, language, and the law were similarly called upon to justify changes in the code of criminal procedure such as the suppression of the independent inquiry judge (*juge d’instruction*) in the preliminary stage and the introduction of adversarial elements into an originally inquisitorial system at the trial. These various reforms served not only to silence and coerce the *fellāhīn* on trial, but it also turned the entire legal process into a parody of justice.

In addition, far from constituting peasants as free subjects of the law, the actual implementation of these new techniques, meant to make bodies and souls “speak,” led to their objectivation as completely cut off from the local socio-political networks in which they were entangled through a decontextualization of their stories and ultimately of the cases. In the course of the procedure, this decontextualization opened the way to the essentialization of the *fellāhīn* as morally corrupt elements of society and to the development of a colonial grand narrative about peasant
criminality and its causes that can be summarized in three words: “love of revenge,” “greed,” and “passion.” This process of moralization of the law translated more specifically into the discursive development of a repertoire of stock figures ranging from the broad categories of the “stupid/savage” or the “illiterate/immoral” fallāḥ and the “vengeful Bedouin” to the more precise profiles of the “disreputable son” and the “ghafīr (guard)-bandit.” Both nourishing and being nourished by contemporary scholarly and political debates on social and security issues, these stock figures allowed judicial authorities and local elites to skillfully conceal the social disintegration brought about by the occupation and the development of colonial capitalism in the countryside. Furthermore, it enabled them to hypocritically deny the fundamental ambiguity of a system supposed to simultaneously ensure, on the one hand, the preservation of “order” and the dispensation of “justice” in the villages, and, on the other, the perpetuation of a highly oppressive, exploitative, but economically efficient situation. In turn, the colonial grand narrative about peasant criminality served to justify the increasing reliance of the judiciary on local administrative authorities and notables to carry out its “mission.” Culminating in the 1909 “law of bad reputation,” this process thereby strengthened the profoundly unequal power relationships that the British had initially claimed to eliminate as part of their grand project of liberation of the peasantry.

But this approach focusing on the unfolding of the various actors’ language ideologies in performance also allows me to shed light on both the collective/contested nature and the diachronic dimension of these discursive mechanisms in which peasants took an active part. These findings lead me to show more specifically how the scene of the mahākim ahliyya became at the turn of the century the locus of a negotiation/contestation, among a multiplicity of professional and lay actors, of the relations between law and power in the villages and hence of the colonial management of the “unruly” countryside. In addition, the analysis of this negotiation/contestation over time, and especially during the six to twelve month period over which the entire legal procedure usually extended, reveals how the fallāḥīn engaged in a true learning process, and how they developed in the course of the experience a “vernacular” culture of the law.

The rich material analyzed in this dissertation presents the full range and diversity of forms that this negotiation/contestation took. Despite the strict rules of performance enforced at the trial,
the principles of public production of evidence and cross-examination of witnesses occasionally allowed defendants’ lawyers and families to contest the colonial grand narrative, re-contextualize the crime within the complex socio-economic dynamics of the village, and eventually lead court members to reassess the weight granted to context in their decision-making process. But such an attempt at considering the full complexity of the case and in particular the whole extent of local responsibilities could also emanate from local prosecutors as early as the preliminary inquiry stage, and be thwarted by ad hoc coalitions of witnesses and judges more interested in the promotion of the simplistic narratives of greed, revenge, and passion associated with the stock figures. Finally, the very telling example of the investigation and trial of a proxy murder shows how long and intricate this negotiation between advocates of the preservation of the status quo in the local power relations and promoters of a more thorough justice could be. It demonstrates in particular how the struggle over the legal qualification of the crime and the sentence to be initiated against the culprits could extend over a year from the first hours following the crime to the last days preceding the execution, and oppose at each stage unlikely alliances of peasants, lawyers, prosecutors, judges, and political authorities holding different interests and conceptions of the law.

These long contested procedures offered the fallāḥīn involved in the cases as plaintiffs, defendants, or witnesses the possibility to engage in a learning process. Far from both the image of the illiterate/immoral peasant popularized at the time and that of the fallāḥ victim of the illusion of modern law developed by contemporary scholars, the court records reveal how the peasants’ very participation in the performance of the law ensured both their introduction to the official rules of the system, but also their direct experience of its misperformances, contradictions, and other “cracks.” In addition, the study of proceedings, petitions, and execution reports sheds light on how, in the course of these multifaceted personal experiences and in a dialectical – though profoundly unequal – relationship with the (allegedly) high legal culture of the magistrates, the fallāḥīn on trial developed what I call a “vernacular” culture of the law. The use of this last expression allows me not to reify any ideologically constructed dichotomies, but rather to emphasize the extremely heterogeneous and deeply interactional nature of this peasant legal culture. I show in particular how the latter was located in a series of in-betweens: in-between petitions and folksongs, orality and writing, the invocation of “ancient” notions of justice and the assertion of “modern” rights, and adaptation and resistance.
Finally, this dissertation serves to invalidate three different historiographical narratives:

- Firstly, the narrative developed by colonial authorities claiming to have brought the *fallāhin* “water for their fields, justice in their law courts, and immunity from the tyranny under which they ha[d] for so long groaned;”\(^{107}\)

- Secondly, the parallel Egyptian nationalist narrative arguing that, in spite of the profound reshaping of and tight control over the *mahākim ahliyya* by the British, the system had a life of its own; that the overwhelming majority of the Egyptian judges and lawyers who staffed these courts remained independent from the colonial authorities; and that after WWI the most talented of these magistrates became prominent nationalists who strengthened the rule of law and led the country to liberalism;

- And thirdly, the narrative of the modern world-as-exhibition theory that analyzes the power of mostly disembodied discourses, and presents the peasantry as the victim of the illusion of the positivity and abstractness of law.

In order to substantiate the thesis presented above, this dissertation is divided into four chapters. While the first one presents the general institutional and ideological background of the *mahākim ahliyya* as well as the methodology adopted throughout the work, the three following chapters focus on three successive moments of the judicial process: the preliminary inquiry, the first trial, and the stage of appeal and cassation. These three consecutive steps of the legal procedure also allow me to address three different legal issues: the determination of the criminal’s profile, the performance of the law and the public production of evidence, and finally the question of the definition(s) of justice.

**Chapter 1: Approaching Turn-of-the-20\textsuperscript{th} Century Egyptian Judicial Archives**

The first chapter of this dissertation entitled “Approaching turn of the 20th century Egyptian judicial archives: ‘Ideologies of language,’ quotations, petitions, & the question of peasant ‘voices’” provides a general reflection on the relationships between magistrates, peasants,

language, legal procedure, and law. The first subsection critically assesses Egyptian and colonial elites’ preconceptions about the fallāḥīn’s uses of language when confronted with the law. Relying on the study of three literary works in context (the ancient Egyptian Eloquent Peasant, Maḥmūd Ḥaqqī’s Maiden of Dinshaway and Tawfīq al-Ḥakīm’s Memoirs of a Country Prosecutor), this part analyzes the strength and longevity of the myth of the garrulous/silent peasant. Thereby, it sheds light on the ideological background upon which the native courts were instituted.

The second subsection explores the judicial authorities’ linguistic ideology through an examination of the colonial discourse on judicial orality, writing, and performance. While these techniques were presented as liberating the fallāḥ, the analysis demonstrates how they actually contributed to his being silenced, coerced, and eventually objectified as a perfectly autonomous individual belonging to an equally self-ruled community free of any class- and power struggle. This part also suggests that such a de-contextualization of the cases allowed the magistrates to both draw a veil over the highly disruptive impact of the occupation on the countryside, and to essentialize the fallāḥīn as morally corrupt elements of society. Finally, it shows how the judicial authorities’ invocation of the ideology of orality, writing, and performance, combined with their conceptions about peasants’ language uses in the courtroom, allowed them to justify a series of legal reforms that turned the original system into an arbitrary justice, and that led to the strengthening of fundamentally unequal and oppressive power relationships in the villages.

The third and fourth subsections examine the magistrates’ linguistic ideology through the various actors’ actual uses of language in and around police stations and courtrooms. These uses are partially reconstituted thanks to a historical anthropological approach to the archives aimed at attempting an “archaeology of performance” on the basis of the physical traces left on the documents. Through an examination of the “fate” of peasants’ quotations and petitions in the constitution process of the judicial file of Mikhīmar ‘Abd al-Nabī, sentenced to death in 1892, and the subsequent transformation of this file into archival material, this part explores the negotiation that unfolded between the victim’s family and the various justice professionals around the question of the relationships between law and power in the countryside. The analysis of this case shows more specifically how, at the end of a highly disputed process of qualification of the facts and of legal decision-making based on the translation and manipulation of the
peasants’ “voices,” the highest colonial judicial authorities made the eminently political choice of the preservation of the status quo in the power relations at the local level to the detriment of basic juridical principles. It also sheds light on both how the fallāḥīn, whose voices were thus reinterpreted and progressively silenced, creatively re-appropriated their ability to act and express themselves through petitions written at the margins of the system, and how these texts reveal their attempts to contest the notions of law and justice invoked by the magistrates and their concomitant awareness of the necessity to speak “the language of law and power” in order to be heard.

Chapter 2: Vengeful Bedouins, Disreputable Sons, and Guards-Bandits

The second chapter entitled “Vengeful Bedouins, Disreputable Sons, and Guards-Bandits: Tattoos, Reputation, Honor, & the question of the criminal’s profile” analyzes, mainly through the workings of the preliminary inquiry, the construction mechanisms of four stock figures of the colonial grand narrative on rural criminality: the general categories of “the vengeful Bedouins” and “the illiterate/immoral peasants,” and the more specific profiles of “the disreputable sons” and “the ghufarā’ (guards)-bandits.” Thereby, it also sheds light on the broader process of moralization of the law, and the diverse reactions to this process on the part of the various village community members.

The first subsection begins by looking at the innovative methods (anthropometric measurements and forensic examinations) used by the police and justice professionals to make the bodies “speak,” within the framework of contemporary debates around the existence of a criminal “race.” It shows how the conception of “noble savages” (Pharaonic/Coptic autochthones) developed by Western scholars studying Egypt served to undermine the theories on “criminal natures” popular in Europe. But it also underlines how the parallel notion of “cruel primitives” (Bedouins) concomitantly put forward by both colonial authorities and local magistrates ensured the continued prevalence of very strong racial and class prejudices among the judiciary. Finally, this first part emphasizes the direct link established in these legal circles between illiteracy and immorality, through the theory of the essentially respectable but illiterate fallāḥīn who were contaminated by the vengeful Bedouins via the spread of corrupting oral poetry.
The second subsection explores the discursive mechanisms at work in the construction of the figure of the “disreputable son.” It does so not only by examining the interplay between orality, writing, and performance in the course of the legal procedure, but also by recontextualizing the phenomenon within scholarly and political debates on the relationship between crime and wealth. Such an analysis underlines the collective and contested nature of a process in which the peasants, willingly or unwillingly, took an active part. It also shows how the character of the “disreputable son,” revengeful, greedy, and depraved, allowed colonial and local elites to both conceal the profoundly disruptive socio-economic impact of the occupation, and strengthen the patriarchal structure of society.

In the last two subsections, I analyze the ambiguous colonial figure of the “ghafir (private or public guard)-bandit.” Through two cases in which these “brigands” – employed by the local ‘umad and other notables to protect their properties – are accused of murder, the third subsection shows how the various actors involved (family members, colleagues and bosses) negotiated issues of complicity and responsibility through evolving strategies of solidarity and betrayal before the inquirers. It reveals as well how these strategies facilitated the judicial and social classification of these cases as mere instances of violent settling of accounts between brigands. Finally, this part emphasizes how the character of the “ghafir-bandit” enabled judicial authorities and local notables to cover up the latter’s collusion with individuals hired and armed to protect the colonial capitalist system of exploitation of workers and resources.

The last subsection sheds light on both the performative dimension of these stock figures and the tactics of resistance developed by those who were associated with them. Through the story of three “ghafir-bandit” brothers who were stricken by shame after the local religious Shaykh allegedly made one of them impotent, I show how the process of moralization of the law, that culminated with the “law of bad reputation,” encouraged ordinary members of the rural communities to challenge the hitherto protected position of these guards in their villages. In turn, I reveal how the latter creatively adapted to these effects of the colonial rhetoric by raising the figure of the “ghafir-criminal” who avenges his honor to the status of hero, and by developing through this image a dynamic of emulation in violence. I eventually conclude by underlining the role played by oral poetry in this subversive re-appropriation of the colonial stock characters.
Chapter 3: Performance of the Law at the Trial

The third chapter entitled “The Trial: Roles, Procedures, Narratives, & the question of the performance of the law” examines peasants’ trials of first instance through the lens of performance. The latter is defined by two main elements: a dialogical interaction between performers and audiences, and an awareness on the part of these various actors that they are playing a role. Such an approach allows me to explore both the judicial authorities’ “mise en scène” and the magistrates’, defendants’ and witnesses’ “misperformances.” Thereby, it enables me to investigate the highly repressive character of the system and the limited spaces of resistance in it, and to eventually shed light on the negotiation that occasionally takes place among lay and professional actors around the de-/re-contextualization of the cases.

The first subsection shows more specifically how, alongside their attempt at moralizing the law, the judicial authorities conceived of its “staging” as an integral part of the functioning of justice. It also underlines how the magistrates’ competence and promotion were determined, within this perspective, by their presentation and language skills on stage, and the ability to secure connections among colonial and native officials both behind and beside the scenes. Furthermore, the analysis of Ṭanṭā court personnel files reveals how the justice professionals’ regular “misperformances” shaped (and were partially shaped by) the court users’ perception of them as community members, profoundly entangled into both national and local socio-political networks. Thereby, it indirectly emphasizes as well the extent to which, in spite of the judicial institution’s continuous efforts to preserve the integrity of the “spectacle of the law,” lay participants in the trials saw law itself as a malleable field susceptible to manipulation.

The second subsection focuses on the strict rules of the legal performance and the rigid distribution of the roles among the various actors. After briefly addressing the oppressive nature of the physical setting, I turn to questions of procedure studied both from the codes and from within the courtroom. I first demonstrate how profoundly the British colonial authorities transformed the initial French model by introducing elements of the adversarial judicial system into a fundamentally inquisitorial criminal procedure, and how this allowed them to ensure a much more expeditious and repressive justice by depriving defendants of their most basic rights. I then use the example of one of the “disreputable sons’” trial in 1908 to show how this hybrid
procedure, combined with various public interrogation techniques, not only silenced accused and witnesses, but also empowered the prosecutor to enact before the court the crude and decontextualized story he had developed in the course of the preliminary inquiry.

In the last two subsections, the detailed analysis of two other trials that were respectively held in 1900 and 1913 allows me to nuance the picture of the all-mighty prosecutor. The first example shows how, given both the public character of the evidence production process and the contradictory nature of the hearings, the “misperformance” of a key witness could open the possibility for the defendant’s lawyers to undermine the prosecutor’s simple storyline by exposing the fundamental ambiguity of the case context. The second example reveals how witnesses could also resist the prosecutor’s power by rejecting the formulaic and moralistic dimensions of trial storytelling and suggesting an alternative, recontextualized understanding of the events. These two cases thus demonstrate how lawyers and witnesses occasionally proved able to both influence to a certain extent the court’s interpretation of the murder, and to eventually lead its members to reconsider the place that should be granted to the social context in the legal decision-making process.

Chapter 4: Petitions, Deliberations, Executions

The fourth and final chapter entitled “Appeal and Cassation: Petitions, Deliberations, Executions, & the question of the definition of justice” explores the ultimate silencing of the peasants during the last stage of the legal process, and their attempts to resist mainly through petition writing and performance on the gallows. By placing this struggle within the colonial politics of the time, both at the local and the national levels, this chapter sheds light on the very different perceptions of the native courts as a political institution held by the various protagonists of the appeal and cassation trials, and hence on the latter’s contending definitions of justice.

The first subsection closely examines appeal petitions against village ‘umad in a context of increasing abuse of power resulting from two British initiated laws that endorsed the nomination – rather than the election – of the ‘umad and the extension of their legal prerogatives. Through this analysis, I show how, by recontextualizing the cases for which they were tried, the peasants sought to bring the native courts into their local conflicts. I further
emphasize that, contrary to the administrative petitions, the legal documents submitted by the *fallāḥīn* to the judicial authorities did not appeal to the just ruler’s benevolence, but rather laid claims to fundamental rights by investing principles of “traditional” justice with new connotations. I underline however that such an assertion of rights (especially property rights and right to protection against oppression) did not preclude an acute awareness of the eminently political nature of the judicial system.

The second subsection analyzes more specifically the techniques used by female peasant petitioners to have their voices heard and the manner in which their requests were treated by the male elite magistrates. It reveals that, while all petitioners learned, in the course of the procedure, to express their grievances according to the rules of the genre, women, with the help of public writers, found ways to experiment more personal strategies. Despite the creativity of their narratives and boldness of their courtroom performances, the examples studied show how these women were regarded by the justice professionals as having necessarily been manipulated by some male relatives and hence as essentially dishonest.

The third subsection investigates why peasants’ petitions more generally were quasi systematically dismissed by the appeal and cassation judges. Through a close examination of the personnel who staffed these courts and of their public and private stances, I argue that, while the *fallāḥīn* often looked at the judiciary as a possible arbitrator of their village struggles, the magistrates generally conceived of their role as maintaining “order,” which meant in practice preserving the power status quo locally and protecting the British occupation nationally. Whereas a few of them did oppose the colonial authorities, they were rather to be found among lawyers, and on the peasant question, even they would treat the case within the framework of the stupid/savage *fallāḥ* figure, merely requesting the court’s mercy for their clients.

The fourth subsection sheds light on the various manners in which, at the end of this long silencing procedure, the peasants sentenced to death found again an ability to express themselves through performance on the gallows. By analyzing two examples, I show how one of these *fallāḥīn* proved able to reinterpret the “spectacle” of his hanging put on by the colonial authorities by subversively reappropriating the figure of the savage *fallāḥ*, and how another
chose to dramatically deprive the magistrates from the very possibility of putting him on display by committing suicide in prison
1 Approaching Turn-of-the-20th Century Egyptian Judicial Archives: “Ideologies of Language,” Quotations, Petitions, and the Question of Peasant “Voices”

1.1 Introduction

Facing a seemingly silent and impressive corpus of turn of the 20th century Egyptian legal archives and eager to find in it Minūfiyya peasants’ “voices,” my first task was to explore not merely what De Certeau calls the “classifications (...) of the investigating knowledge,”108 but also and above all the inquisitorial power’s assumptions about the relations among magistrates, peasants, language, and the law; or in other words, its linguistic ideology. In “When Talk Isn’t Cheap: Language and Political Economy,” Judith Irvine defines language ideology as “the cultural (or subcultural) system of ideas about social and linguistic relationships, together with their loading of moral and political interests.”109 As this description suggests, the language ideology of a group finds its origins in a matrix shaped by specific cultural, socio-economic, and political dynamics both within this group and vis-à-vis other groups. In addition, by both partly governing and being expressed through communication processes and language uses, linguistic ideologies also contribute in turn to the very shaping of these relations. Language ideologies can thus be conceived of as “signifying practices that constitute social objects,”110 and, therefore, they should be considered in both their “conceptual”/“constative” and their “active”/“performative” dimensions.111 By taking into account both what is being said and what is being done through language, such a theoretical approach to linguistic ideologies offers scholars the opportunity to “relate the microculture of communicative action to political

108 De Certeau, L’écriture de l’histoire, 258.
economic considerations of power and social inequality, to confront macrosocial constraints on language behavior, and to connect discourse with lived experiences.”

At the methodological level, I analyze here the judicial authorities’ set of beliefs about the relationships between themselves, peasants, language, and the law, through an exploration of two main sites:

- their metapragmatics, or in other words their discourses about the various actors’ language uses in the course of the legal procedure – be they implicit or explicit, general or contextualized – (subpart 1.2 “Judicial Orality, Writing, and Performance”);
- and these actors’ actual language uses partially reconstituted through a deconstruction of the magistrates’ recording and archival practices (subparts 1.3 “Quotations between brackets: The apparent bureaucratic and judicial logic at the heart of the file,” and 1.4 “Petitions in appendices: ‘Jumble,’ acculturation and agency at the margins of the file”).

Such a historical anthropological perspective aimed at reconstituting the interactions that took place in the police stations and the courtrooms, on the basis of the material traces left on the judicial files themselves, allows me to focus precisely on what the legal authorities officially denied – i.e. the gaps between discourse and practice, the “cracks,” the “in-betweens” –, and thereby to shed light not only on the constative and performative dimensions of the magistrates’ hegemonic linguistic ideology, but also on its profoundly dialectical nature and on the subaltern tactics developed by the peasants to resist it (subparts 1.3 and 1.4).

Before exploring the judicial authorities’ linguistic ideology, I provide more general elements on the colonial and Egyptian elites’ enduring conceptions of peasants’ language uses when confronted with the law. I mainly do so by examining three literary works in context: the tale of the Eloquent Peasant, Maḥmūd Ḥaqqī’s *Maiden of Dinshaway,* and Tawfīq al-Ḥakīm’s *Diary of a Country Prosecutor* (subpart 1.1 “Peasants, Language and the Law: The myth of the ‘eloquent’/silent fallāḥ who lacks both

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112 Ibid., 27.
the awareness and intellectual ability to apprehend modern notions of law and justice, these works constituted the terrain that nurtured the magistrates’ linguistic ideology (subpart 1.2 “Judicial Orality, Writing, and Performance”).

In a context marked by the promotion of a modernized and professionalized form of Arabic (Modern Standard Arabic) through efforts at language reform, the development of the press, and an increase in schooling and bureaucracy, the judge of the native court soon came to be invested with the self-legitimating mission to interpret the peasant’s supposedly inarticulate flows/fragments of Arabic dialect, and grant them the consciousness of which they were allegedly deprived. Thanks to his mastery of modern written Arabic, the technical terms of the new judicial system, and most often the European languages from which these were derived, the magistrate was portrayed as possessing the ability to reach the truth by making the fallāḥ talk when he had found refuge in silence, exposing his lies, and eventually translating his convoluted stories into clearly defined legal categories. In his mission to render justice, the legal professional had at his disposal new techniques of judicial orality, writing, and performance that were promoted as ensuring the right balance between the protection of society and the preservation of the defendants’ and witnesses’ rights. From this ideological perspective, the nature of the interrogations as face-to-face oral communication and the Socratic method they were supposed to follow were conceived of as liberating the fallāḥ and constituting him as a free subject of the law. As for the combination of judicial writing and performance, it was presented as further guaranteeing the fairness of the peasant trials by safeguarding the continuity of the legal process throughout the procedure and making sure that no one would be sentenced on the basis of “papers that do not speak.”

Within this framework, the fallāhīn’s linguistic ideologies appear only as a watermark. In line with the profound suspicion towards face to face oral communication suggested by popular proverbs, judicial orality and performance seem to have been experienced as extremely oppressive interactions from which one had to escape. As for writing in a judicial setting, it

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115 See for example: “The walls have ears,” “The tongue is the neck’s enemy,” “The fool has his answer on the edge of his tongue,” in John Burckhardt, Arabic Proverbs, 2nd ed. (London: Bernard Quaritch, 1875), 29, 37, 57-58.
appears to have been considered by peasants as both a means that could be easily manipulated by literate people against them, and a tool that they could (re)appropriate through the help of a public writer to try to have their voices heard. To be sure, this short presentation is highly schematic, and in fact, neither “the magistrates” nor “the peasants” were monolithic groups holding well defined and perfectly coherent language ideologies. As we shall see now, the progressive elaboration of these linguistic ideologies and their concomitant implementation through language uses were characterized by much contingency, intricacy, and contradiction.
1.2 Peasants, language, and the law: The myth of the “eloquent”/silent peasant

[Le conte des « plaintes du fellah »] nous apporte quantité de détails sur les usages, la condition, les misères des petites gens. La ressemblance des mœurs anciennes et des mœurs actuelles s’y révèle d’une manière frappante (…). Il n’est pas jusqu’aux harangues interminables du fellah ancien qu’on ne retrouve, presque avec les mêmes hyperboles, dans la bouche du fellah contemporain. Le pauvre diable se croit obligé de parler beau afin d’attendrir son juge, et il débite tout ce que son imagination lui suggère de grands mots et de fortes images, le plus souvent sans trop se soucier du sens et sans bien calculer ses effets. (Gaston Maspéro, Les contes populaires de l’égypte ancienne)

“That’s all right,” I thought to myself – “a simple matter. It won’t take me more than a couple of hours at the most. The assailant is unknown. The victim cannot speak and won’t confuse me with his chatter. I have no doubt what the witnesses will be like. There will be the ghafir on duty who heard the shot, went off towards it, sluggish with fright – and naturally found nothing but a body prostrate on the ground. Then there will be the umdah, who will swear by his wife’s honour that the criminal is not one of his villagers; and, finally, the members of the victim’s family, who will keep everything dark from me and reserve the opportunities of vengeance for themselves.” (Tawfiq al-Hakim, Maze of Justice: Diary of a Country Prosecutor)

1.2.1 The various tales of the Eloquent Peasant

The Eloquent Peasant is probably the literary figure that has had the most lasting influence on colonial and Egyptian elite stereotypes about peasants’ uses of language in judicial settings. Dating back to the Middle Kingdom period of Ancient Egypt, the tale recounts the story of a peasant from the Nile Delta who, abused and robbed of his goods by a local civil servant, appeals to the Chief Steward of the Crown. Impressed by the peasant’s eloquence displayed in his first petition, the Chief Steward informs the King. The latter orders him to keep stimulating the plaintiff’s creativity by delaying the judgment and to record the fruits of the peasant’s inspiration for his own entertainment. Through eight additional petitions, the peasant then engages in “a poetic meditation on the need for justice,” alternately praising the Chief Steward for his noble qualities as a just ruler, denouncing the corruption of his subordinates and urging

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him to speak and perform justice. Following the last appeal, the plaintiff’s petitions are read to him and subsequently sent to the King for his delight. The Chief Steward eventually renders a judgment in favor of the peasant who receives all the properties of the local notable who had abused him, most likely as much as a compensation for the damage suffered as a reward for his rhetorical talents.

At the turn of the twentieth century, the more than four hundred lines of poetry of this tale preserved on four different papyri posed a real challenge of translation to Western Egyptologists. While the first editions and translations of the text date back to the 1860s, it is from the 1900s onwards that these Egyptologists began to reflect on the specific difficulties of understanding caused by what was then described as the “clumsiness” of the Eloquent Peasant’s petitions. The problems raised by the study of this text were then framed within the broader question of the “resistance” of its style to translation into European languages. Within this context, parallels between the language uses of ancient and modern fallāḥīn in judicial settings were also conveniently drawn as a way for the Western scholars to justify the limitations of their scientific expertise and shed light on the ultimate “incomprehensibility” of the peasants’ complaints.

In the presentation of the tale of the Eloquent Peasant in the fourth edition of his Contes populaires de l’égypte ancienne, the French General Director of the Egyptian Antiquities, Gaston Maspéro, thus underlined both the continuity of the peasants’ “endless [and hyperbolic] harangues” from ancient to modern times, and the persistent difficulties of understanding presented by these speeches. He furthermore explained that, at the turn of the twentieth century as in antiquity, the same reasons accounted for this alleged unintelligibility of the fallāḥ’s recriminations:

The poor beggar feels obliged to talk nice in order to soften his judge up, and he recites all that his imagination suggests to him from big words and strong images, most often without worrying too much about the meaning and without calculating his effects well... The incoherence of the ideas and the

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119 Ibid., 48.
obscurity of the language are due to the desire to speak well that possesses him and to the little experience he has with handling the elevated language...  

And he concluded his presentation by asserting: “the author of our tale seems to have succeeded, too well for us, in rendering this slightly comical side of the national character.”

More than a decade later in an essay entitled “The Story of the Eloquent Peasant: a Suggestion,” G. D. Hornblower, an inspector of the Ministry of Interior fascinated by Ancient Egypt, proposed another explanation for the “clumsy and turgid” style of the peasant’s appeals in the tale, the “dull display of oriental eloquence in petitioning” of the text, and ultimately the mystery of “the undoubted popularity of a work so bare, in its greatest part, of literary charm.” Instead of invoking the awkward desire of the poor fallāḥ to “talk nice,” Hornblower rather pointed at “the practical nature of the race” and again used contemporary examples to substantiate his hypothesis. After underlining the significance of the activity of petition-writing and of the role played by the “petition-men’ (ardihalghi)” in turn-of-the-century Egypt, he explained how the latter “ha[d] in [their] mind[s] a varied stock of models, graduated according to the importance of the subject-matter and the fee tendered by the client.” He further depicted a scene witnessed in the 1890s:

(...) a fallāḥ, wishing to charge an enemy with an offence punishable by law, would procure a scribe to write an accusation, for the nearest police station, giving all necessary details, real or not. The scribe would ask his client, ‘what do you wish for your enemy? penal servitude? for life or a term? simple imprisonment, or with hard labour? for how long?’ and so on, and would fix his fee in proportion to the sentence required and the amount of eloquence he has to expend.

Drawing on these observations, Hornblower eventually suggested that the nine petitions of the Eloquent Peasant ought to be considered as a collection of “models of eloquence” for the use of professional scribes and maybe even their clients.

120 Ibid.
121 Ibid.
123 Ibid., 44.
124 Ibid.
125 Ibid.
126 Ibid., 44-45.
In spite of the divergence in their respective interpretations of the “clumsy” style of ancient and modern petitions, it is interesting to note that both Maspéro and Hornblower insisted on the utilitarian use of language, especially hyperboles and flattery, in the peasants’ appeals (be they oral or written, uttered by the fallāḥīn themselves or put down on paper by the public writers), and the highly relative value of the alleged “eloquence” of the petitioners for both the European observer and the local bureaucrat.  

In contrast with this turn-of-the-century colonial conception stands Shādī ‘Abd al-Salām’s Fallāḥ al-Faṣīḥ (The Eloquent Peasant). In the more than half century that separates Maspéro’s Contes (1911) from ‘Abd al-Salām’s film (1970), the tale was dramatically reinterpreted. Mainly drawing on Breasted’s summary version published as The Dawn of Conscience in 1933, the director of The Mummy chose to shed light on what he considered as a true process of artistic creation, the dialectical relationship of this process to the rendering of justice and the nobleness of the performer himself. As Douglas and Malti-Douglas convincingly argue, ‘Abd al-Salām’s elimination of the dialogical dimension of the tale, the subsequent silence surrounding the peasant, “the characteristically Shādīan long shots” and a specific “‘musical’ montage” are all elements that emphasize the fallāḥ’s voice and eloquence. Not only does the latter expresses himself in the film in literary Arabic, but the very process of his artistic creation – which truly begins with Pharaoh’s intervention and the recording of the petitions – is almost sacralized through the subtle use of the imagery of “eternal Egypt” and the irruption of a “healing” singing voice as musical background. Far from considering the composition of the petitions as utilitarian, ‘Abd al-Salām underlined the peasant’s artistic drive and the strength of its impact. As Douglas and Malti-Douglas explain, “if the first speech is for a cause, the second is for eternity,” and “under [Pharaoh’s] influence, the quest for justice is transmuted into the creation of art.”

Contrary to Maspéro’s and Hornblower’s conception of the ignorant

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129 Ibid., 200-2.
130 Ibid., 202-3.
Egyptian peasant both ancient and modern, Abd al-Salām’s *fallāḥ* is thus truly eloquent and is able to be heard and obtain justice through performing his art.

In the 1980s, the figure of the Eloquent Peasant regained popularity in Egyptian artistic circles, and three different playwrights adapted the tale to the scene: Fatḥī Saʻīd, Muḥammad Mahrān al-Sayyid, and ‘Alī Aḥmad Bākathīr.\(^{131}\) While the three authors retained the *fallāḥ*’s true eloquence as the main focus of their own works, they all rethought more or less deeply ‘Abd al-Salām overly idealistic view of the relationship between the process of artistic creation and the rendering of justice. While Fatḥī Saʻīd’s peasant merely engages in a more dialogical process with the authorities but is still granted justice, Bākathīr’s hero’s oratory skills contribute to provoke a popular uprising that he has to curb himself through more speeches.\(^{132}\) As for al-Sayyid’s *fallāḥ*, “[he] starts and ends in jail and produces his eloquence despite the attempts of the rulers to silence him.”\(^{133}\) In the general context of Egyptian society in the 1980s, the eloquence of the Egyptian peasant thus came to be seen as a means of resistance and mobilization against political oppression and social injustice, but which rarely, if ever, leads to the granting of justice.

The fate of the figure of the Eloquent Peasant between the 1890s and the 1980s perfectly illustrates the complex processes of translation, adaptation and appropriation by the colonial and Egyptian intellectual and artistic elites of the “voice” of the *fallāḥ* confronted with justice, be it the purely literary voice created by an unknown Middle Kingdom author, or that more directly accessed but not less reinterpreted of twentieth century peasants. This short analysis of different variants of the tale actually reveals how a particular scholar’s or author’s approach to the “original” text, i.e. the manner in which the latter is understood and reworked, is determined by his positioning within a multiplicity of entangled intertextual networks, at the crossroad both between past interpretations of the source and the surrounding hegemonic culture, and between

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133 Ibid., 197.
his conception of the “eternal” Egyptian peasant and the vision (and justification) of his own role in the colonial or post-colonial society to which he belongs. Through their translations and adaptations, the colonial Egyptology scholar and the post-colonial nationalist/leftist artist do not only engage in acts of ventriloquism. They also produce a discourse about the relationship between peasants’ voices and the question of justice. While for the 1890s colonial scholar the fallāḥ’s fundamentally utilitarian use of language and the ultimate unintelligibility of his complaints virtually forecloses the possibility of “true” justice, the 1980s post-colonial artist generally glorifies the peasant’s rhetorical skills all the more because they tragically prove useless in helping him secure his rights. These parallel processes of disparagement and heroization are not only shaped by profoundly unequal social relationships, but they also contribute in strengthening the latter insofar as they conceal the power struggle that takes place through language between the peasant and the judicial authorities and as they preclude any questioning of the very nature of the concept of justice.

1.2.2 The silencing of the Dinshawāy fallāḥīn

The counterpart of the figure of the Eloquent Peasant is that of the silent fallāḥ. It came to be developed in the wake of the Dinshawāy “incident” in 1906 through the creation and publication of at least two novels and a play featuring the villagers, as early as the very first weeks following the events. In the most famous of these works, *The Maiden of Dinshaway* (‘Adhrā’ Dinshawāy), Maḥmūd Ṭāhir Ḥaqqī innovatively presents the fallāḥīn as expressing themselves in an “authentic” colloquial Arabic (‘āmmiyya), and forming a community in which free dialogue and “democratic debate” are promoted as a successful means of conflict resolution. In this highly romanticized peasant environment, “a son can argue with his father or brother without inhibition,” and “women, too, have the right of discussion and assembly in a manner that would fulfill the dreams of his excellency, the author of *Woman’s Liberation*!” In addition,

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136 Ibid., 19.
the examination of a litigious issue by the village “club” “often leads to reconciliation among adversaries.”

When it comes to more complex issues, the *fallāhīn* do not hesitate to express their intention to voice their complaints to the country’s highest authorities by sending petitions to the “Bāshā” in Cairo, but they are practically prevented from doing so by treacherous local notables. Muḥammad al-Shādhlī, the ‘umda, thus disregards the villagers’ concern over the British soldiers’ repeated hunting expeditions in the area, and is ultimately held responsible by the former for intentionally failing to convey their demands in this regard to the competent administration. After the clash takes place, another obstacle that actually prevents Ḥaqqī’s peasants from travelling to the provincial capital and simply “telling the truth” about what happened, as advised by the elder, is the deeply internalized conviction that “none will listen to [them].”

The author’s depiction of the communication patterns and networks within the village, both before and after the fight, thus leaves the reader with the impression of a vibrant socially self-ruled community but one that is politically at the mercy of the local notables and completely cut off from any authority above the ‘umda. More importantly in terms of language, the peasants’ acute awareness of this situation and of the fact that they will not be heard recurrently leads them to break into weeping, wailing, and lamenting before falling in total silence.

This combination of weeping and silence is what characterizes more particularly the second half of the novel, when the accused are brought before the special court, tried, and sentenced. Whereas the style of the work suddenly takes on a more theatrical dimension with the raising and the lowering of the curtain on what is described as a “tragicomic act,” it is striking to note that the main protagonists of this play, the forty-five defendants, are almost completely reduced to silence. The latter’s expressive appearances within the tribunal are described in some detail. They mostly show “gloomy face(s),” “stink,” are “shaken” by the request of the public prosecutor to “crush [them] without mercy” which causes them to “sweat profusely” and hence

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137 Ibid.
138 Ibid., 13-17; 45-46.
139 Ibid., 44.
140 Ibid., 45-46.
141 Ibid., 51-80.
to reek even more, but they do not speak.\textsuperscript{142} When individually questioned about the charges, their actual answers are censored through the following laconic comment: “The whole process of cross-examination was completed in half an hour.”\textsuperscript{143} The only utterance explicitly attributed to them is actually a mere scream that follows the reading of the judgment. The narrator explains: “No sooner had the chief justice finished reading the sentences than there was an uproar in the courtroom because of their harshness. The convicted men went out clamoring for justice, after they had pleaded for mercy!”\textsuperscript{144} As for the final words uttered by the sentenced fallāḥīn on the gallows, they are once again limited to tears, repeated declarations of innocence and last prayers.\textsuperscript{145}

The silencing of the Dinshawāy peasants in Ḥaqqī’s work is perfectly consistent with the manner in which they are featured in Mar’ī’s “political historical modern theatrical novel” - the text of which is actually extremely close to that of The Maiden.\textsuperscript{146} While the second act of this play presents extensive dialogues in literary Arabic (fuṣḥā) among three of the main protagonists of the events (Zahrān, Maḥfūẓ, and al-Sīsī), the latter, along with their forty-two co-defendants, totally disappear from the third and penultimate act dedicated to the trial. Such a representation of the fallāḥīn’s muteness and helplessness inside the courtroom however contradicts the actual historical records of the trial proceedings.

A close study of the official English translation of the “procès-verbaux” of the sittings of the special court presented to the British Parliament in September 1906\textsuperscript{147} and of the collection of the daily reports by Aḥmad Ḥilmī Aftāndī, the correspondent of Muṣṭafā Kāmil’s al-Liwā’ to the trial\textsuperscript{148} reveals indeed not only the judicial authorities’ use of language as a means of further exercising power in an oppressive environment, but also the reality and limits of the peasants’ agency in the form of complex tactics of resistance and collaboration developed through verbal

\textsuperscript{142} Ibid., 35-40.
\textsuperscript{143} Ibid., 43.
\textsuperscript{144} Ibid., 44.
\textsuperscript{145} Ibid., 45-48.
\textsuperscript{146} al-Mar’ī, Riwāyat sayd.
\textsuperscript{147} Further Paper.
\textsuperscript{148} Majallat, 210-368.
interactions. In this regard, both the spontaneous and elicited interventions of Muḥammad Darwīsh Zahrān, the “professional thief” who has strong and intimate links with the local notables, are probably the most telling insofar as they shed light on one of the defendants’ attempts to expose the blurriness of the colonial situation by contesting the strict, socially constructed distribution of the roles imposed upon him both inside and outside the courtroom. Furthermore, the unanimously violent and spontaneous reaction of the accused to their categorization as members of an ‘iṣāba (or gang) and the impact of this and subsequent qualifications on the different manners in which they dealt with the court throughout the trial suggest on their part the adoption of complex and flexible approaches to the colonial judicial system itself.

Thus, far from mistaking the British brand of cologne, allegedly requested by the Egyptian public prosecutor, to cover their bad smells, as “a term for ‘pardon’ in the criminal code” as Ḥaqqī would have us believe, the fallāḥīn of Dinshawāy as portrayed in the historical sources displayed an undoubted experienced knowledge of the system. In addition, contrary to the novelist’s suggestion that the peasants conceived of justice either in terms of the traditional

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149 This analysis of the few historical sources of the Dinshawāy trial at our disposal was fully developed in a paper entitled “The meanings of denial in early 20th century Egypt: The Dinshawāy peasants’ complex strategies of resistance and collaboration in the courtroom performance,” paper presented at the 10th Mediterranean Research Meeting that took place in Montecatini between March 25th and 28th, 2009. This paper situates itself within the theoretical framework of the study of colonial justice “in action,” but proposes to go further by exploring the strategies of resistance and collaboration developed by subalterns within the tribunal itself. More specifically, this work suggests that only an approach informed by ethno-methodology and conversation analysis can allow first to retrieve, to some extent, the active role played by the accused in the courtroom performance and, second, to shed light on the meanings given by the performers themselves to their defense strategies. Using the Dinshawāy affair as a case-study, this paper documents not only, on the part of many defendants, an experienced knowledge of the colonial judicial system, but also, on the part of a few, a strong sensitivity to the complex interactions taking place in the courtroom. Drawing on Martha Komter’s work on the dilemmas encountered by the accused in the elaboration of their defense strategies and Rodney Watson’s studies on the uses of membership categories in the presentation of victims and offenders, this analysis also sheds light on the various manners in which the four main defendants struggled, through their denial, around both the determination of their roles in the courtroom performance (accused. vs. accuser; victim vs. offender; informer vs. witness) and their identification as criminals through different legal/conversational membership categories (liar, members of an “‘iṣāba” (or gang), professional thief, occasional criminal). Finally, the close examination of these struggles reveals in turn the array of the positions adopted by the accused vis-à-vis the colonial judicial system (from overt resistance to hidden collaboration), and, to a lesser extent, the different conceptions of justice upon which these positions relied.

figure of the “just ruler” to whom one aspires to appeal in times of injustice or as the ultimate concern of God in whom one should passively entrust one’s fate, the records lead us to believe that the array of positions that the main defendants adopted vis-à-vis the special court during the trial (from overt resistance to hidden collaboration) actually relied on varied and elaborate conceptions of justice.

As in the case of the Eloquent Peasant, the creation of the myth of the silent fallāḥ in the wake of the Dinshawāy tragedy allows the “engaged artist” to justify the “mission” he believes he has been entrusted with, i.e. the mission to give a voice to the wretched confronted with (in)justice. While the muteness of Ḥaqqī’s peasants in the courtroom is not insurmountable, for the latter otherwise demonstrate a remarkable ability to speak, debate and settle disputes among themselves, it nonetheless betrays both an ignorance and a helplessness that cannot be overcome without the intervention of a benevolent intermediary who, contrary to both corrupt local notables and incompetent lawyers, would prove able to translate the fallāḥīn’s complaints and defend their rights.

In addition, the very combination of the images of the democratic chitchat taking place in the peasants’ “club” and their deafening silence within the courtroom offers Ḥaqqī the opportunity to both portray the village society as a holistic and essentially solidary community and conceal the pernicious manner in which the use of language by the judicial authorities forces the fallāḥīn to take sides, thus strengthening even involuntarily the existing oppressive and fundamentally unequal power relations at work within the village. Regarding this point, it is interesting to underline that while Ḥaqqī alludes to the internal rivalries that lead a number of inhabitants of Dinshawāy to unjustly denounce others, he overlooks the crucial context of complex dialectical relationships of exploitation, dependency and clientelism surrounding these betrayals, as illustrated in the historical records by the case of Maḥfūz’s son who after having escaped to a neighboring village was coerced into collaborating with the police by pressure from powerful members of his extended family, thus saving his own life but thereby helping to send his father to the gallows.

Finally, the silencing of the peasants conveniently allows the Egyptian cultural and political elite to avoid challenging the very nature of colonial justice. Thus, in the vast literature
produced in the wake of the Dinshawāy tragedy, it is revealing to note that the broader question of the criminalization of the *fallāḥīn* as a “dangerous working class” was never raised, and this while the qualification of the defendants as members of a gang was opportune founded on the fact that two of the accused had had previous brushes with the law, and while even the defendants’ lawyers called for their sentencing as habitual robbers.

1.2.3 The garrulous female witness, the enigmatic Sufi *Shaykh*, and the substitut/playwright

The figures of the “Eloquent” Peasant and of the silent *fallāḥ* soon came to be combined, adding yet another dimension to a series of paradoxical descriptions of the land workers, who allegedly proved to be at once submissive and rebellious or ignorant and cunning. The strength of this stereotype is most blatantly revealed in Tawfīq al-Ḥakīm’s diary-style novel *The Maze of Justice* (*Yawmīyāt nāʾib fī al-aryāf*). Drawing on his own subjective experience both as the son of a wealthy Alexandrian judge and as the representative of the public prosecutor’s office in the Nile Delta, al-Ḥakīm interestingly shaped his novel around what constitutes the heart of the justice professional’s work, i.e. the interrogations of suspects and witnesses and the discussions with expert colleagues and subordinates. But in spite of the author’s pretension to draw a realistic painting of the workings (or lack thereof) of the law in the Egyptian countryside, the manner in which these dialogues are presented and the parodic language used by the peasants betray both the narrator’s deep contempt for the *fallāḥīn* and the nature of cruel social satire of the work.

The main source of exasperation for the overworked legal officer is the garrulous female peasant who loses herself and her interrogator in what appears to him as a flow of useless verbiage and continuous digressions, as illustrated by the following (highly ironic) excerpt:

(…) I came in the afternoon to interrogate the woman. There was endless discussion, from which I could extract no information except that the young suitor was called Husain, and was not a local resident, but a man from a neighbouring village.

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“Husain – what, my good woman? There are hundreds of Husains in these parts. What is his family name?”

“I don’t know his name, sir. The girl said his name was Husain, so why should I ask about his family and all the rest of it? I’m a poor simple woman, as you see; I don’t hold with a lot of chatter. All my life round here I’ve kept away from a lot of talking and questions. What’s it got to do with me? You know the saying – ‘If you get between the onion and the peel, all you’ll get is a nasty smell,’ as they say…”

“Oh, shut up, you’re making my brain tired, and all for nothing. May God worry the head of whoever sent you here. Look – if we produce the young man, would you know him?”

“Would I know him, sir? Would I know him? Bless my soul! I should hope so – I’d be quite blind if I couldn’t. Saving your presence, sir, do I look as if…”

“That will do. You’re a woman, thank God, who doesn’t like to talk much, and…”

“Talk much? Of course not, by your life and honour. I’ve kept away from that ever since…”

“All right – that’s enough.”

The second major cause of frustration for the narrator is the local Sufi Shaykh, Shaykh ‘Aṣfūr, who takes pleasure in following every investigation and “guiding” the police through songs, verses of poetry, proverbs and riddles. Through the figures of the garrulous female witness and the deceitful Sufi Shaykh, al-Ḥakīm was denouncing at the same time what he considered as the fundamental immorality of the peasants, and which combined with their venality allegedly lead them so often to provide false testimonies, and their profound ignorance, which associated with their lack of discernment purportedly made them prone to errors and abuses in both their oral depositions and their written petitions. This diagnosis of the “eternal” ills from which the peasantry suffers and of their detrimental consequences on the implementation of the law in the countryside had already been widely shared as early as the first decade of the twentieth century, and had been recurrently evoked in the various socio-economic studies dedicated to the fallāḥīn and published by Egyptian intellectuals and European bureaucrats at that time.

\footnote{Ibid., 97-98.}
\footnote{Ibid., 18.}
\footnote{On the specific question of the inaccuracy/falsehood of peasants’ testimonies, the French veterinary Piot Bey thus explained in his \textit{Causerie ethnographique sur le fellah} published in 1899: “Les longs siècles d’oppression qu’il a subis, l’ont rendu extrêmement défiant et soupçonneux. Une question, même à propos de choses indifférentes, le trouble et l’inquiète ; il répond évasivement, à la normande, ou ment avec aplomb. Ne comptez jamais sur l’exactitude ou la véracité des renseignements que vous lui demandez ; il se fait un malin plaisir de vous trompez, ou s’excuse de son ignorance par un geste, une parole qui frisent le mépris. (…) D’une mauvaise foi punique en affaires, il se rendra difficilement à l’évidence et épuisera tous les moyens malhonnêtes pour se délier de ses engagements ; il ira finalement jusqu’à renier son cachet, même apposé devant témoins. Appelé lui-même en témoignage, il se laissera facilement corrompre par la crainte ou par l’argent, faisant ainsi pencher la balance de Thémis en faveur du plus puissant ou du plus généreux.” (Jean-Baptiste Piot Bey, “Causerie ethnographique sur le fellah,” \textit{Bulletin de}}
But what strikes the reader in *Yawmīyat nā‘īb fī al-aryāf* is the creative manner in which al-Ḥakīm compares and contrasts the cunning and vain talkativeness of the peasants with the narrator’s own use of the language while performing his work. As a legal officer, the latter considers language as “a precise, pragmatic, and strategic tool” that is supposed to help him reach the truth in spite of his interviewees’ persistent silences, outright lies, circular tangential stories, utterly endless digressions, and major countless inaccuracies and contradictions.¹⁵⁵ The language of the interrogation is thus conceived of by the narrator as part of a modern investigation alongside fingerprints and forensic examination. But while al-Ḥakīm opposes the rationality, logic and virtue of the legal officer’s questioning to both the esoterism of *Shaykh ‘Asfūr*’s poems and the futility of the female witness’s chitchat, the narrator’s own confession that the interrogation is sometimes a very rigid and sterile procedure routinely carried out, his sarcastic approach to the writing of his report - that should be composed of “a minimum of twenty pages” - as well as the parallel he draws in the second part of the book between his

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*la société de Géographie d’Égypte* 4 (1899): 235-36.) In his famous essay on cattle poisoning entitled “A plague of today’s Egypt” and published in 1907, he concluded: “(...) la répression judiciaire est, en règle générale, à peu près inefficace chez le fellah. Il n’existe encore chez lui ni la conscience de sa personnalité, ni l’élévation de caractère, ni le sentiment de l’honneur, ni le respect de la foi jurée, ni l’idée de la solidarité qui sont la base de toute société civilisée et sans lesquels la justice répressive reste une expression vide de sens.” (Jean-Baptiste Piot Bey, *Une plaie de l’Égypte actuelle: Empoisonnement du bétail par vengeance au moyen de l’arsenic* (Le Caire: La Bourse Égyptienne, 1907), 6.)

While Raoul de Chamberet and Joseph Nahas both shared Piot Bey’s general view on the definite unreliability of peasants’ testimonies and complaints, they slightly differed both in the explanations they offered for this phenomenon and in the remedies they suggested. Indeed, whereas the latter merely invoked the *fallāḥ*’s ignorance and the “long centuries of oppression to which he was subjected,” and was clearly tempted by a return to corporal punishment as a means of moral reform (Ibid., 6), the former mentioned, as the main reason behind the peasants’ lack of honesty, the mass spoliation in the form of abusive expropriations legalized by the native tribunals they suffered from in the hands of foreign and local counterfeiters and speculators, and insisted on the virtues of education and fair justice as a way to help change their approach to the law. (Joseph Nahas, *Situation économique et sociale du fellah égyptien* (Paris: Rousseau, 1901), 76-8, 179-80; Raoul De Chamberet, *Enquête sur la condition du fellah égyptien, au triple point de vue de la vie agricole, de l’éducation, de l’hygiène et de l’assistance publique* (Dijon: Imprimerie Darantière, 1909), 45, 55-6.)
work and that of both the playwright and the actor on a theatre scene suggest a much more blurred reality.\textsuperscript{156}

1.3 Judicial orality, writing, and performance

If a fellah can only get the examiner into a match with him as to which of the two can shout the loudest, he is on familiar ground, for much of his ordinary conversation is carried on in that way. (...) The best method is to proceed in a firm, quiet manner, and sometimes, when a witness begins to make tardy admissions, in a confidential manner. (...) Once you have something to go on, have obtained important statements from that witness or some other so that you know how you stand with him, a sudden change of manner to acerbity may occasionally be of considerable service. But it is a weapon to be sparingly used. (John Felix Kershaw, *Hints on the Conduct of Criminal Investigation*)

Even if the testimonies of the witnesses before the tribunals of first instance were accurately reported, one could not reproduce on paper the manner in which particular words were stressed – a very important point – no more than the appearances of the witnesses. It happened more than once that the judges of the great criminal Chamber unanimously pronounced the acquittal after having summoned the witnesses for the prosecution and observed their mien while they were making their statements, although on the basis of the written testimonies they would have all leaned towards the sentencing. (Egyptian National Archives, *Report for the Year 1903*)

1.3.1 “Le Parquet ne frappe pas:” The new judicial procedure and the liberation of the peasantry

While Tawfīq al-Ḥakīm’s conception of the magistrate and of his work hinted at the fundamental ambiguity and quasi-artistic dimension of his verbal interaction with accused and witnesses, the legal texts of the turn of the century underlined on the contrary the scientificity, rationality and objectivity supposed to govern the process. By allegedly opening up a space for dialogue, the interrogation was presented as the “most effective means to extract the truth, the whole truth,” while guaranteeing both the interests of society and the rights of the persons questioned. The subtle balance between these various objectives was made possible through the oral, public and contradictory nature not only of the trial, but also to a certain extent, of the preparatory inquiry. As such, the new judicial procedure epitomized the flexibility and fairness of the modern law of the “civilized” world, and symbolized the rupture with both the immutability and ineffectiveness of Islamic law, and the immorality and barbarity of secular criminal justice. In his two volume work on the Egyptian judicial procedure published in 1910, the former director of the Khedivial Law School and member of the Judicial Monitoring

159 Ibid., 154-61, 268-77.
Committee J. Grandmoulin thus explained how the new mode of production of evidence allowing the judge to render a verdict based on his “intimate conviction” historically came to replace both the rigid rules of the *shari’a* – that, until 1897, prevented a tribunal from sentencing an alleged murderer to death if two eyewitnesses of the crime or the confession of the defendant could not be produced – and the complementary inhuman system of the *siyāsa* – that, until 1883, authorized in practice the use of torture by the police in order to extract from the suspect what was seen as “the queen of evidence.”

In addition to the functioning of the dual *shari’a*-*siyāsa* structure of the former *majālis mahālīyya* \(^{161}\), the new judicial procedure of the *mahākim ahliyya* was also contrasted at the turn of the century with the manner in which justice was dispensed by the Commissions of Brigandage and Commissions of Suspicion created by the Egyptian government in 1884 and placed under the authority of the Ministry of Interior. \(^{162}\) In 1889, the scandal of the widespread torture carried out by these semi-administrative structures was “uncovered” by the general prosecutor Charles Le Grelle in a series of reports that not only documented the extent of the physical violence committed against defendants and witnesses by the commissions, but concomitantly underlined the guarantees of fairness provided by the code of criminal procedure followed by the native courts. After having described in detail various cases of torture, Le Grelle thus affirmed in his second report:

> I do not rely on vague or general complaints. I mention specific denunciations, made separately by prisoners who, during my first visit to [the Cairene prison of] Tūra did not expect an interrogation, something that had never been done.

\(^{160}\) Ibid., 285-87.  
Successively in August and September, nearly forty fellahs came to tell me the details of their suffering.

(...)

Often, I would question prisoners sentenced by the Native Tribunals, companions in chains of those whose statements I had just recorded. They naturally asserted their innocence, and alleged the falsity of the testimonies that had motivated the judgment, but none denounced abuse. “You have been beaten?” I would ask. The uniform response was: “The Parquet does not beat,” and indeed, never charges of this kind have been brought against the Native Tribunals. Run by new personnel, they broke with the old traditions. 163

Thus, while the torture scandal of the commissions was undoubtedly used by the British to substantiate their claim that justice could not be left in Egyptian hands, 164 it also served to further strengthen the legitimacy of the new system.

The latter lay more specifically in the notion of judicial orality (be it manifested in the interrogations of the preparatory inquiry or in the testimonies at the trial) and to a lesser extent in that of judicial writing. Judicial orality allegedly constituted the interviewee as a free subject who was offered a possibility to defend himself/herself or to openly testify of what he/she had seen or heard. 165 Concomitantly, it was supposed to ensure, through the “Socratic” method, the “delivery of the truth” in a safe environment. 166 Grandmoulin thus explained that the interrogation was both “a means of defense [for] it permit[ted] the accused to give an explanation on the facts and charges brought against him” and “a means of information [for] it

163 Correspondence, 41-42.
164 Cromer, Modern Egypt, 287-91.
permit[ted] the prosecution to find elements of proof in the embarrassment, inconsistency or verified falsehood of the answers and explanations of the accused.”

As for judicial writing, the recording of the depositions on paper, their being read aloud to the person questioned and being subsequently signed by him/her and included in a file allowed the translation of the interviewee’s words from an oral into a written form, from a colloquial into a formal style, and from everyday expressions into legal categories. It also guaranteed the continuity of the judicial process from the preliminary inquiry to the final judgment. Implemented by competent clerks using the purportedly neutral language of the law and authenticated on each page of the file by signatures and seals, this writing process was to attest to the magistrates’ expertise and to the soundness, objectivity and independence of their judgments solely based on legal reasoning.

More generally, by excluding torture, opening up space for expression, and ensuring the fairness of the verdicts, the new judicial procedure was supposed to benefit the Egyptian people, and allow the Englishman to fulfill his mission to bring the fallāhīn “water for their fields, justice in their law courts, and immunity from the tyranny under which they ha[d] for so long groaned.” Judicial orality and writing thus constituted the key elements of a legal reform conceived as the pillar of the colonial project of liberation of the peasantry; or at least so went the theory…

### 1.3.2 Best method of obtaining fellah’s “evidence-in-chief” and of developing a simple and compelling “story”

Early enough indeed, the myth of the garrulous/silent peasant was mobilized alongside the argument of the magistrates’ lack of competency and training to justify the “adaptation” of the theory of modern judicial investigation and decision-making to the reality of a “backward Eastern population.” In 1907,

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167 Ibid., 176.
168 Ibid., 175, 322-24.
169 Cromer, Modern Egypt, 130.
170 Ibid., 522.
a handbook of practical advice was even composed to this end by John Felix Kershaw, then “Inspector and Chef du Parquet,” and distributed to all English-speaking members of the public prosecutor’s

171 John Felix Kershaw (1873-1927) was the son of Sir Louis Kershaw who had served as the Chief Justice of Bombay. He graduated from Balliol College, Oxford, and began his career as a Civil Judge in Khartoum in 1901. He subsequently became a Judge of the Egyptian Native Tribunals in 1904, an Inspector of the Native Parquet between 1904-1909, a Judge of the Native Tribunal of Alexandria between 1909 and 1912, and was eventually appointed to the Native Court of Cassation in 1913. During the First World War, he served as the President of the Military Court. More importantly, his obituary in The Times of June 17th, 1927 also mentions that “he was President of the Court of Inquiry, Australian Red Cross, 1915; President of the Military Court (Trading with the Enemy) throughout the war; Legal Adviser with the temporary rank of lieutenant-colonel to the XX Corps during the troubles in Egypt in 1919, and later to General Headquarters and the British Army in Egypt,” and that “he was also Legal Adviser to the Court of Inquiry into the Alexandria Riots in 1921.” The text also specifies that “in 1907 his ‘Hints on the Conduct of Criminal Investigation’ was printed by the Egyptian Government,” and that “he was responsible for two Blue-books, ‘Reply to Charges of Atrocities Alleged against British Soldiers,’ 1919, and ‘Causes of the Alexandria Riots,’ 1921.” Last but not least, the obituary gives an interesting version of the case which led to Kershaw’s resignation from his position as a Judge of the Cassation Court in 1926:

“In May, 1926, there came before the Cairo Assize Court the case of seven Egyptians, two of them prominent members of the Wafd or Zaghlulist Party, who were arraigned on charges of complicity in several of the political murders and attempted murders of Englishmen and Egyptians in 1922. (...) On May 25 the Court, which consisted of Judge Kershaw and two native colleagues, one a Copt and the other a Moslem, acquitted six of the seven accused, the two Zaghlulist politicians among them. The verdict was received with acclamations by the Zaghlulist Press (...).

On June 2 Judge Kershaw handed in his resignation as a member of the Native Appeal Court to the Minister of Justice, on the ground that the verdict was, in the case of four of those acquitted, so contrary to the weight of evidence as to constitute a serious miscarriage of justice. The British Government on the same day presented a Note to the Egyptian Government stating that, having been informed of the Judge’s action, it reserved judgment in respect of the verdict, and declined to accept it as proof of the innocence of the four persons concerned. A brief political crisis which followed the Judge’s disclosure of the reasons for his resignation terminated with Zaghlul Pasha’s withdrawal of his claim to succeed Ziwar Pasha as Prime Minister.

Judge Kershaw’s courageous action naturally exposed him to fierce criticism on the part of the Wafdist Press and of the General Assembly of the Native Court of Appeal. In spite of his long and honourable service in the Judiciary, he was accused of “racial prejudice” and of having insulted his two Egyptian colleagues on the Bench by his criticisms of their majority verdict. But Judge Kershaw’s judicial reputation stood far too high to be affected by such charges. (...) His resignation was itself a proof of his rigid sense of duty.”


In his preface to the work, the general prosecutor, Mr. Eustace Corbet, thus underlines the particular difficulty allegedly attached to conducting criminal investigation in Egypt:

The investigator has in too many cases to struggle against what sometimes amounts to a general conspiracy of falsehood, and may often find it impossible to arrive at the truth about a crime of which all the village knows the whole details. When general hostility to the authorities or indifference to the public interest does not have the above effect, it not infrequently results from fear of revenge to be taken by the criminals or their friends and adherents.

In addition to this conspiracy of silence, another element mentioned by Kershaw in the body of the book as hindering the magistrates’ work is the alleged inability of the fallāḥ to give a clear and precise deposition, especially when it comes to issues of time and distance. In *Modern Egypt* published a year after Kershaw’s work, the Earl of Cromer will address the same issue and go as far as writing:

> Want of accuracy, which easily degenerates into untruthfulness, is, in fact, the main characteristic of the Oriental mind. (...) Although the ancient Arabs acquired in a somewhat degree the science of dialectics, their descendants are singularly deficient in the logical faculty. They are often incapable of drawing the most obvious conclusions from any single premises of which they may admit the truth. Endeavour to elicit a plain statement of facts from an ordinary Egyptian. His explanation will generally be lengthy, and wanting in lucidity. He will probably contradict himself half-a-dozen times before he has finished his story.

On the basis of such an assessment, Kershaw’s handbook, entitled *Hints on the Conduct of Criminal Investigation*, aims to help young magistrates keep control of the preparatory inquiry against the untruthfulness, inaccuracy and idle talkativeness of the villagers. As a counter example of how not to conduct the investigation, the *Chef du Parquet* thus quotes the following evaluation of a substitut made by an inspector:

> “X” has been in the Parquet some time now. When he is about to make a procès-verbal one feels that he says to himself: “Here is a crime, and here are a host of witnesses. Let them all tell their stories – the more the merrier. Never mind the points to be proved. Those are for the Chef de Parquet to pick out of the dossier afterwards if he can.” The case is just as well done as if there had been a Katib alone writing down the evidence – as if there was no substitut at all. (...) He exercises no control over the inquiry, has

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173 Ibid., X.
174 Ibid., 109-11.
no clear idea of what he ought to prove, or how he ought to prove it. Consequently his questions have very little value, and the answers less, unless accident intervenes.\textsuperscript{177} In order to avoid such a lack of “control,” “clearness and lucidity,” Kershaw advocates, at the very onset of the investigation, the reliance on the ‘umda who should be “unofficially and conversationally” questioned on his knowledge of the facts.\textsuperscript{178} It is interesting to underline here the major role thus attributed to the ‘umad as the leading source of trusted information insofar as they had been widely vilified during the first fifteen years of the British occupation for their dishonesty, the tyranny they exercised over the fallāḥīn and their submissiveness towards the Pashas.\textsuperscript{179} In 1895, a decree according to which the hitherto locally elected ‘umad would be appointed by the government had been passed, and in 1908, Cromer assured: “whatever defects may still exist generally amongst the Sheikh class, I have little doubt that their moral and intellectual standard is now considerably higher than was the case in 1882.”\textsuperscript{180} For Kershaw, the ‘umad were worthy of the inquirer’s confidence, and could merely be suspected of delaying the sending of the first notification of the crime in an attempt to protect a relative or a patron.\textsuperscript{181}

In addition, the rumor of the village and other hearsay information provided by the ‘umda and the village mashāyikh is considered, at this stage of the inquiry, as “evidence (...) invaluable in indicating to the examiner the line his inquiry should follow.”\textsuperscript{182} While the author of the handbook notes that this “secondary evidence” has to be substantiated by more valuable testimonies in order to obtain a conviction in court, and acknowledges the potentially dangerous character of the rumor, he nonetheless underlines its usefulness as a guide for the inquirer.\textsuperscript{183}

At this early stage of the investigation and before having interviewed any of the witnesses, the examiner should already have elaborated a “theory of the crime.”\textsuperscript{184} To do so, he is strongly

\textsuperscript{177} Ibid., 17-18.
\textsuperscript{178} Ibid., 7.
\textsuperscript{179} Cromer, Modern Egypt, 186-92.
\textsuperscript{180} Ibid., 190, 192.
\textsuperscript{181} Kershaw, Hints on the Conduct, 6-7.
\textsuperscript{182} Ibid., 79.
\textsuperscript{183} Ibid., 78-80.
\textsuperscript{184} Ibid., 7-8, 10-11.
encouraged to use the “skeleton forms of charges” designed to help him determine the juridical elements he will then look for through the interrogation of the witnesses.  

Regarding the latter, the handbook emphasizes that, in addition to the widespread problem of perjury, the inquirer should remember that the peasant mind is not well adapted to the Question & Answer format of the interviews. The author explains: “Like all bucolic peoples, the continuation of [the fellah’s] line of thought is easily broken by interruption, and the result becomes an incoherent jumble.” On the basis of this assumption, Kershaw provides guidance on how to proceed to get the best evidence from the fallāh, by countering his general tendency to digress, his propensity to give the answer that he thinks the examiner expects regardless of its truthfulness, or on the contrary to consciously avoid revealing the elements that he suspects might be crucial to the inquiry.

In all these cases, the magistrate is advised to remain calm in order to inspire confidence to the person questioned and thus facilitate the obtaining of the required information. Here again, Kershaw’s recommendations are based on strong stereotypes regarding peasants’ language use. He explains:

> If a fellah can only get the examiner into a match with him as to which of the two can shout the loudest, he is on familiar ground, for much of his ordinary conversation is carried on in that way. (...) The best method is to proceed in a firm, quiet manner, and sometimes, when a witness begins to make tardy admissions, in a confidential manner. (...) Once you have something to go on, have obtained important statements from that witness or some other so that you know how you stand with him, a sudden change of manner to acerbity may occasionally be of considerable service. But it is a weapon to be sparingly used.

Furthermore, the examiner should first “let [the fallāh] tell his story without interruption to the end”, before pressing him through a series of very focused questions aimed at making the deposition as precise and definite as possible, eliciting answers that will substantiate the charges that were determined a priori by the inquirer, and exposing potential contradictions in the

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185 Ibid., 19-20.  
186 Ibid., 32-33.  
187 Ibid., 33.  
188 Ibid., 33-37.  
189 Ibid., 32-33.
interviewee’s statements.\textsuperscript{190} In addition, the person questioned is to be pressed until he/she provides “a proper answer.”\textsuperscript{191}

In the course of this interrogation process, a great part of the initial story of the suspect, victim or witness is overlooked, insofar as this first account of the facts is from the onset received by the inquirer and acted upon through the lens of the juridical elements he is looking for and the general theory of crime he has already elaborated mainly on the basis of the local authorities’ version. Such a narrow focus, as early as the very first interrogations, on the legal elements that will substantiate the pre-determined charges is explained by the fact that the substitut who conducts the inquiry is not merely responsible for elaborating a “clear and lucid” procès-verbal that exposes the main points of the case in the most “orderly” manner for the justice professionals who will subsequently intervene in the legal process, but he is also in charge of representing the prosecutor’s office, and hence pleading for the Parquet, at the trial.

Indeed, while in the French model, the preparatory investigation is conducted by the juge d’instruction, an inquiry judge who is independent from the Parquet and whose impartiality guarantees the rights of the suspect(s), this position was suppressed de facto in Egypt as early as 1895 at the initiative of Sir John Scott, the British adviser to the Ministry of Justice.\textsuperscript{192} In the

\textsuperscript{190} Ibid., 33-45.
\textsuperscript{191} Ibid., 37-45.
\textsuperscript{192} For the official justification, history and details of the decree of May 28\textsuperscript{th} 1895, see: Grandmoulin, La procédure, vol. 1, 138-139, 141-143; John Scott, “Judicial Reform in Egypt,” Journal of the Society of Comparative Legislation 1 (1899): 249.

In his 1899 assessment of legal reform in Egypt, Sir John Scott explains:

“Another change was made in favour of the speedy and certain repression of crime. The French system of the Juge d’Instruction had been at first adopted in its fullness. Every crime, however unimportant, had to go through the stage of judicial investigation before the Juge d’Instruction. The case was prepared by the police and the Parquet; but however complete it appeared, it had to be examined, and all the witnesses heard, by the Juge d’Instruction who alone could send it to trial. This caused not only great delay, but was so inconvenient to witnesses that those who could give evidence always maintained they knew nothing, and the crime went without punishment for want of proof. We determined that only cases of great importance, requiring very delicate management in their preparation, should go through the preliminary of the Juge d’Instruction. The decision as to what cases should still be presented to him was entrusted to the Parquet. As a matter of fact the Juge d’Instruction is scarcely ever called upon; the cases are presented direct to the court, with the result of greater promptitude, increased ease of obtaining evidence, and a more certain punishment of crime.” (Ibid., 249).
Egyptian legal system, the *juge d’instruction* was replaced by a member of the *Parquet* who thus became at once inquirer and party at the trial.\(^{193}\)

In terms of language uses, this reform meant that the *substitut’s* main objective from the onset was to develop a well-structured and compelling “story” that would eventually ensure the conviction of the soon-to-be-accused suspect by the court, and that the creation of this ordered narrative became the leading principle of the inquiry itself.\(^{194}\) Within such a framework, one better understand the significance of Kershaw’s recommendation to the inquirer to use, from the start of the investigation, “the skeleton forms of charges made out and issued to the Parquet with a view to the giving of assistance in drawing up charges for the Assize Court.”\(^{195}\) Moreover, if one adds, as the author of the handbook suggests, the argument that the judges who sit in the court do not make much use of the judicial file they have received and that, before the beginning of the hearings, they are quite ignorant about the case they are supposed to try, one realizes the crucial importance for the inquirer of preparing and presenting a simple,

\(^{193}\) For the harsh criticisms raised against this reform by legal professionals in Egypt around 1902, see: Grandmoulin, *La procédure*, vol. 1, 143-145; Egypt, Egyptian National Archives, Majlis al-wuzarā’-nizżārat al-ḥaqqāniyya, [0075-040098], *Report for the Year 1902* (Cairo: National Printing Department, 1903).

In his annual report for the year 1902, Scott’s successor recognizes the extent of the “dissatisfaction” “with the present system of conducting enquiries in th[e] country,” and awkwardly defends the 1895 decree in the following manner:

“The innovation was obviously a bold one and conferred great and, as it is claimed, inconsistent powers on the Parquet. The question is whether it has, on the whole, worked well in practice or not. The critics of the system do not hesitate to answer the question in the negative, and loudly demand a return to the *status quo ante* 1895, and the re-establishment of the *Juge d’instruction*.

Now, in theory, there can be little doubt that there is much to be said for this contention. To confer upon the prosecutor the power of conducting the enquiry which is to decide whether there is to be prosecution or not, is theoretically inadvisable. The *Juge d’instruction* does undoubtedly appear to offer the accused persons greater guarantees of justice and impartiality than they can hope for from the prosecuting authority itself. This experiment of fusion was tried in France, during the revolutionary period, proved a failure and was abandoned in the Code of Criminal Procedure of 1808.

The question for consideration, however, *hic et nunc*, is not one of abstract theory but of practical opportunity.” (Ibid., 13)

\(^{194}\) Ibid., 19-25, 29.

\(^{195}\) Ibid., 19-20.
well-organized and persuasive story devoid of any ambiguity or superfluous contextual information.  

As Kershaw puts it, “it is the duty of the substitut in charge of the case to lay it before the court so clearly and logically as to carry understanding not only to the judges, but to the meanest intelligence there present,” 197 and “the substitut must proceed as if he was explaining the case to a man who had no knowledge of the facts or anything connected with them.” 198 In addition, the inquirer/prosecutor should be particularly careful to focus on the juridical elements to be proved. More importantly, he is to limit his exposition of the “condition, situation, or circumstances of the accused” to what sheds light on “the motive and opportunity for committing the crime, and [what] raise[s] a probability that the accused is the offender,” and he is to present this information “before the facts of the case are touched on at all” so as “to impress every one in court.” 199 While the inquirer/prosecutor is “the representative of the State” and as such he should not display any feeling “but to prevent crime,” he is strongly advised to emphasize the facts of particular significance to him in the manner of “a good actor on stage.” 200 Finally, he should lay his own presumptions and deductions before the court, and “guide and control” the judges’ interpretation of the case to the end of the trial. 201

Throughout the procedure, from the very first questions of the interrogations to the pleading of the substitut before the court, peasants’ depositions are not only partly shaped and gradually trimmed by the justice professionals, but their various elements are also decontextualized from the onset to be recontextualized into the new and simple legal narrative of the inquirer/prosecutor, a powerful story that is both inscribed in the judicial file and performed at the trial. Beyond the fundamentally unequal relationship of power that plays itself out from the police station to the courtroom, the constitution of the fallāḥ as a subject of law through judicial orality, writing, and performance thus entails both a process of decontextualization of his words

196 Ibid., 121-30.
197 Ibid., 121.
198 Ibid., 123.
199 Ibid., 122-25.
200 Ibid., 121, 125-28.
201 Ibid., 128-30.
- and consequently of the legal case -, and his concomitant objectivation as an entity entirely cut off from his socio-political environment. As will be seen on the basis of concrete examples from court records in the following chapters, such a process proved essential in the construction of the colonial grand narrative about peasants and peasants’ criminality.

1.3.3 The “anthropological” focus on peasants’ “appearances” and the lowering of evidence standards

Beyond its implementation through the new legal procedure, the invocation of what can be qualified as the ideology of judicial orality, writing, and performance - combined with the mobilization of the myth of the garrulous/silent peasant and the complaint about the justice professionals’ lack of competency and dedication in the alleged transition from oriental despotism to the rule of law - was also used throughout the period to justify major modifications of the Egyptian legal system itself. Through successive reforms, the defendants were deprived of their most basic rights, and the entire structure was gradually transformed into a parody of justice.

Thus, after the de facto suppression of the juge d’instruction in 1895, a plan was designed to replace the criminal courts of the native tribunals by courts of assizes inspired by the French model of the cours d’assises created in 1810. A first draft had initially been drawn up by Sir John Scott as early as the 1890s, and his successor as the British Judicial Adviser, Malcolm McIlwraith, subsequently conceived a second project in 1899, and eventually a third one in 1903. This last version arose much controversy among legal circles insofar as it entailed the elimination of the possibility of appeal without setting up a people’s jury. In place of the latter, the 1903 project planned the introduction into the court of two local notables serving as

assessors with an advisory role, an idea that was eventually abandoned due to strong popular opposition.  

For our purpose, it is interesting to analyze the arguments put forward by McIlwraith in his annual report for 1903 to defend this highly controversial project of assizes courts. The British Judicial Adviser begins by criticizing the fact that the court of appeal, which issues the final judgment in a case, rarely hears the witnesses, and hence most often renders its verdict on the basis of mere written documents. Extensively citing two Counselors of that court, he underlines that, in addition to the fact that “the written word profoundly differs from the verbal word even when what is written is an exact relation of what has been said,” the scribes of the tribunals seldom write down the depositions with accuracy. He further refers to the allegedly widespread idea (both among court clerks and the Egyptian people in general) that the peasants’ vernacular is not meant to be transcribed, and explains that therefore the fallāḥīn’s words undergo a number of major transformations/translations between their being uttered orally and their being put on paper. On this point, McIlwraith quotes the witty remark of the first Counselor who asserts: “This is so true that in defamation cases we have seen people being accused of having used words they never knew existed.” The British Judicial Adviser thus emphasizes that between the witness and the dossier, something crucial is definitely lost, and that issuing a final verdict solely founded on the study of the judicial file is hence particularly dangerous.

Furthermore, McIlwraith’s very lengthy citation of the first Counselor also alludes to an argument allegedly raised by the opponents to the project of assizes courts and presented as

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203 Egypt, Egyptian National Archives, Majlis al-wuzarā’ - nizzārat al-ḥaqqāniyya, [0075-040098], Report for the Year 1903 (Cairo: National Printing Department, 1904), 49; Egypt, Egyptian National Archives, Majlis al-wuzarā’ - nizzārat al-ḥaqqāniyya, [0075-040099], Report for the Year 1904 (Cairo: National Printing Department, 1905), 34-35.
204 Archives, Report for the Year 1903, 40-43.
205 Ibid., 46-44.
206 Ibid., 46, 44.
207 Ibid., 44.
208 Ibid., 45-46.
undermining the importance and value of witnesses’ depositions in a country where the *fallāḥ* is so prone to lying. To this line of reasoning, the Counselor interestingly answers:

They say, for example, that in this country people are so inherently untrue that one can conclude little or nothing from their appearances. I argue that this is absolutely going beyond the truth. I personally saw natives subjected to cross-examination by persons familiar with their way of thinking and the result was that after much obvious tergiversation, they admitted the fact. But the word “appearances” is a word with a broad meaning. It can be difficult to “stick” a native witness, as it is difficult to “stick” an Irish peasant (and yet nobody proposes to change, because of that, the criminal procedure in Ireland). But the aim of a judge is not always to “stick.” It is often enough if he acquires the belief that the witness is devoid of truthfulness, or has a strong bias. It happened to me once in an investigation to find three successive witnesses who, while entering my office, began the same story almost with the same words, before I had asked them their names. I found these “appearances” highly instructive; even if the fact had been reported in the proceedings, and it could have not been, I would not have been equally enlightened.

Two elements deserve to be emphasized here: first, the Counselor’s confidence in the system of cross-examination (both in its oral and performative dimensions); and second, the crucial importance attributed to the defendants’ or witnesses’ “appearances” (“allures” in the original French document) in the course of this process. Regarding the cross-examination, the first judge quoted by McIlwraith actually considers it to be the method of inquiry most suited to the average peasant witness for it allows the judge who personally examines the *fallāḥ* to discriminate within his testimony among what results from “sympathies,” from “prejudices” or from “the [mere] difficulty experienced by uneducated people to be precise.”

As for the notion of “appearances,” the decisive role it plays in the legal decision-making process is further underlined by the second anonymous Counselor quoted by the Judicial Adviser who asserts:

Even if the testimonies of the witnesses before the tribunals of first instance were accurately reported, one could not reproduce on paper the manner in which particular words were stressed – a very important point – no more than the appearances of the witnesses. It happened more than once that the judges of the grand criminal Chamber unanimously pronounced the acquittal after having summoned the witnesses for the prosecution and observed their miens while they were making their statements, although on the basis of the written testimonies they would have all leaned towards the sentencing.

Interestingly, it is this same idea of the fundamental importance for the criminal judge to take into account the defendants’ “appearances” that McIlwraith takes up again at the end of his

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209 Ibid., 44-45.
210 Ibid.
211 Ibid., 45.
212 Ibid., 46.
elaborate piece in defense of the courts of assizes. Relying on the Italian criminologist Garofalo, the Judicial Adviser explains that, contrary to civil cases, in criminal cases “the human element prevails.”\(^{213}\) It is therefore the duty of the criminal judge to give full consideration to the physical and moral aspects of the individuals they try, rather than focus on a blind and mechanical application of the law. The proposed project of assizes courts being likely to both lead to an increased specialization of the criminal judges and to offer them a better opportunity to scrutinize the traits of the accused, it is, according to McIlwraith, a highly desirable reform.\(^{214}\) The complete argumentation put forward by the Judicial Adviser could thus be summed up as follows: given that the official written records of the legal proceedings are inherently flawed, the guarantee of fairness of the final verdict in criminal cases lies not only in the direct hearing of the oral depositions of witnesses and defendants, but also and even more crucially in the taking into account of the performative dimension of these depositions, for the latter allows the judge to sentence the accused, on the basis of his personal “intimate conviction,” to the most individualized punishment possible.\(^{215}\)

While the passing of the highly controversial law on the courts of assizes in 1905 undeniably marked a major turning point, this conception of the new techniques of judicial orality – and more specifically of their performative dimension – as ensuring justice through a quasi “anthropological” focus on the trial participants was actually mobilized throughout the period to subtly but profoundly undermine the general rules of evidence upon which the system relied. Since the pseudo-scientific interrogation and scrutiny of witnesses and defendants, theorized by Lombroso and Garofalo, were to enable the identification and proper assessment of “the criminal” by the justice professionals, the old allegedly rigid rules of legal proof could be disposed of and replaced by a less demanding system solely based on the “intimate conviction” of the judge.\(^{216}\)

As early as 1897, Scott had already taken the initiative to revise the rules of evidence in cases of capital punishment, thus eliminating from the Egyptian judicial system one of the last remnants

\(^{213}\) Ibid., 47.
\(^{214}\) Ibid., 47-48.
of Islamic law. Considering that the requirement to obtain a confession from the accused or to provide two eyewitnesses of the crime actually prevented the sentencing of anyone to death, and being convinced of the necessity to promote capital punishment “in a country new to justice,” the Judicial Adviser had then fought to impose a suppression of this provision. This was to be only the first step in a series of reforms that would endorse a progressive lowering of the standards of proof.

Thus, while, as was already mentioned, the 1905 law on the courts of assizes eliminated the possibility of appeal without introducing the counterpower of the people’s jury, it also allowed the full consideration by the tribunal of the testimonies of the defendant’s direct relatives, something that the code of the mixed courts forbade. As Joseph Achkar rhetorically asked in 1909, “what value can have the testimony of people united by blood or family ties? If this testimony occurs in favor of the accused, parent or relative, it is of no weight, and if it is against him, it loses its authority as a result of the horror and outrage that it inspires.”

Concomitantly, whereas any kind of oral testimony was taken into account, the written documents, and most notably the petitions, presented to the courts by the peasants were increasingly discarded by the judicial authorities. Two main reasons were then invoked: first, the fact that illiterate peasants could be led to affix their seals to virtually any document without being able to know its contents; and second, the fact that the significance attributed to “the right of free petition” “in an oriental country” such as Egypt was considered as somehow fostering involuntary exaggerations and outright false denunciations.

Finally, as seen in Kershaw’s recommendations to the representatives of the public prosecutor’s office, the word of the village ‘umād and mashāyikh was gradually invested with greater credibility and authority. This movement reached its peak in 1909 with the passing of the “Law imposing police surveillance upon particular individuals” or “law of bad reputation,” according to which people having demonstrated “anti-social tendencies” (notably through a “criminal” way of life) could be exiled to the oasis of Kharga upon a mere denunciation by the ‘umda and

218 Achkar, L'instruction, 201.
220 Archives, Report for the Year 1903, 17.
without being accused of any crime. Although the 1904 revision of the Penal Code, already inspired by the Italian School of Criminology, had paved the way for this reform by introducing the distinction between occasional and habitual criminals and providing for ever harsher punishment for the latter, the law of bad reputation nonetheless represented a qualitative shift in the sense that the decision-making process regarding these “typical” criminals was transferred from purely legal authorities to semi-administrative structures composed on the model of the “Commissions of Brigandage” and presided by the mudīr of the province.\textsuperscript{221} The law was consequently strongly criticized by both journalists and judges as a purely arbitrary measure, which disregarded the basic principles of criminal justice. The analysts emphasized in particular that such a law would only result in an increase in the “hate” and “spirit of revenge” already existing in the villages. They argued:

Thanks to this terrible system, the ‘umdahs and their supporters will easily find an occasion to attack their opponents, and this will not be a difficult task. A few witnesses will confirm the ‘umdah’s claim that this opponent or this other are dangerous people, and after a few weeks, the later will be deported to the heart of the desert.\textsuperscript{222}

As the analysts had anticipated, the 1909 law (though allegedly applied with “moderation”) initiated a vicious circle of violence, revenge, and repression. The number of violent crimes diminished for a couple of months, but then rose above the highest statistics of 1909. In 1912, the “law imposing police surveillance upon particular individuals” was abandoned, and the rate of criminality in the countryside increased until the outbreak of World War I in 1914 when, once again upon the denunciation of the ‘umda, “vagabonds” and “suspects” were sent to the battle fields in Sinai and Palestine.

Before analyzing the practical implementation of the ideology of judicial orality, writing, and performance through a close examination of the archival corpus, I would like to conclude this section by briefly sketching part of my thesis. Far from constituting the fallāḥ as a free subject, I argue that the new techniques of the legal process actually led to an objectivation of the peasant as completely cut off from the local socio-political networks in which he was in fact entangled. From the manner in which the answers of witnesses and defendants were partly shaped during

\textsuperscript{221} Grandmoulin, \textit{Le droit}, vol. 1, 15-25.
the first interrogations and subsequently decontextualized and recontextualized into the legal narrative of the inquirer, to the judges’ “anthropological” focus on the trial participants in the course of the courtroom performance, and to the increasing legal authority attributed throughout the procedure to the word of the ‘umda to the detriment of the fallāḥīn’s petitions, virtually every element of the new legal process contributed to the constitution of the peasant subject to the law as a perfectly autonomous individual belonging to an equally self-rulled community free of any class- and power struggle, much along the lines of Maḥmūd Ṭāhir Ḥaqqī’s depiction of the Dinshawāy villagers. But contrary to Ḥaqqī’s predominantly positive conception of the fallāḥīn, their objectivation within the courtrooms opened the way to their essentialization as morally corrupt elements of society and to the development of a colonial grand narrative about peasant criminality. Concomitantly and ultimately, this process also led to the strengthening and rigidification of the fundamentally unequal and oppressive power relationships that were then at work in the countryside and that the British had initially claimed to eliminate as part of their grand project of liberation of the peasantry.
1.4 Quotations between brackets: The apparent bureaucratic and judicial logic at the heart of the file

Having set the ideological background against which the mahākim ahliyya were established, I would like to examine now the various manners by which the theoretical principles of judicial orality, writing, and performance (as allowing to overcome the issue of the garrulous/silent peasant) were implemented in practice throughout the procedure. I argue that it is possible to explore this implementation through the material traces that the judicial performance has left on the archival files themselves. With the aim of carrying out an “archaeology of the performance” on the basis of these sources, I propose to approach the records through a historical-anthropological perspective. Such an approach entails taking into account both the interactional practices of the different actors present on the scene of the police station or the tribunal - practices that resulted in the collective creation of the judicial files between 1884 and 1914 -, and the various procedures linked to the constitution of these files as part of an archival collection by the staff of the National Center for Judicial Studies (NCJS) a century later.

The file I have chosen, both to illustrate the fruitfulness of this approach and to document the fundamental ambiguity in the implementation of the procedure that the latter reveals, is that of Mikhīmar ‘Abd al-Nabī al-Qāḍī. A twenty-seven year old peasant living in the region of Kafr al-‘Ulwiyya (markaz Talā) in the Minūfiyya province [File of the public prosecutor’s office Number 452 for the year 1892], Mikhīmar is accused of having killed Muḥammad Jalabī (or Shalabī, depending on the transcriptions), another peasant from the village while the latter was coming back from the fields on the evening of March 16th 1892. For a short while, Mikhīmar’s three under-aged brothers and Muḥammad ‘Abd al-Ḥayy ‘Alqa are considered as accomplices in the crime, but they are soon cleared of the charge, and are then merely interrogated as witnesses. From the very beginning of the case, the victim’s brother, Ḥasan Jalabī, denounces the fact that Mikhīmar has actually received the order to kill Muḥammad from his relatives (one of whom is a shaykh in the village), and consequently calls for their prosecution as the ones behind the murder. The case gets even more complicated when, at the opening of the trial, both peasants

\[223\] From now on all the references to this file will be indicated as: [1892 – M’AQ: xxxxx] with xxxxx indicating frame numbers.
receive the legal assistance of two famous Cairene lawyers – Ahmad Afandī al-Ḥusaynī for the defendant and Saʿd Afandī Zaghlūl for the plaintiffs [1892 – MʿAQ: 138-139]) –; an element suggesting that, beyond the highly probable implication of small local notables, the parties involved benefit from greater external support. In spite of the complexity of the circumstances, the case is eventually dealt with by the judges of the Ṭanṭā court as a simple instance of personal revenge for which Mikhīmar is sentenced to death and executed on April 22nd 1893.

Within this context, I examine the negotiation that unfolds in the course of the procedure between the victim’s family and the various judicial actors surrounding the question of whether the crime should be classified as a proxy murder and of the nature of the sentence to be initiated against the culprits. More specifically, the analysis mainly focuses on the “voices” of the victim’s brother, Ḥasan Jalabī, as they are visually presented in the archives. The study of the traces left by the utterance of these “voices,” their transcription on paper (with all the transformations that this operation entails), their (re-)reading, (re-)use, highlighting, or on the contrary, their relegation to the end of the file reveals the complexity and the richness of the relations between orality, writing, and performance, not only in the practices of the peasants confronted to the Egyptian legal system at the turn of the twentieth century, but also in these of the justice professionals at the time, and these of the NCJS archivists a century later. Through the study of the nature, functions and fates of the quotations in the body of the file and the petitions in appendices, I show how:

- Firstly, the “voices” of the fallāḥīn – initially produced in a constraining dialogical framework and constituting to a certain extent the heart of the file – are “translated” into juridical terms and decontextualized to be recontextualized within a new legal narrative, thus giving an appearance of coherence and logic to the legal process of qualification of the facts and decision-making;

- Secondly, the petitions by the victim’s family – also produced in a dialectical relationship but relegated to the “jumble” of the appendices – reveal, at the margins of the file, the subtle acculturation of the fallāḥīn to the requirements of the system and their ability to contest both the distribution of the roles in the performance and the notions of law and justice invoked by the judges.
1.4.1 The visibility of the disciplined “voices:” The dialogical production of the oral proof and the distribution of the roles

If the “voices” of the peasants interrogated in the context of the Mikhīmar case have irremediably lost their “audibility,” the operation of transcription of these verbal exchanges into writing carried out by the kātib (i.e. scribe, be he police officer or court clerk) nonetheless invests them with a “visibility” that demands analysis.

These transcriptions of interrogations appear in two forms depending on whether they have been produced at the very beginning of the judicial procedure or later on, as illustrated in appendices 1 and 2. Appendix 1 is the first page of the police report (محضر الشرطة), and it contains the first interrogation of Muḥammad ‘Abd al-Ḥayy ‘Alqa (then still one of the accused of the murder) conducted by the police superintendent in Talā on March 17th 1892. It is interesting to note that the superintendent himself was probably the one who put the verbal exchange down on paper. The interrogation is presented in the form of a short narrative text (paragraph) in which no reference is made to the questions that have been addressed to the accused. In this way, the interrogator/kātib conceals the constraining role he plays in the performance, thereby giving the impression that the deposition has been made in a perfectly spontaneous manner.\(^{224}\) This partial erasure of the police superintendent’s activity sheds light on the dimension of censorship of the work of the kātib who always has the possibility to make cuts in the statements that have been uttered before him by the interrogator as well as by the accused.\(^{225}\)

In contrast to the narrative text, appendix 2 presents the now classical form of the س/ج (س for سؤال or question and ج for جواب or answer) (Appendix 2). The first part of this document contains the interrogation of the victim’s brother (Ḥasan Shalabī or Jalabī) conducted by the inquiry judge (قاضي التحقيق or Juge d’Instruction) of the Minūfiyya province (‘Ashmāwī Shukrī) on March 19th 1892. Beyond the clear distinction of roles between interviewer and interviewee introduced by this presentation, it is interesting to note that the variations in the length of these


questions and answers visually displays a few clues regarding the evolution of the power relations unfolding within the judge’s office. Thus, while the first interrogation of Mikhīmar (the main accused) in this new environment is characterized by short and very general questions (“Q.: The accused was questioned about the charges against him” [1892 – M’AQ: 124]) and relatively long answers [1892 – M’AQ: 124], the following interrogations reveal a development towards more specific and more detailed questions that follow one another more quickly and give rise to more concise answers [1892 – M’AQ: 125]. This evolution progressively leads to the ultimate “crushing” question, i.e. a question of four lines that summarizes the depositions of the four witnesses of the crime and that generates a very succinct declaration from the accused who simply underlines the legal invalidity of one of the testimonies [1892 – M’AQ: 127-128]. As such, Mikhīmar’s interrogation by ‘Ashmāwī Shukrī follows the pattern designed by the colonial authorities to help the young magistrates reach the truth through the “subtle” process of dialogical production of proof; a pattern promoted again in the three chapters of Kershaw’s Hints on the Conduct of Criminal Investigation dedicated to the examination of suspects and witnesses.

While the visual pattern of such an interrogation is the most visible sign of the implementation of the new concept of judicial orality, other clues that testify to the superior probative force conferred to the latter are also discernible on the pages of the file. Interestingly enough, these other elements are already present in the first example chosen (and this, in spite of the fact that the excerpt takes the form of a short narrative text). Thus, Muḥammad ‘Abd al-Ḥayy ‘Alqa’s deposition concludes with the formula: “and this is my saying and I write my name with my handwriting,” followed by the suspect’s signature affixed with a rather hesitant hand: “الفقير” (i.e. “the poor,” understood as poor in front of God and suggesting a Sufi reference), محمد عبد الحي علقة (Appendix 1: elements in green). Here, putting the signature in writing merely substantiates the main formula, namely “and this is my saying,” simply as a support of the proof itself borne by orality. In the course of the procedure, new measures that further attest to the superior value attributed to judicial orality are introduced by the justice professionals. These include, at the

226 Komter, “Accusations;” Atkinson and Drew, Order in Court; Manzo and Travers, Law in Action.
227 Komter, “Accusations.”
228 Kershaw, Hints on the Conduct, 27-71.
beginning of the interrogation, the taking of the oath, and, at the end of the verbal exchange, the reading aloud of its written transcription, the accuracy of which the questioned person has to confirm before affixing his/her signature or seal. Here again, the reintroduction of writing in this last gesture only plays in as a mere sign of the oral proof (Appendix 2: elements in green).

Beyond these very general visual elements, it is interesting to examine the more subtle clues that reveal the transformations undergone by these peasants’ “voices” when put into writing and the complex dialectical relations between orality and writing at work in the very course of this process.

Once again, the contrast between the two examples I have chosen ought to be underlined. In the first excerpt (Muḥammad ‘Abd al-Ḥayy ‘Alqa’s interrogation by the police superintendent of Talā), the text was drawn up by a kātib whose mastery of literary Arabic is imperfect at best, as suggested by a number of spelling and grammatical mistakes (Appendix 1: elements in red). A single language register, a sort of middle Arabic (intermediary language form between colloquial (‘āmmiyya) and literary (fuṣḥā)) that is not very elaborate,\(^\text{229}\) is used in almost the entirety of the paragraph. The choice to use this language register in the quasi-totality of the text is the sign of a conscious effort (even if incomplete – Appendix 1: elements in orange) on the part of the kātib both to turn the direct style of the interrogation into indirect speech, and to raise the language level of the defendant’s statements - as they were uttered before him - from ‘āmmiyya to fuṣḥā. This transformation of Muḥammad ‘Abd al-Ḥayy ‘Alqa’s words when put down on paper reveals the role of mediator between the fallāḥ and the administration played by the kātib.\(^\text{230}\)

More specifically, this reworking of the suspect’s statements suggests on the part of the kātib/police superintendent both an awareness of his belonging to a body of civil servants who have the duty to maintain a certain level of language, and the fact that he probably has in mind, as he composes the text of the deposition, his hierarchical superiors and the various justice


\(^{230}\) Doss, “Des écrivains,” 42-44.
professionals who will read and re-read the document in the course of the procedure that will follow, i.e. the multiple “over-reading audiences.”

This being said, while the successive use of indirect and direct speech in the transcription of the interrogation itself reminds us of what Vološinov would call “the unqualified primacy of direct discourse” in Arabic, it is essential to note that one expression in the whole paragraph was voluntarily kept in direct speech and in ʿāmmiyya. This phrase is a set of words presumably uttered by a witness on the crime scene and reported by the interrogated defendant: “the kid died, Mikhīmar, like that!” (Appendix 1: elements in blue and bold). Here, the original colloquial form of the statements is preserved by the kātib in order to confer additional authenticity to an element considered as being of major importance. Alongside his efforts to give the testimony a more polished, official, and professional written form, it is thus orality that the kātib/police superintendent invests with a superior probative force vis-à-vis writing; not only the orality of the deposition produced in the course of the interrogation, but also and more importantly that of the words supposedly uttered at the moment of the crime. In doing so, the civil servant complies with the administrative guidelines he has received. In his 1907 handbook, Kershaw thus reminds the inquirers that: “Where the witness states that a deceased person, the accused, or others, made a statement to him which is important, the examiner should get from him the exact words used or as near as the witness can remember, which should be written down word for word.”

While Kershaw’s instruction to transcribe as accurately as possible the words supposedly uttered by the various actors involved in the crime should have been relatively easy to follow, his subsequent advice to the inquirer to further interrogate the fallāḥ without revealing his intentions must have been much more problematic to apply. In this matter, the Chef du Parquet seems to have greatly underestimated both the peasants’ subtle perception of the functions of interrogations within the broader judicial mechanism and the active role they played on the basis

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231 Dupret, Le jugement, 136, 164-73.
232 Vološinov, Marxism, 127.
233 Kershaw, Hints on the Conduct, 34.
234 Ibid., 34.
of this understanding in the dialogical production of the proof.\(^{235}\) In our case, Muḥammad ‘Abd al-Ḥayy ‘Alqa’s awareness of the special value given by the inquirers to the words presumably uttered on the crime scene (and of what is at stake in these words both for him and for Mikhīmar) is revealed in the manner in which his testimony evolves in the course of the procedure. Thus, during the second interrogation, conducted this time by Muḥammad Afandī Ḥishmat, the sergeant of the commandant’s office or مساعد الحكمدارية, the expression supposedly heard by the defendant transforms into: “You killed Muḥammad, Mikhīmar!” [1892 – M‘AQ: 112]. In his successive depositions, the accused - who has become a mere witness in the process - sticks to this last version, while insisting that he has not seen the murderer. Concomitantly, he very interestingly refines his subtle self-presentation as a religious student more interested in the divine secrets than in worldly affairs [1892 – M‘AQ: 124; 155-157]. This tactic cleverly allows him to substantiate the claim that he does not know anything about the events that preceded the crime, the existence of family feuds, or the intricacies of the village politics [1892 – M‘AQ: 156]. He is thus able to clear himself by charging Mikhīmar, and at the same time to protect himself from potential reprisals by the various parties involved. In his refusal to talk about what and who is behind the crime, Muḥammad ‘Abd al-Ḥayy ‘Alqa actually does not differ from almost all the other witnesses on both sides of the case. The only one who breaks the silence is the brother of the victim, Ḥasan Jalabī. Let us now examine the manner in which the latter’s first deposition is transcribed into writing.

While Ḥasan Jalabī’s interrogation is conducted only two days after that of Muḥammad ‘Abd al-Ḥayy ‘Alqa, the methods of transcription used in both cases are very different. Contrary to the police superintendent of Talā who puts down the content of the verbal exchange on paper himself, the Juge d’Instruction, ‘Ashmāwī Shukrī, is assisted by a professional kātib, Aḥmad al-Ṭaḥān. The kātib’s work reveals the ambition to write down more faithfully the statements of the interviewees while at the same time preserving a certain language register in the transcription of the interviewer’s questions. Thus, while the judge’s initial question to Ḥasan Jalabī (“Q.: Inform us of the manner in which your brother, Muḥammad Shalabī, died.”) has undoubtedly been asked in ‘āmmīyya, it is transcribed in this excerpt in formal Arabic. The quasi-automatic nature

\(^{235}\) Ibid., 33-35.
of this transformation of the simplest questions from ‘āmmiyya into fushā suggests the internalization by the kātib of some sort of a professional “routine.” As for the witness’s answer, it is written in a middle language very close to ‘āmmiyya.236 A quick comparison of this second questioning (Appendix 2) with the first one (Appendix 1) reveals that, while the main spelling and grammatical mistakes present in the first excerpt have almost totally disappeared (notably the “lam + māḏī” instead of “lam + majzūm”), the second text bears many more marks of orality. The latter can be seen in the first-person narration throughout the passage, the succession of short sentences introduced by “fa” and the relatively intensive use of “’anā” and of the combination “fa-’anā” (Appendix 2: elements in yellow), the expressions supposedly heard on the eve of the murder that are almost always reported in direct speech (Appendix 2: elements in blue) and almost always written in ‘āmmiyya (Appendix 2: elements in blue and bold), and finally the use of ‘āmmiyya in the narration itself (Appendix 2: elements in orange).

To the initial distinction of the roles between interviewer and interviewee materially visible on the page through the succession of س / ج is thus added a differentiation of language registers. The latter allows one to underline a posteriori not only the disparity in knowledge/power that distinguishes the justice professionals from the “lay people,” but also the social gap that separates fallāḥīn from afandīs. The fallāḥ, be he/she accused or witness, is thus established as the Other by the kātib, an Other defined by his/her lack of access to writing and by the indiscriminate production of words that the justice professionals will have the mission to filter out and then interpret.237

The brackets that punctuate this second excerpt are the “traces” of this discriminating dimension of the kātib’s work, a dimension that cannot be dissociated from the very process of transforming the oral testimony into a written statement. Even if the uses of these brackets are manifold (Appendix 2: blue, orange and purple brackets), it seems that they are mainly employed to highlight specific expressions that have been intentionally left in ‘āmmiyya. These are most often phrases presumably reported either from the crime scene or from significant incidents that occurred a few days or weeks before the crime. That being said, the excerpt chosen

236 Doss, “Some Remarks;” Doss, “Forms of Reported Speech.”
shows that the statements supposedly heard on the eve of the murder have not all been put into brackets (Appendix 2: elements in blue) and that they have not all been preserved in their initial colloquial forms either (Appendix 2: elements in blue, bold and non-bold). In addition to their use in reporting words from the crime scene, the brackets can also serve to underline other elements such as a colloquial expression used by the victim’s brother to qualify the main suspects’ behavior as described by an eyewitness of the crime (Appendix 2: orange brackets).

A finer analysis of these phrases between brackets reveals that the kātib has chosen to highlight these elements because it is possible to make them fit into particular preconceived judicial categories allowing one to qualify the crime. Thus, the first element between brackets “(بلااشعار بلاابتاع)” (Forget about the notification, forget about this stuff!), which highlights the desire of the defendant’s uncle to take the law into his own hands, underlines the intentional or voluntary nature of the crime or تعمد. The second element between brackets “(لااخلي بطنه دفية)" (I will turn his belly into a diffiyya [kind of loose woolen cloak]), which consists of the threats issued by the accused against the victim, confirms the dimension of premeditation or سبق الإصرار. Finally, the third element between brackets “(متلبدين في الغلة)" (huddled together in the crops) that states that the three main suspects were hiding in the fields, suggests the idea that the murder was perpetrated under the aggravating circumstances of an ambush or ترصد - تربص. The kātib’s emphasis on these expressions (both through the use of the brackets and the preservation of their initial colloquial forms) illustrates the discriminating dimension of his activity. Not only responsible for the operation of transcribing on paper the declarations of the witnesses and defendants, the kātib is also in charge of identifying among the latter the elements that he considers legally relevant. In this transition from oral to written, the kātib plays the double role of a censor and a mediator who filters the flow of words from the fallāḥīn.\footnote{Doss, “Des écrivains,” 42-44.}

### 1.4.2 The emergence of the “refrain:” The translation of the “voices” and the manipulation of the file throughout the procedure

This first activity of discrimination and filtering of the testimonies is intended for the various justice professionals who successively intervene in the treatment of the case, and in the first
place for the *Chef du Parquet* who, at the term of the preliminary inquiry, establishes the indictment on the basis of the juridical categories identified above. But the various marks in the margins of the original documents, such as large crosses, lines and other dots, as well as the numerous underscored elements apparent on these first interrogations [1892 – M‘AQ: 122-127] suggest that the *Chef du Parquet* carries out in his turn a second operation of filtering of the information. He becomes acquainted with the file, scans the different documents, and identifies with a mark the elements that he sees as being of some importance on the juridical level. When writing the act of indictment, the chief prosecutor relies on these elements that he quotes before interpreting them from a juridical perspective. In the indictment against Mikhīmar issued by Muḥammad Maḥfūẓ, the *Chef du Parquet* of the Banhā tribunal, on March 27th 1892, we thus find again the threats presumably uttered by the accused and his uncle on the eve of the murder, still between brackets but this time presented in *fuṣḥā*:

إن لم تحضر العباية ففيها كل فتلة برجل (إن لم تحضر العباية نجعل بطن جلبي دفية) (if the ‘abāya [a cloak-like woolen wrap] does not reappear, then for each thread of it, [we will kill] a man) –

(ال‘ابيا [ناسفة كالرجل] - (إن لم نحضر العباية نجعل بطن جلبي دفية) (if the ‘abāya is not brought back to us, we will turn Jalabī’s belly into a *diffiyya* [another kind of loose woolen cloak different from the ‘abāya])

[1892 – M‘AQ: 136]

These quotations in direct speech are inserted into a narrative paragraph that recapitulates the elements of the case selected by the chief prosecutor and ends with the legal qualification of the crime as “قتل عمدا مع سبق الإصرار و الترصد” or voluntary homicide with premeditation and in ambush. The three categories (the voluntary nature of the crime, the premeditation and the ambush) are then reexamined one after the other and are accompanied each time by a short synthesis of the testimonies and the names of the witnesses on which the qualification is founded [1892 – M‘AQ: 136].

The determination of the legal qualification of the facts on the basis of the quotations – be they quotations of words supposedly linked to the crime or paraphrases of the witnesses’ depositions – sheds light on the mission of “translation” for the statements of the *fallāḥīn* (first into literary Arabic, then into legal terms) with which the justice professionals consider themselves to be

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240 Ibid., 328.
entrusted. The distribution of the roles is thereby reasserted: on the one hand, the members of the legal profession who possess a legal knowledge/power that expresses itself through an apparent monopoly of writing; and, on the other, the peasants whose ignorance/vulnerability seems to relegate into the realms of orality. In this framework thus constructed, the Chef du Parquet establishes himself as the translator and interpreter of the words of the fallāḥīn to which he confers the intelligibility and the “consciousness” they are supposed to be lacking.\textsuperscript{241}

Once the legal qualification of the facts is established in the act of indictment, the “sheets of the file” (أوراق القضية) pass into the hands of the president of the tribunal of first instance in charge of the trial. At this stage, the file already contains around thirty documents presented on about fifty pages. (In addition to the main records, the file encompasses all the administrative correspondence exchanged among the various actors of the local legal and police scene). The magistrate finds himself forced to become acquainted with this information in an extremely limited time, notably because of the congestion in the work of the courts. He browse through the file, and scans its different parts. He seems to essentially pay attention not to the dozen pages of testimonies that are then available, but rather to the few main official documents that have already been drawn up by the police and justice professionals in the course of the procedure. This claim is suggested by the manner in which he conducts his own interrogations at the trial. The witnesses of the crime are once again solicited at length through questions that are very similar to those already asked first by the police superintendent of Talā, then by Ahmad Shabrāwī, the representative of the public prosecutor’s office in Shibīn, and finally by ʿAshmāwī Shukrī, the inquiry judge for the Minūfiyya province; and this while no reference whatsoever is made to these previous interrogations.

Moreover, the manner in which the president of the tribunal composes the final text of the judgment released on June 5th 1892 further strengthens the hypothesis that the witnesses’ depositions are henceforth considered as secondary vis-à-vis the official documents that have already established a first version of the fact (i.e. البلاغ or the initial notification of the crime sent by the local ʿumda or mayor, أمر الإحالة or the transfer order of the case to the tribunal written by the inquiry judge and ورقة الاتهام or the act of indictment produced by the chief prosecutor). Thus,

\textsuperscript{241} De Certeau, L’écriture, 216.
in spite of the length of the new interrogations carried out during the trial (eighteen pages that do not bear any particular sign), the very text of the judgment presents only very few modifications in the statement of the facts in comparison with the act of indictment [1892 – M’AQ: 136; 167-169]. The wording of both texts is even so close that it does not leave any doubt about the fact that the kātib of the tribunal copied to a great extent the initial document composed by the chief prosecutor [1892 – M’AQ: 136; 168]. The only significant difference between both documents is nonetheless of great importance. The text of the judgment witnesses indeed to the disappearance of the threats uttered by Mikhīmar’s uncle and the subsequent transformation of the case from a complex quarrel among families to a simple individual vengeance. This subtle reinterpretation of the facts relies once more on the quotation of the famous words attributed to Mikhīmar on the eve of the crime “(إن لم تحضر العبأية يجعل بطنه دفية،)” presented here first between brackets, then reiterated a second time in a slightly altered manner and without brackets “توعده عائلة شلبي يجعل بطنه دفية إن لم تحضر العبأية” to attest the intentional and premeditated nature of the murder, and finally indirectly recalled through two other references [1892 – M’AQ: 168].

Once the tribunal of first instance issued its ruling, the peasants’ “voices” are progressively silenced. From that moment onwards, the lawyers, the representative of the public prosecutor’s office, and the judges speak “in the name of” and/or “about” defendants and witnesses. The latter are always physically present within the court of appeal or the court of cassation, but they are marginalized when they are not totally ignored. The words uttered by the fallāhīn during the first stages of the procedure are then repeated, reused, reshaped and reformulated by the various justice professionals. In the case I am concerned with, these are almost exclusively Mikhīmar’s (alleged) threats that are thus reprised, as a refrain, more than a dozen times and in different contexts between the act of indictment and the ruling of the court of appeal [1892 – M’AQ: 181-183].

Ultimately, these words are invoked to justify the legal validity and relevance of the death sentence pronounced against a single accused. The invocation of this “refrain” thus gives the illusion that the stifling of part of Ḥasan Jalabī’s “voice” – that which as early as the first interrogation (Appendix 1) was denouncing the implication not only of Mikhīmar, but also that of his father, his uncle, and his brothers – is the result of a legal and bureaucratic logic internal to the system. Within this perspective, the “refrain” is presented as a summary of the case, as a sign
of “The” proof or almost all that remains from the about thirty pages of interrogations conducted with the various protagonists. A finer analysis of the very creation of this “refrain” (and the concomitant silencing of the dissonant “voices” it entails) nevertheless sheds light both on the fact that the judicial procedure consists of an aggregation of individual actions performed by different actors who make choices – rather than a mechanical legal logic –, and on the idea that in spite of the existence of a professional “routine,” a reinterpretation and hence reorientation of the case is possible at every stage.

On a more linguistic level, the production and multiple repetitions of this “refrain” – which, even when quoted in a more formal language remains extremely close to the original expression – allow the justice professionals to use what Vološinov calls “the texture-analyzing modification” of “the pattern of indirect speech.” By emphasizing not only the content but also to some extent the form of Mikhīmar’s utterance, the magistrates both decontextualize and individualize it. Thus, the peasant’s words “are being ‘made strange.’” As Vološinov explains: “in [the texture-analyzing modification] the speaker’s individuality is presented as subjective manner (individual or typological), as manner of thinking and speaking, involving the author’s evaluation of that manner as well. Here the speaker’s individuality congeals to the point of forming an image.” In our case and as the final Judgment of the court of appeal reveals, the quotations of Mikhīmar’s both poetic (with the association between ‘abāya and diffiyya) and violent threats are used by the magistrates not merely to underline the premeditated nature of the crime, but also as a basis for both incorporating the defendant into the colonial narrative about the fallāḥīn’s inherent “spirit of vengeance” (حقد) and to further substantiate this narrative [1892 – M’AQ: 181-183].

To conclude this sub-part, the analysis of the “traces” of the performance left on the “sheets of the file” by the various police and justice professionals (be they crosses, underscored elements, signs of filtering, or finer clues of orality and intertextuality) gives the impression that the constitution and the evolution of the judicial file (from the transcription of the interrogations to the writing of the judgments) respond to a bureaucratic and legal mechanism that seems

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242 Vološinov, Marxism, 130-33.
243 Ibid., 131.
244 Ibid., 133.
implacable. At the heart of this process lies the quotation between brackets of words reported from the scene of the crime or from events linked to the latter. From the perspective of the members of the legal profession, these quotations and their highlighting allow the reification of the roles within the performance: on the one hand, the ignorant and powerless fallāḥ who loses himself in a flow of words; on the other, the police officer or the magistrate, the only ones to be able to translate, to interpret, to make sense of the latter through writing. In addition, the use of these quotations by the justice professionals serves to rigidify the various pre-conceived legal categories to which they give substance. The multiple repetitions of the key-quotations also allow to both found until the last judgment the legal validity and relevance of the death sentence on the superior probative force of judicial orality and to substantiate the emerging colonial narrative about peasants’ criminality. Finally, the reprise of the refrain both makes the decision-making process appear as the product of a truly collective and consistent legal mechanism, and gives greater coherence to what becomes at the end of the procedure the “dossier” (الدوسيه – الملف).

This appearance of coherence, constructed by the justice professionals and materialized through the holistic nature of the dossier, is artificially reinforced in the case of the files I deal with by the operation of “ordering” [ترتيب] performed by the archivists of the National Center for Judicial Studies (NCJS). Indeed, while the analysis of a few of the original tables of contents of the dossiers suggests that the filing was essentially done at the turn of the 20th century according to the order of arrival of the documents without consideration for the judicial logic other than that naturally borne by the chronological unfolding of the procedure, the current arrangement is made through subfolders created by the archivists in order to underline the legal rationality of the decision-making process. Faced with these reorganized archives, and after a few sessions of observation of the work of the archivists in action, I undertook a closer examination of the last subfolder of Mikhîmar’s file, that of the appendices (المكاتبات المتعلقة بالقضية).
1.5 Petitions in appendices: “Jumble,” acculturation, and agency at the margins of the file

1.5.1 The appendix subfolder, or how to conceal the “jumble” and the blurring of the role distribution

The appendix subfolder of the Mikhîmar case, created by the archivists of the NCJS, consists of very different documents. Most of the latter however fall into the regular administrative correspondence among the multiple police and justice actors involved in the treatment of the case: receipts attesting to the sending of telegraphs, notes accompanying the transfer of isolated pages or of the whole file from one institution to another, copies of documents the originals of which were delivered to various protagonists, etc. A quick analysis of this correspondence reveals the extent to which the “bureaucratic chaos” within these institutions prevailed at that time; a chaos that greatly contrasts with the strong impression of coherence and organization left by the study of the body of the dossier and of its various standardized documents and multiple forms, almost all of which bear dates, stamps, numerous numbers and other signs of an undeniable effort of filing.

The main causes of this bureaucratic chaos seem to be linked to the circulation of isolated elements or of the complete file among the different judicial instances and to the manipulation by the various professionals in charge of the case of the hundred of documents that the dossier contains at the end of the procedure. Circulation and manipulation of a file of this size almost inevitably entail the (temporary or permanent) loss of pages, intentional or non-intentional modifications in the initial chronological arrangement, and even the possible sliding of documents from one judicial file to another. Among the appendices of the Mikhîmar case, seven notes thus attest to these cracks in the bureaucratic mechanism. They emanate from very different institutions, and they all require from the authority holding the file at a given time the reintegration, within the latter, of documents that have obviously been scattered or misplaced in the course of the procedure [1892 – M’AQ: 208; 220; 221; 232; 242; 243; 244].

For Mikhîmar’s file, the confusion is aggravated by the fact that the case passes rather suddenly and without any explanation from the tribunal of Banhâ to the tribunal of Ṭanţâ where the procedure of first instance comes to an end (May
22nd, 25th and 29th and then June 5th 1892). As for the other cases, the dossier is then transferred to the court of appeal (between August 15th and November 23rd 1892), and finally to the court of cassation (between January 7th and February 18th 1893), both located in Cairo. The congestion in the work of these various tribunals mentioned above adds not only to the trouble of the kuttāb - who end up substituting the name of the plaintiffs’ lawyer with that of the defendant’s [1892 – M’AQ: 184] -, but also to the confusion of the magistrates themselves who order the delivery of a copy of the act of indictment to the accused at the Ṭanṭā prison, although the latter is actually incarcerated in Banhā [1892 – M’AQ: 135; 137].

If the study of this administrative correspondence prompts the historian to greatly relativize the bureaucratic logic of the dossier, reconstructed a posteriori by the archivists, the analysis of other major documents of this case, also relegated to the appendices, incites to critically question both the strict role distribution imposed by the justice professionals in the course of the procedure, and the juridical logic that led to the determination of the accused, to the legal qualification of the facts, and eventually to the judgment. To illustrate these arguments, I rely on the close examination of four petitions emanating from the victim’s family.

The first of these petitions belongs to the body of the file [1892 – M’AQ: 117], while the following three were placed in appendices by the archivists of the NCJS [1892 – M’AQ: 213; 231; 245-1/245] (Appendices 3, 4, 5 and 6). This choice made by the archivists can be explained by the fact that while the second “petition” [1892 – M’AQ: 231] rather falls into the field of communication among members of the legal profession (I come back to this issue below), the last two [1892 – M’AQ: 213; 245-1/245] were arbitrarily ignored by the judicial authorities. As such, their presence in the body of the dossier would therefore only “obscure” the postulated

245 Before 1884, the cases of crime occurring in the Minūfiyya province were tried by the court of Ṭanṭā, while those of the Qalyūbiyya province were dealt with in Cairo by the court of Gīza and Qalyūbiyya. With the creation of the native tribunals, a court was established in Banhā in order to take in charge the cases of both provinces. It was nonetheless suppressed on April 25th 1892, the Minister of Justice considering that the number of cases treated was not sufficient to justify the existence of a special court. From that date onwards, the cases occurring in Minūfiyya would be tried by the tribunal of Ṭanṭā, while the crimes taking place in Qalyūbiyya would be presented before the tribunal of Cairo. As for the personnel, it would be dispatched between both courts. See: Egypt, Egyptian National Archives, Ḥaqqāniyya - maḥākim ahliyya, [0075-041807], Ra’y majlis shūrā al-qawānīn wa al-māliyya ǧī muddakkirat al-ḥaqqāniyya al-khāṣṣa bi-ilghā’ maḥkamat Banhā al-ahliyya ma’ tawzī’ mustakhdimī hadhihi al-maḥkama ‘an maḥkamat Ṭanṭā wa maḥkamat Miṣr (25.04.1892).
rationality of the magistrates’ decision-making in this case, and hence the legal validity and relevance of their judgment. This being said, the archivists’ choice to relegate to the appendices the documents that were not taken into account in the decision-making process is not solely founded in a specific theoretical and ideological conception of legal work. It is also an imitation of the very practices of the magistrates. Indeed, in spite of the initial chronological filing of the documents – attested by both the “original” figures found on the documents\(^{246}\) and the original tables of contents of the files –, the latter always reach the archives “in jumble.” One basic organizing principle nonetheless seems to govern this “jumble”: as a result of the numerous manipulations of the file by the various justice professionals, the documents considered as being of some importance in the decision-making process are to be found on top of the file, while the others lie at the bottom. On the basis of these observations, I would hence argue that the last two petitions at least were relegated at the end of the file in the very course of the procedure, and this simply because they did not lead to any legal proceedings.

In any case, the very presence of these petitions in the dossier blurs the strict distribution of the roles skillfully constructed during the procedure within the judicial institutions in charge of the case. In a sense, the eruption in the file of this external element, created at the margins of the system, breaks the myth. Not only does Ḥasan Jalabī, the fallāḥ, have access to writing (even if this is done through the intermediary of a public writer (كاتب عام)), but he also takes the initiative to resort to it the very first days following his brother’s murder – while the procedure is still in its infancy – (between March 16\(^{th}\) and 20\(^{th}\) 1892), and he will continue to use this means of expression till the eve of the issuing of the judgment by the tribunal of first instance (May 30\(^{th}\) 1892). In addition, if the very existence of the petitions proves that the justice professionals do not have a monopoly on writing, a quick analysis of the content of the documents demonstrates that they do not have the monopoly of legal language either. An examination of the four successive versions of Ḥasan Jalabī’s petitions reveals more specifically on the part of their author a knowledge of both certain legal terms and the essential juridical elements on which the validity of a testimony is founded. To be sure, it is impossible to determine with precision if this

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\(^{246}\) Various numbers can be found on the documents, among which the main two are those written by the justice professionals at the time of the initial filing, and those added by the archivists of the NCJS when the dossier was “re-ordered” a century later.
basic knowledge of the system is that of Ḥasan Jalabī himself or that of the kātib he has hired and who plays here, much more than the clerk of the tribunal, his role of mediator between the plaintiff and the administration. Nonetheless, and this is what makes this case particularly interesting, the evolution that manifests itself through the four versions of this petition, both in the terminology used and the more general manner in which the arguments are presented, reflects a progressive acculturation, or at least an undeniable and growing awareness on the part of Ḥasan Jalabī of the necessity to speak as best as possible “the language of the law.”

As early as the first petition (written between March 16th and 20th), the key-verbs “to order the murder,” “to incite to murder,” “to lay an ambush,” and finally “to kill intentionally with the help of [...] on the order of [...]” are present (Appendix 3: elements in blue), and this while no official legal document qualifying the case in these terms has yet been produced, and while the act of indictment will be drawn up only a week later. Moreover, the various charges raised against Mursī al-Qāḍī, Ḥasan Abū ‘Alqa, and ‘Abd al-Nabī al-Qāḍī (the alleged sponsors of the murder) are each time founded on the statements of at least two carefully identified witnesses (Appendix 3: elements in orange). Finally, the petition has been very cleverly addressed to the Chef du Parquet of the Banhā, to whom the plaintiff requests the interrogation of the three suspects above-mentioned, and the investigation of “what lies behind the case” (Appendix 3: elements in green).

While reading the documents, it appears very quickly that the case is indeed very complex, and that in addition to the likely implication of notables of the village (Mursī al-Qāḍī, one of the mashāyikh of the region, and Hasan Abū ‘Alqa, the chief of the village guards), the parties involved enjoy much greater external support. This latter element is suggested by the legal assistance from which both sides benefit from the first sessions of the case held at the Banhā tribunal. At the opening of the trial, on April 2nd 1892, Mikhīmar thus declares that in spite of the fact that a legal representative has already been automatically assigned to him, he has chosen another one: the very famous Cairene lawyer Aḥmad Afandī al-Ḥusaynī [1892 – MʿAQ: 138]. As for Ḥasan Jalabī, his brother, his sisters, and the wife of the deceased, they become plaintiffs

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247 Doss, “Des écrivains.”
in the case, and shortly after hire the equally notorious lawyer Saʿd Afandī Zaghlūl for their defense [1892 – MʿAQ: 138-139].

It is in this context that ʿHasan Jalabī affixes his seal to a second document. The latter is not a petition proper, but rather the official demand from the victim’s family to be considered as plaintiff in a civil case. However, its reintroduction within the chronological series of requests sent by the victim’s brother to the judicial administration sheds light on particularly interesting elements regarding the different tactics adopted by Jalabī. The style of this second document submitted to the president of the tribunal on April 3rd 1892 betrays the intervention of a justice professional (most probably a collaborator of Zaghlūl) in the drawing up of the text (Appendix 4: elements in blue and yellow). The spelling mistakes on technical terms and the errors in grammar and wording (Appendix 4: elements in red) nonetheless suggest that the text has been dictated to a kātib. As for its content, this document greatly differs from the initial petition, insofar as it no longer calls for an investigation of “what lies behind the case,” but merely demands the conviction of Mikhīmar, and the allocation, to the victims, of a sum of one hundred Egyptian Pounds (a sum that incidentally corresponds exactly to the remuneration of the lawyer).

It would tempting to see this document as a mere instance of ventriloquism, ʿHasan Jalabī affixing his seal at the bottom of a text that he has neither drawn up, nor put down on paper, and of which he might not grasp the whole meaning and impact. This being said, the very fact that he has affixed his seal to it seems to me to be significant in itself. In addition, what is even more telling is that a few weeks later, ʿHasan Jalabī returns to his initial request through a third document.

Contrary to the official demand of the whole family to be considered as plaintiff in the case, this third document, which is again a petition in the literal sense of the term, is only signed (or rather sealed) by ʿHasan Jalabī and his brother Jalabī. It is addressed to the criminal inquiry judge of the Banhā tribunal, and it seems to have reached its recipient around April 28th 1892, while the sessions of the trial have been interrupted because of Ramadan since April 9th and will remain suspended until May 7th [1892 – MʿAQ: 139]. At that time, the trial has not truly begun. Saʿd Afandī Zaghlūl was not able to attend the first two sessions, and neither the accused, nor the witnesses have yet been heard. It is nonetheless during this period of inactivity that ʿHasan Jalabī decides to again take the initiative and personally get back into the case. His repetition of the
main elements of the initial petition suggests a patent dissatisfaction certainly due to the fact that he has not received any response to his first request, but also most probably due to the manner in which his demand for an investigation of “what lies behind the case” has been suppressed in the second document drawn up by the lawyer.

While the charges against Mursī al-Qāḍī and ‘Abd al-Nabī al-Qāḍī are reiterated (Appendix 5: elements in red), the style of this third document is nonetheless slightly different from that of the first one. This time, the main role is not so much played by the witnesses anymore (Appendix 5: elements in orange), as by the threats and the incitements to murder allegedly uttered by the uncle and the father of the accused on the eve and the day of the crime (Appendix 5: elements in blue and bold). The latter are now quoted in direct speech, and almost exclusively in ḍāmīyya. Through these quotations, the emphasis is placed not only on the nature of the crime as a proxy murder, but also and most essentially on the fact that its sponsors consider themselves as above the law. This last element is in fact accentuated by a true text analysis, a sort of translation into ḍāshā of the meaning of Mursī al-Qāḍī’s words: “if a fight were to happen and that someone got killed, maybe him, do not go to the government” (Appendix 5: elements in yellow, bold and underlined). Finally, the last part of the text clearly adopts the judicial style with the use of phrases such as “حيث أن” and “وبناء عليه” that undeniably strengthen the demand for legal proceedings to be initiated against Mursī al-Qāḍī and ‘Abd al-Nabī al-Qāḍī as accomplices of the murder (Appendix 5: elements in green). Through this third petition, the fallāḥ thus truly substitutes himself for the justice professional (even if it is with the help of the kātib). He knows how to do what it takes to make the wording of his request evolve towards the standards in use in the legal profession. Thereby, he recovers not only his ability to express himself (in writing), but also becomes again his own interpreter. More significantly, he proves to be able to retrieve the autonomy of his action, and hence to differentiate his strategy of accusation from that of his lawyer with the aim to bring the real sponsors of the murder to justice.

The discovery, in the appendices of the file, of the different petitions and other requests sent by Ḥasan Jalābī to the judicial administration thus leads the historian to question not only the administrative and bureaucratic logic that is supposed to govern the ordering and the manipulation of the “sheets of the case,” but also the strict distribution of the roles in the performance that takes place within the police station or the tribunal, a distribution reconstructed
by the justice professionals through the transcription of the interrogations and the drawing up of judgments. But more importantly, the discovery of these petitions, or more specifically the analysis of the various manners in which they were considered, also challenges a third more crucial logic, that of the legal reasoning that allegedly underlies the decision-making process in the judicial framework.

1.5.2 The petitions and their treatment: Dialectical production of the written proof and conflicting definitions of law and justice

The three petitions and requests submitted to the judicial authorities by Ḥasan Jalabī and presented above are curiously treated in very different ways by the various justice professionals whose hands they successively reach. The first petition - that is included into the body of the file [1892 – M‘AQ: 117] - is the object of very special attention on the part of the Chef du Parquet of the Banhā tribunal, Muḥammad Maḥfūẓ, who receives it between March 16th and March 20th 1892. Muḥammad Maḥfūẓ officially files the document among the petitions sent to the tribunal in that year (“92 – [sic] عرايض 490”), and as early as March 21st, he transmits it to Aḥmad al-Shabrāwī, the representative of the Parquet in Shibīn al-Kūm (closer to the site of the events), whom he orders to inquire about the claims raised by Jalabī [1892 – M‘AQ: 118]. Then, a week later, while the later laconically answers that the case has already been investigated by the inquiry judge for the Minūfiyya province who ordered its transfer to the penal court, Muḥammad Maḥfūẓ insists and demands from Aḥmad al-Shabrāwī the interrogation of the persons mentioned in the petition as early as possible [1892 – M‘AQ: 119]. The subordinate complies with the order, and on March 30th, he sends Maḥfūẓ the transcription of the interrogations of the witnesses who all confirmed Jalabī’s charges [1892 – M‘AQ: 120-121].

On April 2nd, the first session of the trial is held at the Banhā tribunal. The second document sealed by Ḥasan Jalabī has not yet been submitted to the judge, but the victim’s brother already states his intention to become a plaintiff in the case, and requests the postponement of the session for a week in order to give him time to pay the costs of the insurance that this move entails and to appoint a lawyer to defend his rights [1892 – M‘AQ: 138]. Following this, the second request is sent [1892 – M‘AQ: 231], and as a legal document, it is naturally taken into account by the judicial administration. In the course of the second session of the trial in Banhā
(April 9th), the judge thus endorses the recognition of Ḥasan Jalabī’s family as plaintiff in the case, and takes note of the name of their lawyer: Sa‘d Afandī Zaghlūl [1892 – M‘AQ: 139].

While the first two documents receive significant attention on the part of both the Chef du Parquet and the judge in charge of the trial at the Banhā tribunal, the transfer of the case to the Ṭanṭā tribunal is characterized by a clear change in the justice professionals’ attitudes towards Ḥasan Jalabī’s requests. The third document, still addressed to the Banhā tribunal, reaches its destination during the period of Ramadan [1892 – M‘AQ: 213]. There, it is given a petition number (“عرضحلات سنة 557”), before being replaced in the file that will be sent to Ṭanṭā a few weeks later. On May 22nd, during the reopening of the trial at the Ṭanṭā tribunal of first instance, the witnesses of the case are heard, but none of the persons mentioned by Ḥasan Jalabī in both of his petitions (and who had already been interviewed by the representative of the Parquet in Shibīn) has been summoned [1892 – M‘AQ: 140-157]. The victim’s brother himself is merely interrogated “for information” [1892 – M‘AQ: 146]. He is asked only one question: “Q.: You, you have presented a declaration [بلاغ] to the Chef du Parquet in Banhā ?” [1892 – M‘AQ: 146]. Ḥasan Jalabī answers very interestingly by specifying that it is not a declaration, but actually a “petition” [عريضة] regarding Mursī and ‘Abd al-Nabī, that he has submitted in Banhā. Then, he launches into a summary of the case during which he quotes again Mursī’s intimidations, his statements suggesting that he is above the law, and Mikhīmar’s famous threat [1892 – M‘AQ: 147]. This response does not give rise to any other question, and the witness is dismissed immediately afterwards.

This total lack of interest on the part of the members of the Ṭanṭā tribunal for Ḥasan Jalabī’s petitions is confirmed by the judgment that – to be sure – is pronounced in favor of the plaintiffs (death sentence for Mikhīmar and allocation of a compensation of one hundred Egyptian Pounds to the victim’s family), but that completely eludes the crucial question of who ordered the murder. This attitude is all the more surprising that, in the course of the trial, the defendant’s lawyer himself (Aḥmad Afandī al-Ḥusaynī) has relentlessly stressed that the case is much more complex than what it seems to be, and repeatedly called for a supplementary and “discreet” investigation to be conducted within the village [1892 – M‘AQ: 159-161; 162]. But his requests are merely met with the additional hearing of two notables from the village (the secretary of the council of elders and the deputy ‘umda) [1892 – M‘AQ: 150-155; 161], and the assertion that the
sending of the secret police to inquire on site (common practice at the time) is an illegal procedure [1892 – M‘AQ: 169]. During the appeal trial, al-Ḥusaynī even goes as far as declaring that “the case contains a secret that does not appear in the pages of the file” [1892 – M‘AQ: 178]. He thus explains that his client cannot afford to pay his fees (one hundred Egyptian Pounds), and suggests that the person who has hired him (and whose name he refuses to reveal) is the real instigator of the murder [1892 – M‘AQ: 178-180]. Furthermore, the representative of the Parquet at the appeal trial, who is no other than Muḥammad Maḥfūẓ (ex-Chef du Parquet in the suppressed tribunal of Banhā and to whom Jalabī had sent his first petition) subtly attempts to commute the death sentence to hard labor for life by proposing to drop the charge of ambush and hence that of premeditation [1892 – M‘AQ: 177-178]. But once again, the political reasoning prevails, and the court of appeal considers that all these elements are insufficient to justify a retrial or the further investigation of the case, or even to modify the first judgment [1892 – M‘AQ: 181-183]. At the end of the procedure, the public prosecutor to the native tribunals himself, the Belgian Charles Le Grelle, who has uncovered the torture scandal of the Commissions of Brigandage three years before, comes to petition the Khedive in order to save Mikhīmar’s life on the basis of the “strangeness of the circumstances of the case,” but he fails and the accused is eventually executed on April 22nd 1893 [1892 – M‘AQ: 258-260].

In this case, the highest colonial judicial authorities thus seem to have made the eminently political choice of the preservation of the status quo in the power relations at the local level, even if this entails a breach of the juridical principle that requires the taking of legal proceedings against the instigators of a murder in the same capacity as its perpetrators. The analysis of the various treatments to which Ḥasan Jalabī’s petitions were subjected to in the course of the procedure has shown how the political logic eventually prevails here over the legal logic that is supposed to govern the judgment. More interestingly, it has revealed how the new legal scene of the mahākim ahliyya becomes at that time the locus of a harsh and complex negotiation between a multiplicity of individual actors, both professionals and lay people, over the very question of the relations between law and power in the countryside.

In the framework of this negotiation, the various actors take sides and build alliances in sometimes highly surprising ways on the basis of an intricate combination between short term interests, professional responsibilities, political stands, and personal conceptions of the law.
Thus, it is striking to note that, during the last session of the appeal trial that takes place on November 23rd 1892, the plaintiffs’ lawyer (Muḥammad Afandī Yūsuf, replacing Saʿd Afandī Zaghlūl) is led to reiterate the first instance judges’ assertion that the demand of the defendant’s representative for a secret inquiry is illegal, in an obvious move to secure the one hundred Egyptian Pounds he has requested as compensation for the family and that will most probably cover his fees [1892 – M’AQ: 180]. On the side of the Parquet, while Muḥammad Maḥfūẓ’s attempt to save Mikhīmar’s life in appeal is not followed by the attorney general Aḥmad Ḥishmat Bey (his colleague and superior in Cassation), it is personally taken up again at the very last moment by the Belgian public prosecutor Charles Le Grelle in a long and detailed written petition [1892 – M’AQ: 258]. As for the various judges of the three courts who consistently and repeatedly refuse to address the question of the perpetrators, it is worth mentioning that they constitute an interestingly heterogeneous group of Egyptian Afandīs, Beys, and Bāshās, British “Misters” and French “Messieurs” ranging from Qāsim Afandī Amīn (who would become famous as the successful author of Les égyptiens: réponse à Mr. le Duc d’Harcourt in 1894 and The Liberation of Women in 1899) to Mister Walter Bond (who would become infamous for sitting as a judge at the Dinshawāy trial in 1906). Finally and more importantly for our reflection on peasants’ “voices” and agency, it is particularly interesting to see how, in the course of this negotiation process, the victim’s brother himself becomes aware of the necessity to speak not only the language of law anymore, but also that of power.

On the day following the penultimate session of the first instance trial, while the file has been sent to the muftī for opinion (as required by the procedure for death sentences), Ḥasan Jalabī indeed tries once again to make his “voice” heard through a last petition addressed to the Chef du Parquet in Ṭanṭā (Appendix 6) [1892 – M’AQ: 245-1/245].

The style of this text is very different from the previous ones, which suggests that the plaintiff has resorted to a fourth kātib. The latter employs a very official model to draw up the document. The language register is particularly high, and is characterized by the use of numerous legal terms, formulae, and even of religious references ("وسوس < الخناس"). The cases of tanwīn are also indicated; a means for the kātib to underline the quality of his mastery of the language. Nonetheless, a few spelling mistakes are still present (Appendix 6: elements in red, not bold,
underlined [among others]), and the grammatical correctness of the sentence construction is poor. Finally, one phrase in colloquial is used («اعدامه الحياة»).

After a brief description of the case, Ḥasan Jalabī comes back to the fact that he has already submitted a declaration («بلاغ») to the Banhā tribunal, regarding the implication of ‘Abd al-Nabī al-Qāḍī and Mursī al-Qāḍī in the murder; and this same point will be taken up a second time a little bit further (Appendix 6: elements in purple, underlined). The alleged words of both protagonists inciting Mikhīmar to murder are then quoted in fuṣḥā, accompanied by the names of the witnesses (Appendix 6: elements in orange). More importantly, what distinguishes this petition from the others is contained in the four short paragraphs that follow and in which the plaintiff reiterates the idea the instigators of the murder consider themselves as being above the law. This theme has already been mentioned in the third document (notably through the expression “متروحوش للحكومة” and its explanation) [1892 – M‘AQ: 213], but this time it is considerably developed. Ḥasan Jalabī gives new elements regarding the evolution of the power relations within the village, explaining that, because they have not been subjected to any legal action, the murder’s sponsors “swim in their tyranny” [1892 – M‘AQ: 245]. He thereby suggests the danger to political power posed by these two individuals who do not fear “the government” [1892 – M‘AQ: 245]. This being said, the plaintiff recasts immediately afterwards his point in terms of law and justice, by adding that neither the former nor the latter allow anyone to place himself/herself above the law [1892 – M‘AQ: 245]. This same very subtle oscillation between political argument and legal argument is repeated in the last two paragraphs. After underlining his fear to be killed as well, Ḥasan Jalabī recalls the essential juridical principle upon which his demand is founded, i.e. that which requires the taking of legal proceedings against the instigators of a murder in the same capacity as its perpetrators. He then invokes the mission of the “government” to protect the ones it governs (understood against the tyranny of local notables), before concluding with a reference to the nobleness of men of justice who “perform their duty” [1892 – M‘AQ: 1/245].

Once again, it is obviously impossible to determine who, between Ḥasan Jalabī and the fourth kātib (probably a graduate from al-Azhar), took the initiative to associate legal and political arguments. What seems significant to me here is that the victim’s brother made the conscious choice to resort to another public writer whose style is very different from the previous ones, and
this, a few days before the judgment. The other important element is that, whatever the extent of his personal contribution in the drafting of the text, Ḩasan Jalabī also took the decision to affix his seal to it, and this time he is the only member of the family to do so. His seal represents here the sign of what links his words as he uttered them before the kātib to the manner in which the latter transcribed them on paper, sign of the space-time located between orality and writing, the last trace of the performance that took place at the margins of the judicial institution (both literally and figuratively) between the plaintiff and the scribe. Finally, it is essential to underline that the evolution in the wording of the different versions of Jalabī’s request to bring to justice the instigators of his brother’s murder reveals not only an ability to reimpose his “voice” (largely censored during the trial) in the judicial file, but also a subtle acculturation to the requirements of the system in the course of the two and a half months of procedure that elapsed between the writing of the first petition and the drawing up of the fourth one. Through this last document, Jalabī stands on the political terrain, that he has progressively understood to constitute the real field in which the magistrates operate. On the basis of this background, the plaintiff continues to mobilize elements of law and notions of justice. While positioning himself within the politico-legal framework imposed by the judicial authorities, the fallāḥ nonetheless creates a major shift, by opposing to the judges’ invocation of the very ambiguous notion of legality through which they justify their refusal to further inquire into the case, a larger conception of justice understood here as protection against the tyranny of local notables and as the ultimate foundation of political legitimacy.

Through this study, I hope to have shown all the fruitfulness that lies in the adoption of a historical-anthropological approach to the archives aimed at attempting an “archaeology of performance” on the basis of the very materiality of the documents. The analysis of the judicial file of Mikhīmar ‘Abd al-Nabī has thus allowed me to explore in details the negotiation that unfolds in the course of this case between the victim’s family and the various justice professionals around the questions of the qualification of the crime as a proxy murder, the prosecutions to be initiated against the culprits, and hence the relations between law and power in the countryside. More specifically, the examination of the body of the file has shed light on, on the one hand, the importance of the dialogical character of the production of the testimonial proof – even if the “voices” of the fallāḥīn are produced in a highly constraining environment and governed by a strict distribution of roles – ; and on the other hand, the complex nature of the
process of qualification of the facts and of legal decision-making on the basis of this testimonial
proof – process of translation and manipulation of the “voices” that is the result of both a
collective logic and a series of independent choices and that materializes in the emergence of the
“refrain” –.

More interestingly, this study has also revealed that through the “jumble” of the appendices a
space opens within which an unsuspected capacity of action and (written) expression on the part
of the peasants manifests itself. Once again, the analysis sheds light on the dialectical nature of
the production of the different petitions submitted by Jalabī to the judicial authorities, and the
subtle acculturation to the requirements of the system at the margins of the file that the evolution
of the style of these documents suggests. While it is true that, in order to draw up these petitions,
the fallāḥ needs to resort to a kātib and to position himself in the politico-legal framework that
has been imposed upon him, he proves nonetheless able, through the production of these
documents, to both blur the distribution of the roles in the judicial performance and contest the
notions of law and justice invoked by the magistrates. As the stage actor, the fallāḥ before the
judicial system plays a role on a scene that he has not really chosen, and expresses himself
through a language that is not totally his. But it is paradoxically in this “disempowerment,”248
and in the contestation within the imposed framework that the latter allows, that lies his true
“agency.”

248 Talal Asad, Formations of the Secular: Christianity, Islam, Modernity (Stanford: Stanford University
Press, 2003), 75-78.
1.6 Conclusion

To return to the broader theme of linguistic ideologies, this first chapter has shown how the latter actually operated on two different planes. First at the institutional level, the discourse about peasants’ language uses when confronted with the law developed by the highest judicial authorities allowed them to legitimize their positions of power, by presenting their mission as one of liberation of the fallāḥīn and of reestablishment of law and justice in the countryside. In addition, this official discourse constituted a convenient justification to reforms that led to the progressive tightening of the colonial grip over the legal system and the profound transformation of the initial model into an arbitrary justice. By bolstering the role and attributions of local ‘umad and mashāyikh, the promotion of the justice professionals’ assumptions about peasants, language, and the law also contributed to the strengthening of fundamentally unequal and oppressive relations of power and production in the villages.

At the level of language uses in police stations and courtrooms, the performative dimension of the magistrates’ linguistic ideology took form through the mechanisms of indexicality, iconicity, and erasure. 249 By choosing particular transcription methods, the legal professionals reified the socially constructed opposition between their (law-)literacy – epitomized in a mastery of writing, Modern Standard Arabic, and the legal language – and the peasants’ illiteracy – understood as a confinement to orality, dialectal Arabic, and an ignorance of modern concepts of law and justice –. Thereby, they not only constituted the fallāḥīn as “Others,” but also attached to this Otherness distinctive and interdependent qualities through which they could ultimately link illiteracy to immorality. Furthermore, these transcription methods allowed the magistrates to erase from the record the multiple ways in which the actual linguistic interactions among the various actors disrupted – and hence invalidated – their well defined binary categories.

Through specific techniques both of reporting speech – notably the creation of the “refrain” – and of translating the lay participants’ depositions into legal terms, the justice professionals also proceeded to a fundamental entextualization of the peasants’ stories that opened the way to their essentialization, and the construction of a grand narrative about them and their criminality. This

The semiotic process of social entextualization and legal recontextualization was not only meant to strengthen the colonial state’s presentation of modern law as neutral and objective, but also to preserve the oppressive status quo of the colonial situation at the local level. The judicial procedure against Mikhīmar has shown, however, the extent to which this process was a collective and contested one, even among the legal professionals. Finally, in spite of both the effects of the latter’s language uses and the fact that these were reinforced by the archival practices of the Egyptian Ministry of Justice a century later, this chapter has shed light on the fallāḥīn’s attempts to resist these processes from within the framework of the dominant language ideology, through petitions. We shall see in the next chapter how other peasants preferred to fight from outside of this framework through violence and oral poetry.
2 Vengeful Bedouins, Disreputable Sons, and Guards-Bandits: Tattoos, Reputation, Honor, and the Question of the Criminal’s Profile

2.1 Introduction

This second chapter, dedicated to the determination of “criminals’ profiles,” begins with a discussion of debates surrounding the question of a criminal race that could be identified by simply “interrogating” bodies through the newly developed anthropometric methods. While the analysis shows both a strong undermining of the theories of “criminal natures” – popular in Europe at the time – on the part of Western scholars working on Egypt, and a practical confusion on the issue on the part of the Egyptian police and justice professionals, it also underlines the prevalence of very strong racial and class prejudices among colonial authorities as well as local magistrates. Both Bedouins and peasants were thus stigmatized as having a “natural” tendency toward crime, the former being accused of having contaminated the latter, less through the trade of savage tattoos than through the spread of corrupting oral poetry (subpart 2.1 “From judicial anthropometry to criminal anthropology”).

Once the direct link between illiteracy and immorality established by the legal professionals is thus revealed, the rest of the chapter focuses on the manner in which the entire judicial system was concomitantly cast in a moral light that contributed to both concealing and safeguarding the situation of increased exploitation and oppression brought about by the development of colonial capitalism in the countryside. This process of moralization of the law is examined through the lens of language and more specifically the interplay between orality, writing, and performance in the course of the legal procedure. Such an approach gives me the opportunity to analyze the collective and contested process of construction, by the various actors involved, of stock figures to which the defendants’ portrayals were made to fit.

The character of the “disreputable son,” revengeful and greedy, thus allowed both colonial and local elites to overlook the profoundly disruptive socio-economic impact of the occupation and its resulting conflicts over inheritance and resources in an overloaded social environment. In addition, it served to strengthen the patriarchal structure of society, in a period characterized by the elites’ fear that the disobedient sons of the peasantry who rebelled against their fathers could
soon rebel against their “masters,” be they local landowners or British occupiers (subpart 2.2 “The ‘disreputable sons’ and social misery”).

As for the figure of the “ghafīr (or local guard)-bandit,” it enabled local notables and judicial authorities to draw a veil over the ambiguity of the colonial situation at the village level, covering up in particular the former’s collusion with suspicious individuals hired and armed to protect the colonial capitalist system of exploitation of both workers and resources. The promotion of a simplistic dichotomy between “good” and “bad” ghufarā’ also constituted a way to deny the rising violence and repression associated with the intensification of power and class struggles in the countryside (subpart 2.3 “The ‘ghafīr-bandit’ and the ambiguity of the colonial situation”).

Finally, the methodological approach focusing on language adopted throughout this dissertation allows me to shed light on both the performative dimension of these stock figures and the tactics of resistance developed by those who were associated with them. Through the story of three “ghafīr-bandit” brothers who were stricken by shame after the local religious Shaykh allegedly made one of them impotent, I show how the process of moralization of the law, that culminated with the “law of bad reputation,” encouraged ordinary members of the rural communities to challenge the hitherto protected position of these guards in their villages. In turn, I reveal how the latter creatively adapted to these effects of the colonial rhetoric by raising the figure of the “ghafīr-criminal” who avenges his honor to the status of hero, and by developing through this image a dynamic of emulation in violence. I eventually conclude by underlining the role played by oral poetry in this subversive re-appropriation of the colonial stock characters (subpart 2.4 “The law of “bad reputation” and the honor of the ‘ghafīr-bandit’”).
2.2 From judicial anthropometry to criminal anthropology

Identification form:
First name of the accused, last name and nickname: Muḥammad al-Nakkāḥ
[...]
Nationality and Citizenship: ‘arabī – Egyptian
Religion: Muslim – Profession: ghafīr – Age: 35
[...]
Distinguishing bodily features:
(left arm and hand): a disk and nine dots – the drawing of two fish and lines in a tattoo that reaches to the finger 
(right arm and hand): on the side of the nose on the right side: a dot – medium neck
(chest and back): on his chest: nine dots and the back is devoid [of any signs]
(rest of the body): big ears with a medium head
Measurement of the height of the accused: 1,67 cm [1902 – MN¹A+: 4626].

In addition to questioning voices, the police and judicial authorities also interrogated bodies. While those of the victims were dissected by the forensic doctors in search of the marks of injuries, the traces of poison, or the trajectory of the bullet, those of the suspects were subjected to a series of procedures, from taking the “judicial photograph” to recording certain anatomical elements and collecting fingerprints. The adoption of these measures in Egypt at the turn of the century occurred in a context of struggle against the “recidivists” – or repeat offenders – very similar to that which had seen the very development of these techniques in Europe a decade earlier, with the alleged additional difficulty to ascertain the identity of Muslim colonized populations that the British had already encountered in India. Hence, when the suspects’ identification system was implemented in 1895, the colonial authorities were careful to draw on both experiences. Thus, while the method of anthropometric measurements designed by the French police clerk Alphonse Bertillon was simultaneously taken up in both the United Kingdom and Egypt – following the recommendations of the evaluation mission that had been

251 Regarding the “Bertillonage,” Grandmoulin explains: “Le système anthropométrique, pratiqué aujourd’hui dans la plupart des pays, sauf variations dans les procédés, a été inventé en France par le Dr. Bertillon.
Il repose sur cette double observation qu’il n’existe pas deux individus identiques dans toutes leurs particularités – et que certaines particularités anatomiques ne se modifient pas chez l’adulte.

sent to France the preceding year, the British were also keen to perfect the system in both countries by adding the collection of fingerprints, the utility and reliability of which had been initially discovered by the civil servant Sir William Herschel in colonial Bengal, and later theorized by the English scholar Francis Galton. In this field as in others, Egypt, contrary to India, thus proved to be considered by the colonial authorities as the ground of administration and implementation, rather than that of investigation and experimentation.

An Anthropometric Bureau (“service de l’identité judiciaire” or “الإدارة لتحقيق الشخصية”) was thus created as part of the Egyptian Ministry of Interior in 1895, and placed under the authority of colonel Harvey Pasha, Commandant of the Cairo police. The first “anthropometric instruments” – “a measuring apparatus and plates for making the fingerprints” – were sent to the Alexandria police in January, and the experiment was progressively extended to the whole country in the following months. In April of that same year, a service of the antecedents ("قلم السوابق") in charge of centralizing and confirming the information related to the suspects’ potential previous convictions – their “casiers judiciaires” – was also established at the native court of appeal under the supervision of the public prosecutor to complete the identification procedure. Over the following decade, the system slowly expanded, “the number of identifications [of recidivists using false names] [rising] from 177 in 1897 to 841 in 1901” and eventually to 2,050 in 1906. As Grandmoulin reveals: “at the end of 1905, the anthropometric

Il y a deux séries d’opérations. On relève d’abord, suivant une méthode rigoureuse, certains caractères des plus propres à différencier chaque individu de tous autres. On classe ensuite ces signalements de telle sorte qu’on puisse, avec facilité et certitude, isoler un signalement de milliers d’autres.” (Ibid., 96)

Ibid., 97.


Ibid. – See also Grandmoulin, Le droit, vol. 2, 88-95, for details regarding the physical constitution of the “casier judiciaire” through the creation, transfer and filing of “bulletins originaux” and “bulletins de renseignement,” as well as on the various uses of the casier and of its potentially stigmatizing nature.

Harold Tollefson, Policing Islam, 115.
service possessed 68,000 cards containing, along with the signs of identity, the table of the condemned’s antecedents.”\textsuperscript{256}

The “humanity” and “scientificity” of both the \textit{casier judiciaire} and the anthropometric measurements were contrasted with the cruel means that had supposedly been used till a recent past to identify repeat offenders, i.e. “the mutilations of the nose, of the hand, etc., of the middle ages” and “the hot iron brand, that [according to Grandmoulin] had persisted until the 19\textsuperscript{th} century.”\textsuperscript{257} With regard to the relative efficiency of these modern identification techniques, fingerprinting was soon to take precedence over the “\textit{Bertillonage},” deemed inapplicable to women in a Muslim country,\textsuperscript{258} costly, subject to multiple errors and hence not sufficiently reliable. Following their elimination in Bengal in 1897 and in the United Kingdom in 1900, anthropometric measurements were mostly abandoned in Egypt in 1902, to be restricted to “prisoners finally condemned and solely at the prisons.”\textsuperscript{259}

But interestingly, both the colonial authorities’ attempt to exclusively rely on fingerprints to identify recidivists and their will to have the latter sentenced to much harsher sentences were thwarted by the Egyptian judges’ refusal to accept these new methods as proofs of identity/antecedents and by what Cromer saw as their “leniency” towards criminals in general and repeat-offenders in particular.\textsuperscript{260} In order to “remedy” this situation, a new penal code targeting especially those defined as “habitual criminals” was passed in 1904, and the inspectors of the Committee of Judicial Surveillance – that had been created in 1891 in order to extend British control over the administration of justice – were encouraged to warn the magistrates considered too lenient.\textsuperscript{261} Finally, a booklet was published by the Anthropometric Bureau in both English and French, explaining that the fingerprints remained unchanged in the course of a lifetime, that they were still to be found on the mummies’ fingers at the Egyptian national museum, and that “the probability to find two identical finger[prints] was one in 64,000

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{256} Grandmoulin, \textit{Le droit}, vol. 2, 97.
\item \textsuperscript{257} Ibid., 88.
\item \textsuperscript{258} Ibid., 97.
\item \textsuperscript{259} Ibid. Harold Tollefson, \textit{Policing Islam}, 116.
\item \textsuperscript{260} Ibid., 121.
\item \textsuperscript{261} Ibid.
\end{itemize}
\end{footnotesize}
After detailing the manner in which the latter were taken, thereby underlining the extreme reliability of the system, the author of the brochure, Harvey Pasha, added that “if by chance the judges were not sufficiently convinced of the subject’s identity by the fingerprint evidence, there [was still] a second way of evidence: that of the distinguishing features observed on the body and that are not exposed to the eye.”

While the sources I have collected do not contain either the suspects’ photographs or their anthropometric measurement forms, the carefulness with which their distinguishing bodily features have been recorded “in red and black ink” betrays the crucial importance attached to them by the police and justice professionals [1908 - ‘AMB+: 16751-16757] (Appendix 7). To be sure, the meticulous documenting of these elements was considered as an additional means of identification of the suspects, alongside and – as Harvey Pasha suggests – maybe above the fingerprints. But the prevalence, among these identifying marks, of tattoos, the precision with which the latter have been described, and the few scholarly articles they inspired at the time also point to two additional critical dimensions of judicial anthropometry: that which consists in deciphering the potential proof of guilt borne by the body, and by extension that which attempts to define the physical archetype of the criminal.

At the turn of the twentieth century, both Cesare Lombroso’s theory of the “born criminal” that could be recognized by his mere physical appearance and Alexandre Lacassagne’s notion of the body as revealing the criminal’s pathological psychology were still dominating much of the research in criminal anthropology – and more generally criminal etiology – in Europe. The first section of this chapter reveals that in Egypt, however, the interrogation and measurement of Egyptian bodies were used to test and eventually invalidate these prevailing assumptions. By examining more specifically the reflection that was initiated by foreign physicians, statisticians and judges around both native tattoos and the question of a “criminal race,” this part sheds light on how these scholars’ obsession with Ancient Egypt – and its alleged survival through the Copts – led them to analyze “criminal bodies” through the lens of the “noble savage” and to emphasize the idea of a “sociological” rather than a “biological heredity” of crime. Finally,

through an analysis of the force and longevity of the figure of the “criminal Bedouin,” this section also shows how the colonial authorities and some Egyptian magistrates contrasted this “good primitiveness” with the “bad primitiveness” of the “Arabs” that was carried on by the nomads and eventually passed to the essentially respectable but illiterate fallāḥīn through the sedentarization process of the former.

2.2.1 Analyzing tattoos, or how to make the body “speak”

In my corpus of archives, almost every file created after 1895 contains very detailed descriptions of the tattoos worn by the suspects in the frame dedicated to the “distinctive physical marks” (علامات بدنية مميزة) on the various forms of arrest warrant, antecedent search and more precise identification. For the most common geometrical designs, the complex combinations of dots (نقط), lines (شروط), chains (سلاسل) and disks (ترس) of the tattoos (وشوم) were transcribed on paper, always with words but never with illustrations. These various elements were usually associated by three, six, or nine, and their color – most frequently green – was sometimes mentioned. For the more elaborate drawings (رسومات), the different patterns such as fish, gazelles, trees and names, were also depicted [1908 - ‘AMB+: 16751-16757] (Appendix 7). Interestingly, in the case of the three ‘Aṭiyya Ḥammād brothers accused of the murder of a local Shaykh – a case that will be analyzed in much detail in the last subsection of this chapter –, the tattoos of both ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād “the brigand” and Muḥammad ‘Aṭiyya Ḥammād “the impotent” are duly recorded, while the body of their brother, ‘Abd al-‘Aẓīm ‘Aṭiyya Ḥammād “the ghafīr” soon to disappear from the inquiry, is said to be completely devoid of any marks [1912 - ‘A‘AH+: 3235-3238; 3239-3242; 3243-3246] (Appendix 8). This surprising observation leads me to put forward the hypothesis that, while tattoos were obviously used primarily for identification purposes, they were also probably considered by the police and justice professionals as a stigmatizing element, an additional sign of the likely guilt of the suspects.

While tattoos thus seem to have been extremely prevalent among both Egyptian fellahs and Bedouins, whether suspected of crime or not, it is the existence of the same phenomenon among the Arabs and Kabyles of Algeria that prompted the French forensic physician and criminologist Alexandre Lacassagne to write his first “anthropological and forensic” studies of the meaning to be given to these marks on the bodies. In his 115 page book on the topic entitled Les tatouages:
étude anthropologique et médico-légale published in 1881, he thus explains how he conducted fieldwork in the provinces of Algiers, Constantine, and the towns of Setif, Aumale and Medea, among spahis, members of tribes, and Arab prostitutes. The main part of his research however focuses on “1,333 tattoos collected from 378 subjects [mainly] belonging (...) to the Second Battalion of Africa,” a division stationed in Medea and composed of “honorable” French officers and “insubordinate” and “undisciplined” French and foreign soldiers “who [had] been [previously] convicted of desertion, selling goods, or stealing [something from] a comrade.”

If Lacassagne dedicates the last chapter of his book to the forensic identification value of tattoos, his main objective nonetheless lies in the analysis of these “stigmata” from an anthropological perspective; and it is within this very perspective that he constructs the connection between Arabs and criminals. As early as the first pages of his book, the criminologist thus notes that the practice of tattooing is condemned by the Qur’ān as an attempt “to alter God’s creation” characteristic of “the idolater Arabs.” Quoting Bertherand, the author of Médecine et hygiène des Arabes, he adds: “The tattoo is, actually, forbidden by the religion that designates these particular marks as Ketibet ech chitan or signs of the devil. But the natives get off the hook by pretending that before entering paradise, everyone must undergo a fire purification that will remove all the worldly impurities!” Finally, he exposes his thesis more clearly by explaining that tattoos are “the manifestation of that instinctive vanity and that need for display that are one of the distinguishing features of the primitive man or of criminal natures.” As Lacassagne himself acknowledges, such an analysis draws its inspiration from Cesare Lombroso’s theory of the “criminal man” (Uomo delinquente) and especially his reflection on tattoos found in the third chapter of his magnum opus. In his own Les tatouages, the French forensic doctor goes to great lengths to present, to a French audience, the research

265 Ibid., 21.
266 Ibid., 87-111.
267 Ibid., 7.
269 Lacassagne, Les tatouages, 27.
conducted on this topic by Lombroso and the Italian school of positivist criminology. In order to summarize this school’s thought, he emphasizes the common features that are allegedly shared by both “primitive people” and “criminals” and that supposedly account for the high frequency of tattoos among both populations: idleness, vanity, “l’esprit de corps,” erotic and romantic passions, nudity, and a lack of decency and sensitivity. Finally, to illustrate Lombroso’s key notion of “atavism,” he quotes the Italian criminologist himself as follows:

[There is] nothing more natural than a custom [that was] so widespread among the savages and the prehistoric peoples [and that] shows itself once again among the human classes which – as the low seabeds maintain a constant temperature – repeat the customs, the superstitions, up to the songs of the primitive peoples. As the latter, these human classes have the same violence of passions, the same numbness of sensitivity, the same puerile vanity, the long idleness, and, among the prostitutes, the nudity. Here are the main incentives of this strange custom [i.e. tattooing].

On this very idea of atavism, Lacassagne’s analysis slightly differs from that of Lombroso insofar as the latter understands the phenomenon of tattooing as a modern resurgence of a primitive tradition that had disappeared at some point in history, while the former conceives of it as the result of “an uninterrupted series and [of] the successive transformation of an instinct.”

Now interestingly, the very first article dedicated to the practice of tattooing in Egypt was published in Lacassagne’s *Archives d’anthropologie criminelle* in 1898. The text, written by a French physician working in Cairo, Dr. Fouquet, does not however deal with the marks found on criminal’s bodies, but rather with the relatively widespread phenomenon of the “medical tattoo.” In this article entitled “Le tatouage médical en Egypte dans l’antiquité et à l’époque actuelle,” Fouquet differentiates this “therapeutic” tattoo from the ornamental one. While the former, used to “treat” certain diseases such as migraines, sprains, stomachaches or tumors, is seen as a remnant of Ancient Egypt maintained by the Coptic population of the country, the latter is described as being mainly practiced for purely decorative purposes by the females of two nomadic tribes, the Ghagariyyāt (عجاريّات) and the Ḥalab (حلب), and is consequently considered as finding its origins either in North Africa or in Syria. This same obsessive search for the origins

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270 Ibid., 64-82.
271 Ibid., 81.
272 Ibid., 115.
of tattooing in modern Egypt is what prompts the British psychologist and anthropologist Charles Samuel Myers to write a second article on the topic five years later. In this piece entitled “Contributions to Egyptian Anthropology: Tatuing,” Myers’s main objectives are “to determine by descriptive, metric and photographic methods, what differences, if any, exist (1) between the modern Mahommedan and Coptic populations; (2) between the inhabitants of various parts of Egypt; and (3) between the ancient and the modern Egyptians.” While his study focuses on both therapeutic and decorative tattoos worn by more than a thousand Egyptian conscripts, Coptic monks, oasis dwellers, Bedouins and fellahs, his conclusions very closely resemble those of Fouquet: the linear scars and tattoo marks used for medical purposes originate from Ancient Egypt, the geometrical decorative patterns from North Africa, and the more complex designs such as lions, mosques and stars from further East through the intermediary of the Gypsies (“Ghagar” and “Ghawazi”) of Syria, Turkey, Iraq, Persia and even India. Interestingly, he also notes that tattoos are to be found among Bedouins and fellahs, and are both more common and more elaborate in Lower rather than in Upper Egypt, and in the Western (Minūfiyya, Gharbiyya and Bihayra) rather than the Eastern Delta.

Both Fouquet’s and Myers’s articles will have a significant influence on the reflection on criminals’ tattoos in Egypt initiated two decades later by the Greek counselor to the native court of appeal, Megalos Caloyanni. Adopting a more personal approach to his topic, the judge first writes of his “attract[ion] to the various tattoos [he] found on the prisoners’ bodies” “in the course of his studies on the Egyptian criminal.” He further explains:

“These drawings seemed to me to become a language, and I began a search for the meaning of these cryptographic signs. The task was not easy, in the sense that, in such matters, one faces two major difficulties: the first, that of the natural distrust of the criminal to answer questions; the second, arising

\[275\] Ibid., 82.
\[276\] Ibid., 86-89.
\[277\] Ibid., 83-84.
\[279\] Ibid., 115.
from the first, consists in distrusting the answers given, and in creating the need to submit those answers to one of the most rigorous controls.280

Contrary to his predecessors, Caloyanni’s main interest thus initially seems to lie in analyzing the semiotics of the criminals’ tattoos, in deciphering the secret language of these marks, by both making the prisoners’ silent bodies “speak” and interrogating the subjects themselves with the shrewdness and circumspection that characterize a police inquiry. Following this original introduction, the magistrate returns however to the question of the “ethnic” origins of the Egyptian people, and the “cultural” origins of the tattoo practice.281 Further refining Myers’s analysis, he nonetheless argues, first, that it is difficult to trace back, with certainty, the transmission path of a pattern; and, second, that, if the symbols did survive from one civilization to the other, the meaning attributed to them has probably changed over time. On the basis of this idea, Caloyanni then raises the question of the sense given by the contemporary Egyptian criminals themselves to tattoo designs they have allegedly borrowed from both Ancient Egypt and early Christianity.282

To answer this question, the Greek judge begins by classifying the patterns he has observed over many years (directly or indirectly) on the bodies of more than 3,000 criminals, both males and females, “in penal colonies, ordinary prisons, and reformatories.”283 He first differentiates between “native” (“autochtone”) and “imported” tattoos, and then between those with “a meaning” (“un sens”) and those with “an aim” (“un but”). He further explains: “The meaning consists in designating categories [and ranks] of wrongdoers; the aim, in expressing feelings, ideas, or in obtaining an artistic or utilitarian effect.”284 But in spite of this apparent diversity, Caloyanni is keen to underline “the repetition of certain signs, the conformity of their arrangement in the drawings, [their] identical meaning (...), [and] the near fixity of models of drawings despite the long presence of various foreign elements during the war period.”285

280 Ibid.
281 Ibid., 116-18.
282 Ibid., 118.
283 Ibid., 122.
284 Ibid., 121, emphasis added.
285 Ibid., 122.
It is on this same idea of the prevalence of an Egyptian “autochthony” – a concept he borrows from the French anthropologist Ernest Chantre – that the judge founds his conclusions regarding the “meaning” of these tattoos and “the psychology of the tattooed criminal of Egypt.”\(^\text{286}\) After having summarized the various theories of the main European criminologists on the topic – the Italian Lombroso, the French Lacassagne, but also the Germans Baer and Leppmann, and the Belgian Vervaeck –, Caloyanni explains how none of these could accurately apply to Egyptian lawbreakers.\(^\text{287}\) The magistrate concedes that “it is often to vanity, stupidity, [and] some degree of degeneration [characterized by drug use, prostitution and homosexuality] that one has to attribute the practice of tattoos.”\(^\text{288}\) He strongly argues nonetheless that, contrary to both Lombroso’s and Lacassagne’s assumptions, the tattoos of “the Egyptian criminal” are “the signs of his exterior life” rather than those of an intrinsic immorality, and that they express superficially held beliefs and ideas rather than deeply rooted and evil passions.\(^\text{289}\) Therefore, even when the designs show “a hand holding a dagger,” “a police sergeant holding a man by the collar,” or “two shaking hands with an Egyptian flag and a canon above them,” these are to be considered as without “any serious significance” and as “a mere imitation of European drawings” (Appendix 9).\(^\text{290}\) According to Caloyanni, the main reason for this divergence of interpretation to be given to the tattoos worn by the Egyptian as opposed to the European criminal lies in the fact that the former has not only preserved “the signs” of the various civilizations that have succeeded one another to this day – in particular these of Ancient Egypt and Christianity –, but also maintained “in his psychology” the tattooing traditions of these “primitive and healthy peoples.”\(^\text{291}\) And the argument of the “healthy” practices of the Egyptian inmates is substantiated by the fact, emphasized over and over again, that the Greek judge has never found either any “suggestive or obscene drawing” or any tattoo on his subjects’ genitals.\(^\text{292}\)

\(^{286}\) Ibid.
\(^{287}\) Ibid., 126.
\(^{288}\) Ibid., 127.
\(^{289}\) Ibid., 127-28.
\(^{290}\) Ibid., 125.
\(^{291}\) Ibid., 127.
\(^{292}\) Ibid., 123-24, 127.
It is striking to note here that, while both Lombroso’s and Lacassagne’s references to “the primitive man” carry an extremely negative connotation that supports their demonization of the tattooed criminal, the primitiveness reconstructed by Caloyanni is fundamentally “good” and “healthy.” The theories of the “criminal natures” – whose inner pathologies express themselves through their bodies – developed in Europe at the time are thus greatly undermined – if not totally invalidated – by the study of the colonized “natives.” In Egypt, the turn of the century Western fascination for the civilization of the pharaohs and the close links established by European scholars, doctors, and judges with the local Coptic population turns, for some, the dangerous and indecent primitive man into a “good savage.” Other actors of the Egyptian judicial scene, however, oppose to this “healthy” Pharaonic/Coptic autochthony an essentially “bad primitiveness,” that of the Bedouin “race” to which the professional “gypsy” tattooists – the Ghagariyyāt – are said to belong and which, after having been mentioned by both Fouquet and Myers, do not appear in Caloyanni’s article.

2.2.2 Bedouin blood, blood revenge, and the contamination of the illiterate peasant

On March 10th, 1913, Bārūd Ḥammad (al-‘Arabī), agricultural ghafīr (or guard) on the estates of Mursī Bāshā Abū Gāzya located in the Talā district, is tried by the native tribunal of Ṭanṭā for the murder of Muḥammad Ḥaggāg, the estates’ supervisor. According to the various testimonies, the latter was shot to death for having attempted to oppose the ghafīr’s misdeeds, having objected to his possession of dangerous dogs, and last but not least having called him a “gypsy” (غجر) [1913 – BH’A]. As Abū Bakr Muṣṭafā al-Birbirī, one of the witnesses, explains:

The reason for [the murder] is that, two days ago, the wife of al-‘Arabī Bārūd had a fight with the wife of Muḥammad Ḥaggāg. So, when Muḥammad Ḥaggāg came, he beat his wife, and told her: ‘you, you’ll keep standing every day with these gypsy people?!’ So, Bārūd came up to him from his tent, and told him: ‘Eh, Muḥammad Ḥaggāg, we’re gypsies?!’ So, [Muḥammad] told him: ‘Yes, you’re gypsies.’ So, [Bārūd] told him: ‘Ok! I’ll show you if we’re gypsies or people before you!!’ Then, Bārūd took his wife, headed to Mursī Bāshā Gāzya, and told him. And after that, yesterday, Muḥammad Ḥaggāg headed to Mursī Bāshā, and informed him of al-‘Arabī’s aggression, but then the Bāshā kept silent (…). [1913 – BH’A: 4249].
In addition to their general designation of the accused as *al-‘Arabī*, the various eyewitnesses of the crime interestingly explain, from the very beginning of the inquiry, that they were able to identify Bārūd without any hesitation, because he was then wearing the traditional Bedouin dress (a white woolen blanket ("حرام") around his body and a white shawl ("شال") around his head), and was accompanied by four men in dark clothes who spoke with a “foreign” accent [1913 – BH’A: 4247-4248; 4263-4264; 4273; 4278]. As for Bārūd, while he does not immediately refers to himself as “*al-‘Arabī*” in the course of his own interrogation, he nonetheless ends up justifying the fact that he owns dogs by declaring: “We, the Arabs, we can’t do without dogs.” [1913 – BH’A: 4254]. And when he denies even possessing the traditional Bedouin white dress, the deputy prosecutor of Shibīn confronts him by rather rhetorically asking: “Is there any Arab who does not have a woolen blanket?” [1913 – BH’A: 4278].

This agreement among the various actors of the case on Bārūd’s identification as an “Arab” appears as very straightforward. But if we try now to understand what they actually meant by this term, things suddenly get much blurrier. In the minutes of the inquiry, the accused is sometimes referred as “*al-‘arabī*” as is his wife (“*al-‘arabiyya*”), although the latter comes from “the mountains” (as most Bedouins of the region) while the former was born in Asyūt. In his own identification form, Bārūd’s “nationality and citizenship” (“*jinsiyya wa tābi‘iyya*”) simply reads: “Egyptian” (“*maṣrī*”) [1913 – BH’A: 4287], while other records of cases dating from the same period use terms such as “*‘arabī*” [1902 – MN’A+: 4626] or “*ra‘ī*” [1902 – MN’A+ (Muḥammad al-Nakkā‘ al-‘Arabī): 4628; 1908 – ‘AMB+ (‘Āmir Muḥammad Badawī): 16751, 16756; 1912 – MMI (Muḥammad Mitwallī Ibrāhīm): 3398] to refer to Bedouin suspects.

Finally, the question of the definition of the term “Arab” gets even more confused when one looks at the forensic report of the case [1913 – BH’A: 4291-4292]. Probably affected by all this “Bedouin” fever, the Doctor Muḥammad al-Samrī, health inspector of the Talā district, thus mistakenly identifies the victim himself as “*Muḥammad Ḥaggāg al-‘Arabī*,” and very consistently describes the corpse as “of *Arab race*, strong physical constitution, with healthy eyes, open eyebrows, and wheat-colored” [1913 – BH’A: 4291]; and this while, of course, every single element of the case tends to prove that the victim was certainly not an “Arab.” In contrast, the main eyewitness of the crime, Abū
Bakr Muṣṭafā al-Birbirī, who had also been injured in the fight, is surprisingly found to be “of Egyptian race, average height, strong physical constitution, with open eyebrows, dark-colored, and with healthy eyes” (مصري الجنس متوسط القامة قوي البنية مفتوح الحواجب أسمر اللون سليم الإبصار) [1913 – BH‘A: 4292].

When the case is eventually tried on March 10th and March 13th, 1913, it is Bārūd Ḥammad, the accused, who is again officially designated as “Bārūd Ḥammad al-‘Arabī,” and is convicted of murdering Muḥammad Ḥaggāg “for reasons that in themselves are not strong enough to drive [someone] to kill, but that induce [people] like the accused to get angry at the victim and take revenge from him” [1913 – BH‘A: 4308]. Incidentally, while his personal voice is silenced in the records, “Mister Caloyanni” was sitting in the court that sentenced Bārūd to death, along with two other Egyptian judges and the prosecutor. While the trial eventually restores “order,” this case – with all its confusion around “Arabs,” “Bedouins,” “Berbers,” and “Gypsies” – seems to me to betray both the justice professionals’ obsession with the question of “race” and their practical confrontation with the fundamental ambiguity of its definition.

This very ambiguity, and the consequent impossibility to find “pure races,” is acknowledged very early on by certain anthropologists working on Egypt. While in Europe anthropometry is then still very much used to substantiate the idea of a hierarchy of “biological” races, the studies of Charles Samuel Myers in the early 1900s significantly contribute to the undermining of the concept of “racial purity.” In a reflection on “the future of anthropometry” published in 1903 – in the same issue of The Journal of the Anthropological Institute of Great-Britain and Ireland as his tattoo article –, Myers thus denounces the fact that “[a]nthropometry has become well nigh sterile by its persistence in one sole line of research after racial averages.” And to further support his point, he declares:

> The question at once occurs to us, has a pure race ever existed, and, if so, what are the criteria of racial purity? Take the earliest people of which we have any trustworthy knowledge, the prehistoric Egyptians who lived before 5,000 B.C.; are they a pure race? Those who admit the vast remains sent home by Professor Flinders Petrie from Naqada to represent the people of a single epoch, will turn in vain to Mr. Warren’s and to Miss Fawcett’s recent memoirs, if they expect to find that the variation of these

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Egyptians from the mean type [i.e. the average racial type] is very considerably smaller than what is met with among modern peoples.  

In 1905, the British psychologist returns to Petrie’s discoveries in an article entitled “Contributions to Egyptian Anthropometry: The Comparative Anthropometry of the Most Ancient and Modern Inhabitants.” In this piece, he harshly discredits the work of British colleagues fixed on the idea of establishing a “biometric” evolutionary link between the skeletons of these Ancient Egyptians discovered in Naqada and those of “modern” Copts from Cairo. 

A year later, he places again the emphasis on intermarriages and racial admixture (especially in the Minūfiyya province) in presenting the results of his third study dedicated to “the anthropometry of the modern Mahommedans.”

Following up on Myers’s work, J. I. Craig, the Director of the Computation Office of the Egyptian Survey Department, publishes in 1911 his own analysis of “the anthropometry of modern Egyptians.” Contrary to Myers who had founded his work on the examination of conscripts, Craig interestingly focuses on the statistical study of “a series of 10,000 measurements of modern Egyptian criminals (...) obtained from the Anthropometric Bureau [of the Ministry of Interior].” Here, the statistician interprets the differences in the anatomical measurements of his subjects in terms of the relative presence of “foreign” (in the north), “negro” (in the south), and “Arab (Bedawi) blood” (in the north-east). Regarding the existence of a “criminal race” – a fact that would have greatly undermined the representativeness of his sample –, he argues however that:

It may be objected that criminality is in itself a determinating factor of selection, but the objection does not hold in Egypt. Here it cannot be said that there exists a definite criminal class, and criminals are rather amateurs than professionals. This state of things is in all probability due to the easy conditions

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294 Ibid., 38-39.
298 Ibid., 66.
299 Ibid., 71, 77.
under which the lower classes live. There is practically no abject poverty, and but little drunkenness among them, and two of the most frequent incentives to crime are thus eliminated. It is, however, possible that wealth may have acted indirectly as a selecting factor, for it is without doubt still true that the number of witnesses for the defence is sometimes regulated by the depth of the defendant’s purse; but in some respects, this selection, if it does exist, will result in a distinct gain. The wealthier classes are generally, though not always, of foreign – Turkish, Albanian, Circassian, Tunisian, etc. – descent, while the poorer classes, on the other hand, are mainly autochtonous, but subject to a possible slight admixture with immigrant negro blood in the south and the foreign blood in the north. It may be concluded, then, that the statistics [of criminals’ measurements] are representative of the Egyptian and Nubian races with their [provincial] variations.

In the “biological”, “physiological”, and “sociological” study that he conducts on 700 Egyptian habitual criminals between 1908 and 1921, the above-mentioned Greek counselor to the court of appeal, Megalos Caloyanni, eventually reaches similar conclusions. To be sure, the “great recidivists” are very weak, both physically and morally, but they have inherited their various diseases and psychoses as much biologically as socially. Drawing on theories of “criminal ethnography,” Caloyanni cites the example of revenge “as a result of family reasons and of the way of conceiving of social rules.” He explains:

When revenge is committed by the descendant of an individual engaged in hashish use, for instance, one should not only stop at the causes of mental deviation that hashish determines, but one should also take into account the family causes according to the family organization of the people to which the delinquent belongs.

While certain foreign scholars and professionals thus recuse both the idea of “racial purity” and the existence of a “criminal race,” some Egyptian members of the Parquet, as well as a number of British officials, emphasize on the contrary the intrinsic dangerousness of the “Arab race.” In a section of his “critical study of criminal etiology” entitled “Race and Heredity,” Muḥammad Al-Qulālī, a former Egyptian magistrate and a graduate of the criminology institute of Paris university, thus identifies “Arabs” (“les Arabes”) as “a redoubtable factor of Egyptian criminality.” Among these Arabs, Al-Qulālī interestingly differentiates the “Bedouins” – who have remained nomads – from “the other Arabs” – who have been sedentarized and have turned

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300 Ibid., 67.
302 Ibid., 2-7.
303 Ibid., 7.
304 Ibid., 7.
305 el-Kolaly, Essai sur les causes, 159.
into farmers –, and he estimates their total number at around 500,000 in 1917 which represents “around 3% of the population of Egypt for that year”\textsuperscript{306}. He further explains:

Their criminal tendencies originate from their nature which, in principle, only admits absolute freedom, and which, outside of the tribe, does not know any superior power. This nature of extreme independence had to undergo social evolution, and to bow to the organization of public power; hence Arabs, nomad or sedentary, had to comply with the law, as much for their own interest as for the peace of the country in general. But their rebellious character still retains, from various viewpoints, its primitive imprint that manifests itself in criminal attacks.\textsuperscript{307}

The Juris Doctor then reveals the main component of this criminal primitiveness, “an exaggerated vanity and pride,” and, quoting the special report on criminality for the year 1905 written by Machell, the British counselor to the Ministry of Interior, he proceeds to describe how “[Arabs] abuse their rights and believe they belong to another, higher caste than the fellah whom they are used to considering as an inferior.”\textsuperscript{308} Interestingly, while Al-Quţālī’s mention of the criminal “primitiveness” of the Bedouins closely echoes both Lombroso’s and Lacassagne’s theories, his understanding of the concept of “race” remains highly ambiguous. He thus notes in passing at the beginning of the section: “race and heredity present special characteristics that are, in the last analysis, only the product of a long evolution of social phenomena.”\textsuperscript{309} Similarly when addressing the issue of personal revenge or “thār” (ثأر), the Egyptian magistrate first underlines how this is “only a memory of their old customs” dating back to pre-Islamic Arabia and the story of the famous poet Imrū’ al-Qays.\textsuperscript{310} But he concomitantly explains: “This blood revenge (althār) is only the primitive vendetta that one finds again among the races with a proud spirit, rebellious to the laws and respectful of a sort of traditional code of honor (Corsica, Sardinia, etc.).”\textsuperscript{311} And after a long digression about the Corsican case, he ends up quoting Lombroso himself and shedding light on the allegedly common “Saracenic” origin of vendetta in Egypt, Corsica and Sicilia.\textsuperscript{312}

\begin{itemize}
\item \textsuperscript{306} Ibid., 158-59.
\item \textsuperscript{307} Ibid., 159 (emphasis added).
\item \textsuperscript{308} Ibid., 159-60.
\item \textsuperscript{309} Ibid., 158.
\item \textsuperscript{310} Ibid., 161, 163-64, 167-68
\item \textsuperscript{311} Ibid., 162.
\item \textsuperscript{312} Ibid., 168-71.
\end{itemize}
Finally, this same ambiguous mixture of a prevailing racial element more or less affected by a shifting social environment lies at the heart of Al-Qulālī’s analysis of peasant criminality. Contrary to the “Arabs,” the fallāḥīn cannot be stigmatized on a racial basis. Defined as the descendant of the Ancient Egyptians – Caloyanni’s “good primitives” and the bearer of the national identity –, the fellah is “by nature” “good and peaceful,” “active,” “sober” and “clever.” And if he is occasionally tempted to break the law, it is only because two centuries of exploitative, oppressive, and tyrannical regimes have kept him “improvident” and “ignorant,” led him to “harden his moral sense,” and taught him “ruse” and “slyness.” But more importantly, a last element accounts, according to the Egyptian magistrate, for the high rate of criminality among the peasantry: the phenomenon of social imitation induced by ignorance that has allowed the criminal Bedouin to contaminate the good fallāḥ. Ultimately, it is the peasants’ lack of education, and more specifically their illiteracy that is presented as the cause of their corruption by the Arabs and their adoption of the tradition of revenge. Unable to either read or write, the country child is both exposed to the dangerousness of pre-Islamic oral poetry and irremediably cut-off from the salvatory power of the moral lessons of the Qur’ān. As Al-Qulālī rather eloquently puts it:

By a natural instinct of imitation, he will thus only know the old prejudices and customs of his parents, the defense of his family, the imaginary rivalry with his neighbors, and the upholding of his superiority through revenge. The atmosphere that surrounds him only develops this mentality. The literature that amuses him is a mere set of ballads of the ancient Arabs which repeat the same themes of struggles, hatreds and revenge. The popular poet (shā‘ir) exalts the strength of a certain Abū Zayd or ‘Antar, the battles, the intrigues and the swaggerings of their tribes. As for the tender feelings and of moral idealism, they only come last. The instructions of his shaykhs, made at the mosque, consist most often of ritual

313 Ibid., 172.
314 Ibid., 172-76.
315 Ibid., 163-71.
316 Ibid., 323.
formulas. As for the principles of morality which form a large part of the Qur’ān and are the basis of the Muslim religion, when they are the object of preaching, they are uttered in beautiful classical Arabic language of which the fellah understands nothing.317

Ultimately, the fallāḥīn are not so contaminated either by the Bedouins’ blood, or by their practice of tattoos, than by their allegedly highly subversive art of oral poetry. Contrary to the Arabs themselves, the peasants are thus criminalized not on a racial criterion, but through the much more pernicious and powerful means of equating illiteracy with immorality. From Al-Qulālī’s perspective, oral poetry, vernacular language, and popular forms of piety all become tainted with the imprint of criminality; while written literature, the “beautiful classical Arabic language,” and the “orthodox” understanding of Islam are deemed to ensure morality, peace and security.

By considering the fallāḥīn as the passive audience of ageless oral epics that promote the backward tradition of blood revenge, Al-Qulālī fails to recognize that, with every performance, the latter actively contribute to the creative reinterpretation of their heroes’ legends in a way that confers meaning to their own experiences. More specifically, he fails to see in the peasants’ revival of interest, at the turn of the twentieth century, in the story of ‘Antara bin Shaddād – the pre-Islamic black slave, courageous warrior and brilliant poet who fought throughout his life for social recognition – and in that of Abū Zayd al-Hilālī – the eleventh century black slave who saved his people from famine by leading it to the “promised land” of North Africa – the mixture of fascination, fear and resentment aroused among them by the implementation of the new colonial economy.318 Concomitantly, the Egyptian magistrate conveniently overlooks the fact that the judicial professionals themselves also create at the time their own partly-mythical villains – the disreputable sons and the ghufarā’-criminals – as a way to both stigmatize the troublemakers and conceal the reality of the colonial situation, i.e. both the social disintegration it has caused and the oppressive and exploitative system on which it relies.

317 Ibid.
318 For the study on which this argument is founded, see: Clément, “Rethinking ‘peasant consciousness’.”
2.3 The “disreputable sons” and social misery

Besides or rather within the well-know categories of the “vengeful badawī” and the “illiterate fallāḥ,” other more subtle subcategories of dangerous individuals are being shaped during the period studied, first within the courtrooms and then more broadly in the new public sphere delineated by the media and the circles of the political and intellectual elite. I begin by examining here the subcategory of the “disreputable sons,” through the case of twenty year old Maḥmūd Muḥammad Ma’rūf executed on March 23rd, 1901 for having beaten up and drowned his eight year old half-brother, and that of twenty-two year old ‘Āmir Muḥammad Badawī hung on January 18th, 1909 for having stifled his mother. The cases of Maḥmūd Ma’rūf and ‘Āmir Badawī are representative of a series of murders of very close family members by “disreputable sons” (or in some cases brothers or even nephews) based on struggles over inheritance and limited resources in an overloaded social environment significantly disrupted by the occupation. Within my corpus, seven cases out of nineteen are of this nature. 319

These cases shed a very interesting light on the great complexity of the highly “recomposed” family situations in which the accused find themselves. The father of twenty year old Maḥmūd Ma’rūf thus got married five times. In 1900, we learn that two of his wives (including Maḥmūd’s mother) are deceased; one is legally an ex-wife, but she is still living with the family; while another one is “angry at her husband,” and she has left the marital home a year before. More interestingly, it is Khaḍra, the ex-wife and mother of the eldest children who runs the whole household and cares for all of her ex-husband’s offspring. As for Maḥmūd’s mother, his father explains that she left them soon after the delivery, and subsequently remarried to a man from another village where she eventually died [1900 – MMM: 11318-11319; 11322-11323; 11332; 11360]. By contrast, in 1908, twenty-two year old ‘Āmir Badawī lives alone with his thirteen year old brother and their mother. The latter’s husband has abandoned her six years before but without divorcing her, thus preventing her from remarrying. After having left them, ‘Āmir’s

319 In addition to the cases of Maḥmūd Muḥammad Ma’rūf [1900 - MMM] and ‘Āmir Muḥammad Badawī [1908 – ‘AMB+], see in appendices the synopses of the cases of ‘Abd al-Ghaffār Muḥammad Qandīl [1902 – ‘AMQ+], Al-Sayyid Sālim al-Ṣayyād [1902 - SSS], Ibrāhīm Ḥasan Salīm [1912 – HIS+], ‘Alī al-Sayyid Qirba [1912/1913 – ‘ASQ+], ‘Alī Sulaymān al-Baṭra [1914 – ‘ASB].
father married again twice, and has had seven other children from these two marriages with whom he had been living till his death, five days before ‘Āmir killed his mother [1908 – ‘AMB+: 16716-16717; 16744].

The combined impacts of these highly complicated familial situations – both in emotional and financial terms – and of the socio-economic circumstances of the time transpire from the records, and in particular from the depositions of the wives and children involved in the cases. Thus, Maḥmūd’s story reveals the extent of the tensions and resentment that exist, alongside patterns of care and cooperation, among the various members of the family, and how they can translate into domestic violence. As for ‘Āmir’s case, it sheds light on the intensity of the struggle over the family’s economic resources, a struggle that takes place both between parents and children and among the latter.

But beyond this general description of the cases and their contexts, it is interesting to underline that the death sentence in both instances is founded to a great extent on the bad reputation of the defendants and their portrayal by the witnesses as “disreputable sons”; and this while none of the main accused has judicial antecedents. Within the framework of this study on the interplay between orality, writing and performance, I will focus my analysis on:

- the disclosure, by different witnesses, of “blameworthy” elements from family stories in order to charge Maḥmūd and ‘Āmir;
- the various defense strategies adopted by Maḥmūd and ‘Āmir against the exposure of their alleged bad reputation;
- and the “reprise” and reframing of these incriminatory elements by the justice professionals in a way that both substantiates the category of “disreputable sons” and strengthens the colonial grand narrative about the young peasants’ lust and greed.

2.3.1 “The indecent proposal:” Disobedience, “bestial lust,” and “love of revenge” vs. domestic violence and overcrowded housing

When eight-year-old Muḥammad Maʻrūf goes missing on the evening of October 7th 1900 in the village of Kafr al-Shaykh Shiḥāta (markaz Talā), suspicion quickly falls on his half-brother Maḥmūd with whom he has left the family house in the morning to work in the fields. The latter first denies having any knowledge of the young boy’s whereabouts, but after being repeatedly
interrogated by the local authorities, he ends up leading them to the corpse [1900 – MMM: 11306]. In his original version of the events, Maḥmūd asserts that the death of the boy was an accident. As they had arrived in the fields, the twenty year old had slapped his half-brother for playing in the water instead of working. He had then left him, and, when coming back to the spot of the quarrel a couple of minutes later, had found him drown in the pond. For fear of the reaction of the other members of his family, he had remained in the fields for the rest of the day, and had not found the courage to tell them “the truth” when he returned in the evening [1900 – MMM: 11306-11310].

While marks on the victim’s body made Maḥmūd’s initial account appear doubtful from the onset, Mubāraka - the young boy’s mother - , al-Sayyid - Khaḍra’s eldest son - , as well as more distant family members from both paternal and maternal sides, all begin by confirming the suspect’s version and denying the existence of any tension within the household [1900 – MMM: 11313-1134]. At this point in the inquiry conducted by the local police, Muḥammad Ma’rūf, the father of both victim and accused and himself a fallāḥ who owns three fadādīn (around 12600 m²), is away from the village. On his return however, tongues suddenly loosen, and Mubāraka reveals a much different story to the representative of the public prosecutor’s office in charge of the investigation at that time [1900 – MMM: 11322-11327].

After alluding to the fact that she and Khaḍra are not on good terms then, Mubāraka launches into a long and detailed account of the night preceding the murder [1900 – MMM: 11323-11327]. She begins by briefly mentioning her son’s evident fear of the accused and his declaration that Maḥmūd was actually beating him. Then, she describes with much precision how on the eve of the crime Maḥmūd came to her room to make indecent proposals to her, before leaving her upon Khaḍra’s call [1900 – MMM: 11324]. Finally, she explains how Maḥmūd forcefully took her son with him the following morning to work in the fields, contrary to habit, sent away their other half-brother, and came back in the evening pretending that he did not know the whereabouts of the boy [1900 – MMM: 11325-11326]. Contrary to her first testimony, Mubāraka’s deposition before the representative of the public prosecutor’s office is very emotional, punctuated by tears, grief gestures (such as the hitting of the chest), and three expressions (including two between brackets) meant to underline that this time she tells the truth:

ان كنتم مكذبين اسالو اهل الدار ان كنتم لا تصدقونى - (علبك خلاص الحق يا سيدي) - (انا بحكي يا ربي بالحق)
[1900 – MMM: 11325-11326]. Following her account, the magistrate asks her a few questions focusing on Maḥmūd’s regular mistreatment of his younger brother and consequently on the possible premeditated nature of the crime. As for the “indecent proposal” (كلام بطال), it is merely the object of two questions, the answers to which reveal that Maḥmūd’s sexual harassment of Mubāraka on the eve of the murder was not an isolated incident, and that she had been afraid to talk about it with Khaḍra. In the wake of Mubāraka’s testimony, Khaḍra and her two sons, al-Sayyid and Ḥammūda, cautiously acknowledge Maḥmūd’s rudeness towards the young boy, as well as the great fear experienced by the latter, but they all deny having witnessed any instance of physical violence.

It is at this point that the family father, Muḥammad Ma‘rūf, is interrogated [1900 – MMM: 11333-11335] (Appendix 10). Having been away from the village during the week preceding the murder, the father first carefully underlines that his knowledge of what happened has only been obtained through hearsay (Appendix 10: elements in blue). Similarly, when the question of the nature of the relationship between Mubāraka and Maḥmūd is raised, the head of the family chooses to somewhat hide behind his wife’s words regarding both her son’s fear of Maḥmūd and the instance of sexual harassment the night preceding the murder (Appendix 10: elements in green). Eventually, when clearly asked about his witnessing of any incidents, he admits indirect knowledge of Maḥmūd’s regular beating of the young Muḥammad, and adds that he had repeatedly rebuked his son for that, but that the latter would sometimes ignore his scolding (Appendix 10: elements in orange underlined). By beginning to portray Maḥmūd as the disobedient son, Muḥammad Ma‘rūf cleverly justifies his own failure to put an end to the domestic violence of which the young Muḥammad had long been the victim. Further encouraged by the representative of the public prosecutor’s office in search for additional incriminating elements, the father comments at length on Maḥmūd’s lifestyle (سير) (Appendix 10: elements in red underlined): “[the latter] used to run away from me and stay for three or four months at his maternal uncles’ [place]” ("له عادة يطفش مني ويقع بالثلاثة اوأربعة أشهر عند اخواله"), “he is a bastard” (ابن حرام) and “his way of life is indecent” (سيرة بطال). Consequently, when al-Sayyid, the eldest son, suggested to bring Maḥmūd back to help them with the work in the fields, the father had objected for “when he comes for a couple of days and stays at [their] place, he annoys the boy Muḥammad, and doesn’t obey” [1900 – MMM: 11334]. But the “disreputable son” had nonetheless come back, and had perpetrated the crime the premeditated
nature of which was conveniently attested by his “previous deeds” (Appendix 10: elements in purple underlined).

If we now turn to the suspect’s interrogations, it is interesting to note that, throughout this preliminary inquiry successively conducted by the *ma'mūr* and *wakīl al-niyāba*, Maḥmūd does not only build his defense around the claim that the death was accidental, but he also attempts to gradually strengthen it by presenting himself as a respectable son. As early as the first interrogations by the local police, he thus underlines three main elements: his dedication to work – that purportedly led him to get angry at his young brother –, his fear of the family, and his immediate remorse. In order to substantiate the first point, Maḥmūd quotes and reiterates several times what he claims he told the boy when he allegedly found him playing in water: “we just began with the morning, and you keep playing in water! (...) Don’t play in the water again!” [1900 – MMM: 11308-11309; 11316]. As for the element of fear, it allows him to justify over and over again why, at first, he did not inform anyone of the “accident,” and why, subsequently reassured by the local authorities, he led them to the corpse [1900 – MMM: 11308-11309; 11317-11318]. Finally, the suspect illustrates his remorse through the repetition of a series of telling expressions and images: “Oh, what a black day! I wish I hadn’t hit you!” - “When my brother Muḥammad fell in the pond, I peed on myself from the shock.” [1900 – MMM: 11308; 11314; 11316]. Following his father’s deposition and the concomitant unveiling of his “bad lifestyle” however, Mahmūd’s behavior changes. He first acknowledges the instance of sexual harassment against Mubāraka, justifying it by the fact that “the devil is cunning” [1900 – MMM: 11335]. He then admits his regular mistreatment of young Muḥammad, but still denies having killed him intentionally and with premeditation [1900 – MMM: 11335-11337]. It is only after a short break – a break that remains off-record, but during which the representative of the public prosecutor’s office most probably used either coercion or the promise of a light sentence – that Maḥmūd confesses the crime with much detail: because the boy was “disobedient,” his older brother hit him with the handle of an axe, and drowned him [1900 – MMM: 11337-11338].

Now, what is most significant for our purpose is how, on the basis of this preliminary inquiry, the various judicial authorities successively in charge of the case not only considerably developed Maḥmūd’s profile as that of the “disreputable son-as-criminal” in the course of the
procedure, but also progressively shifted the focus of the accusation from the issue of the domestic violence of which young Muḥammad had been the victim to that of the sexual harassment against Mubāraka; the latter conveniently allowing them to firmly establish the element of premeditation while adding a whiff of moral scandal to the whole case.

As early as October 18th, the act of indictment written by ‘Abdallah al-Ṭuwayr Afandī, the local prosecutor, sets the tone [1900 – MMM: 11345-11346] (Appendix 11). It begins with a description of the accused as “an evil child of bad reputation who does not obey his father’s orders to the extent that his aforementioned father almost disowned him or actually disowned him from among his children” (ولد شقي سيء السمعة غير مطيع لأوامر والده لدرجة أن والده المذكور كاد أن يسقط أو أسقطه فعلا من عداد أولاده) [1900 – MMM: 11345] (Appendix 11: elements in orange underlined). Maḥmūd’s mistreatment of Muḥammad is then alluded to, and it is specified that this behavior had attracted the attention of the whole family, and caused his father to reject him. The text subsequently focuses on “the lowest of the acts of pure bestiality” that he committed on the eve of the “horrible crime,” that is to say his “attempt to have intercourse with one of his father’s wives” [1900 – MMM: 11345] (Appendix 11: elements in red underlined). Although Mubāraka herself testified that Maḥmūd had repeatedly harassed her in a similar way in the past, and although the extremely overcrowded living conditions of the family suggested regrettably but quite logically the possibility of a high risk of sexual promiscuity among the various family members, the instance of sexual harassment on the eve of the crime is being here isolated from its broader context, and emphasized in order to make it appear as the direct motive of the crime. Both Maḥmūd’s “indecent proposal” and his general bad behavior thus appear again at the end of the document in the final summary of the evidence upon which the act of indictment is founded. They are mentioned directly after the forensic report and the suspect’s own confession as the elements proving the premeditation (Appendix 11: elements in green underlined).

When the trial begins on November 7th, the president of the tribunal, Aḥmad Ḥilmī Bey, insistently comes back as well to the question of sexual harassment in spite of the witnesses’ obvious reluctance to address the issue. While interrogating Mubāraka, he thus requests her to explicitly talk about what she has modestly referred to as “al-’af‘āl” [1900 – MMM: 11352]. Similarly, Khaḍra is asked to testify on the issue of “al-’amr al-baṭṭāl,” and her explanation of
how she guessed that Maḥmūd was making indecent proposals to Mubāraka suggests once again that this was not an isolated instance [1900 – MMM: 11356]. In addition, the family father is also led to open the topic in an exasperated declaration in which he reiterates his wife’s maddening “stories,” wishes that “all the kids were dead, and [that] this had never happened,” and eventually laments that his son would not obey him in spite of the fact that he had provided him with everything he needed and had planned to leave him a faddān (around 4200 m²) as inheritance [1900 – MMM: 11360]. Finally, at the very end of his deposition, Maḥmūd’s father very interestingly answers a question raised by ‘Abdallah al-Ţuwayr Afandī, the prosecutor, on his son’s general way of living and manners by stating: “His way of living is disgusting. I fed him with all the chicken that I have, because when I was going to bring him back from his uncles and the people of their village who help me, I had to invite them and feed them with all the poultry that I had” [1900 – MMM: 11361]. The “disreputable son” thus appears not only as the one who does not obey his father, but also and as importantly the one who constitutes a financial burden for his family.

While the president of the tribunal and the prosecutor both emphasize and link very closely Maḥmūd’s “indecent proposal” to his general bad reputation in order to establish the element of premeditation and ultimately the death penalty, two other actors of the judicial system contest such an interpretation of the case. The first of these actors is unsurprisingly Maḥmūd’s defense lawyer, ‘Abd al-Wahhāb Afandī Muḥammad. The latter builds his pleading around the argument that, in addition to being unbelievable, his client’s alleged “attempt to have sexual intercourse with his mother” ("اتيانه لوالدته") is inconsistent with his killing of her son the next day [1900 – MMM: 11361]. As for Maḥmūd’s confession during the preliminary inquiry, it obviously results from his having been frightened by the local authorities during the “break” mentioned in the proceedings. According to ‘Abd al-Wahhāb Afandī, there is consequently no evidence of premeditation and the death should be considered accidental [1900 – MMM: 11361-11362]. This same argument that Mubāraka’s rejection of Maḥmūd’s “indecent proposal” cannot constitute a sufficient motive for the crime will be taken up again by Maḥmūd’s defense lawyer at the court of appeal, the then famous – but soon to be infamous for acting as the Egyptian public prosecutor at the Dinshawāy trial – İbrāhīm al-Ḫilbāwī [1900 – MMM: 11370-11371].
More interestingly, the second actor to contest the interpretation of the case as an act of revenge against Mubāraka committed by an “evil child of bad reputation” and deserving the death penalty is the muftī of the province. In a document sent to the president of the Ṭanṭā tribunal on November 11th 1900, the latter very soberly explains that, according to Abū Ḥanīfa, the legal (shari‘a) sentence for drowning someone in water is not death penalty (qiṣāṣ) but blood-money (diyya) to be paid by the family of the killer [1900 – MMM: 11364]. In his fatwā, the muftī thus totally overlooks Maḥmūd’s “indecent proposal” and his general “bad behavior.” More significantly, he rejects the death sentence on the ground that the killing was unintentional, and emphasizes the responsibility of Maḥmūd’s father regarding the payment of the compensation. While this legal opinion is founded on a strict adherence to the Ḥanafī school, I would argue that it also betrays a conception of the family different from that of the tribunal, as a more organic structure with various interdependent components. I would thus venture to suggest that the muftī probably held the view that losing two sons within a same family would not be desirable, that compensation would be more advantageous to Mubāraka than retaliation, and that, given the impossibility for the accused to pay the blood-money himself, Maḥmūd’s father should be held accountable as the head of the family.

In any case, the request for the muftī’s opinion being a purely procedural matter, the fatwā is simply ignored by the president of the tribunal, Aḥmad Ḥilmī Bey, when issuing the ruling on November 14th 1900 [1900 – MMM: 11365-11368]. The latter begins once again with an emphasis on Maḥmūd’s general bad reputation and his disobedience to his father (Appendix 12: elements in red underlined). His hatred towards the young Muḥammad is then mentioned (elements in green underlined), to be immediately followed by a long account of the incident of sexual harassment the night preceding the crime (elements in orange underlined). This account subsequently allows the judicial authorities to first present the events that happened the following morning as motivated by “the love of revenge” ("حب الانتقام") against a woman who “refused to submit herself to the satisfaction of his bestial lust,” and to eventually justify the death sentence [1900 – MMM: 11366] (elements in yellow underlined). The judgment was

320 According to Abū Ḥanīfa, “criminal intent is assumed to exist” only “if a sharp weapon or object of fire was used.” Within such a perspective, killing by drowning is therefore considered unintentional. Rudolph Peters, *Crime and Punishment in Islamic Law*. (Cambridge: Cambridge University Press, 2005), 115.
upheld both in appeal and cassation, and Maḥmūd was finally executed in his village of Kafr al-Shaykh Shiḥāta on March 23rd 1901.

Maḥmūd Maʻrūf’s judicial file perfectly illustrates the dynamics at work in the course of the procedure among the various actors involved in the case. The collective construction of the category of the “disreputable son” conveniently allows one to avoid inquiring into the thornier issue of the socio-economic conditions of the fallāḥīn and the often ensuing phenomena of domestic violence and spatial proximity (or “promiscuité” in the French meaning of the term). In addition, the figure of the “disreputable son” facilitates the drawing of strict boundaries between “good” and “bad” peasants. In this case, such an approach does not only allow the members of the Ṭanṭā court to preserve the model image of mostly respectable peasants struggling to protect their honor while clearly identifying Maḥmūd as the “black sheep.” It also offers an opportunity to the other family members, and above all the father, to cover up their own responsibilities and failures. Last but not least, the constitution of the “disreputable son” as a criminal profile undoubtedly serves to strengthen the patriarchal structure of the society as a whole, in a period characterized by the elites’ fear that the disobedient sons of the peasantry who rebel against their fathers could soon rebel against their “masters” be they local landowners or British occupiers.

2.3.2  “Finish her off:” Violence and “greed,” or the relationship between crime and poverty

While in Maḥmūd Maʻrūf’s case, the first “blameworthy” elements from family stories were progressively revealed by the family members themselves, in ‘Āmir Badawī’s case, they are disclosed to the inquirer by the local authorities from the onset, even before the beginning of the formal interrogations, through conversations that remain off-record. This is at least what the analysis of the first testimonies of the witnesses strongly suggests.

The very first witness to be questioned in the wake of the murder of Shalabiyya, the wife of Muḥammad Badawī, in the village of Bālmashṭ (markaz Minūf) on May 29th 1908 is the victim’s thirteen year old son, al-Sayyid [1908 – ‘AMB+: 16715-16718]. While at this point the main suspects are one of Shalabiyya’s older sons, ‘Āmir Badawī, and his brother’s brother-in-law, Qandīl Ibrāhīm – both caught inside the house a few minutes following the crime –, the
young al-Sayyid chooses to protect his brother ‘Āmir and charge Qandīl. Following this first account of the events, the deputy prosecutor in Minūf, Buṣṭūrūs Bishāra, immediately interrogates al-Sayyid on the extremely recent death of his father and what the latter had left to his wife as inheritance. Al-Sayyid answers that his father had long ago planned to leave his mother two qīrāṭ (around 350 m²) in the fields and eighty dhirā’ (36 m) in the house, and that before dying he gave part of his properties to his children from another wife with whom he had been living [1908 – ‘AMB+: 16716]. When asked by the magistrate to confirm whether or not ‘Āmir (falsely) reported his father to the local authorities as being ill from the plague, al-Sayyid corroborates the claim, and explains that his brother did so precisely because their father had left all of his properties to his other children and none to them. Buṣṭūrūs Bishāra subsequently asks if Shalabiyya possessed land of her own, and we learn that she had actually inherited half a faddān (around 2100 m²) from her mother. Finally, a last question on the victim’s recent marriage plans leaves no doubt that, even before the beginning of the formal interrogations, the inquirer had already gathered specific information about the existence of strong tensions within the family, and had most probably already classified the case as a murder merely for inheritance.

More precise elements regarding ‘Āmir’s relationship to his mother are then disclosed by the family’s immediate neighbors [1908 – ‘AMB+: 16718-16724]. The latter, two single young men, give a detailed account of what they witnessed the night of the murder (Appendix 13: elements in orange underlined), not only quoting the exact dialogues – frequently punctuated by insults – that allegedly took place among ‘Āmir, Shalabiyya and Qandīl (elements in red underlined), but also providing essential “textual analysis” and complementary contextual information (elements in blue underlined). We thus learn that on the eve of the crime a quarrel erupted between ‘Āmir and his mother over two issues: first, Shalabiyya’s refusal to grant ‘Āmir’s request to sell her half faddān in order to help him purchase goods for his shop and eventually to resume his business activity; and second, her intention to marry Maḥmūd Dabash, a man from the village younger than ‘Āmir. Within this context, the witnesses also mention ‘Āmir’s death threats against his mother, and his alleged instructions to Qandīl “to finish her” [1908 – ‘AMB+: 16719]. When asked to give further details about the two contending issues between mother and son, the neighbors end up revealing elements of their respective reputation: while Shalabiyya is a relatively good woman for she would always meet Maḥmūd Dabash “out
in the open,” ‘Āmir is a disreputable son who lost his shop by “crossing the line into indecency, spending money on women, and playing rigged games” [1908 – ‘AMB+: 16720; 16723].

While carefully avoiding to address Shalabiyya’s reputation and her marriage plans, the various local authorities who were subsequently interrogated further elaborate on ‘Āmir’s bad behavior and his being a burden on his mother. In addition, they also emphasize Qandīl’s previous convictions for theft and the fact that he then belongs to the category of the village “suspects” (al-mashbūhīn) [1908 – ‘AMB+: 16728]. In this regard, the testimony of Muḥammad Bey al-Ganzūrī, the ‘umda and last witness to be interrogated by the deputy prosecutor, is very telling [1908 – ‘AMB+: 16744-16745]. Although the Ganzūrī family has then been ruling over Bālmasht for at least the past twenty years and in spite of the fact that the relationship between Shalabiyya and Maḥmūd Dabash was known to the whole village and the subject of much gossip, the Bey pretends that he heard about it for the first time on the day of the murder. Similarly, while he denies any knowledge of whether Shalabiyya had money or not, he emphasizes that she was selling and buying, in other words, she was productively working in some kind of business. By contrast, ‘Āmir’s way of life is very indecent (baṭṭāl jiddan): “all he earned, he lost it in gambling (al-qumār); and he had a shop, but lost its capital in nonsense (al-hals)” [1908 – ‘AMB+: 16745]. Last but not least, the disreputable son “also wanted to cause a scandal to [his father] because [the latter] had planned to leave what he had to his brothers; so, he presented in his name (fī ḥaqqīhi) a notification that [his father] was ill from the plague, and he wanted to remove him to the sanitary cordon” [1908 – ‘AMB+: 16745]. Through the ‘umda’s final mention of ‘Āmir’s plague notification, the loop is thus closed, and the source of the deputy prosecutor’s initial and rather focused knowledge of the case is revealed.

Given that all the interrogations in this case were obviously conducted in the presence of both ‘Āmir and Qandīl, it is particularly interesting now to analyze the suspects’ reactions to the unveiling of their “indecent” ways of life and judicial antecedents. Following the revelation by the chief of the village guards (shaykh al-khafara) that Qandīl had already been convicted for robbery, the latter interrupts the testimony to specify that if he was sentenced to six months in prison for stealing cotton, he was found not guilty in another case of theft of bersīm [1908 – ‘AMB+: 16728; see also 16737]. Aware that his previous brushes with the law would also be revealed and in an attempt to tarnish the credibility of the shaykh al-khafara, ‘Āmir then takes
the initiative to declare that “four years ago th[e] witness accused [him] of cattle poisoning, but that the charges against him could not be proved” [1908 – ‘AMB+: 16728]. The Chief Guard subsequently explains: “[we] had caught him before he put the poison to the cattle, and he confessed, [but] when we brought him to the prosecution, they let him go and said that, since this was a case of attempt, there was no penalty [prescribed by] the ancient [penal] code” [1908 – ‘AMB+: 16728].

Besides the Shaykh al-khafara, ‘Āmir also interrupts the deposition of a number of other witnesses among whom Maḥmūd Dabash, his mother’s young suitor [1908 – ‘AMB+: 16730-16731]. Here, it is remarkable to note that, if the son is keen at some point to emphasize that his mother “was caught” with Maḥmūd and a second man inside the family house two months before the crime – a revelation that leads the deputy prosecutor to further inquire the matter through the interrogation of three additional witnesses –, ‘Āmir never uses the question of Shalabiyya’s reputation for his own defense; something that his lawyer will do at the end of the trial in an attempt to obtain the mercy of the court for what could be then qualified as honor killing [1908 – ‘AMB+: 16773].

In addition to charging his brother Darwīsh – who is also Qandīl’s brother-in-law and who lives with the latter, his wife and their five children in a separate house in the village – [1908 – ‘AMB+: 16737; 16739-16740], ‘Āmir’s defense strategy actually lies in presenting himself as an obedient and loving son, both financially dependent on his mother and grateful to her for her support [1908 – ‘AMB+: 16738; 16741]. From the very beginning, he also adds an emotional dimension to this line of argument through a series of theatrical scenes and moving declarations. Several witnesses thus testify to having seen ‘Āmir pretending to cry and “acting” as the grieving son, when caught in the house minutes after the crime [1908 – ‘AMB+: 16719; 16725]. Later in the course of the inquiry, the main suspect explains that he could not have taken part in the murder of his mother, since he has “a tender heart for her” [1908 – ‘AMB+: 16740]. Eventually, for his first appearance at the trial, he will dramatically declare to the court “how could I kill my mother?!” [1908 – ‘AMB+: 16767]. The emotional tone of ‘Āmir’s various depositions does not, however, work in his favor, for as early as his second interrogation, the deputy prosecutor underlines the inconsistencies that exist between the “sad story” (“al-riwāya al-muhzina”) of his mother being killed by his brother and Qandīl, and the fact that he then
failed to both call for help and reveal his version of the events to the local authorities. The magistrate subsequently pressures the suspect by saying: “it is better for you to tell us the truth, because all your defense and the stories that you are telling are totally false” [1908 – ‘AMB+: 16741].

A last element mobilized by ‘Āmir for his defense is his medical condition. Thus, answering the question of whether or not he actually lost his shop, a week before the murder, in nonsense and gambling, he answers that “[he] spent [the money] on [him]self because [he] [is] ill” [1908 – ‘AMB+: 16739]. Later, he justifies the fact that, in spite of the heat, he was sleeping in a closed room – and was hence somewhat away from the crime scene – by explaining that “the doctor warned [him] against sleeping in the humidity” [1908 – ‘AMB+: 16739]. At this point in the inquiry, the deputy prosecutor notes in his report that, in addition to a few marks of struggle, a medical examination of the suspect has revealed that he is blind from the left eye, and that he has symptoms of syphilis [1908 – ‘AMB+: 16739]. Although ‘Āmir’s blindness might have been an indication that he was in a late stage of a disease then already known for causing serious mental disorders, the issue is surprisingly never to be mentioned again in the course of the procedure.

Similarly, from the act of indictment onwards, the contextual information regarding the fact that ‘Āmir has just lost his shop, that he and his younger brother have been disowned by their father, and that, had the marriage taken place, he would have also been deprived of the house and of his mother’s properties to the benefit of her young suitor is totally overlooked. Likewise, Qandīl’s extremely difficult economic situation as a landless peasant, wage laborer working by the hour, and living with his sister and brother-in-law is never evoked again to explain his motivation to participate in the crime [1908 – ‘AMB+: 16716; 16720; 16734]. The story line chosen by the justice professionals in this case is merely one of violence and “greed.”

To substantiate this version of the facts, the magistrates rely on the strategy of the “refrain,” a few striking words allegedly uttered by the suspects on the crime scene, reframed and reiterated several times from the act of indictment to the text of the judgment. In this case, the “refrain” is particularly gruesome. It is composed of an exchange of words between ‘Āmir and Qandīl, the
former requesting the latter to “finish [his mother] off” ("خلص عليها"), and the latter answering that she is already dead ("اهي خلصت") [1908 – ‘AMB+: 16764; 16769; 16770; 16779].

In addition to the “refrain,” the second element emphasized is unsurprisingly ‘Āmir’s “indecent lifestyle” [1908 – ‘AMB+: 16764; 16770; 16772]. Interestingly, a series of short questions asked to the witnesses at the trial by the deputy prosecutor, Buwāqīm Mīkhā’īl Afandī, leads to the construction of a rather clear dichotomy. On the one hand, Shalabiyya’s way of life was good because she was doing business, making money (“kissība”) and owned part of her house and a piece of land, and in these conditions the issue of her questionable relationship to the young Maḥmūd Dabash becomes almost irrelevant [1908 – ‘AMB+: 16770; 16772]. On the other hand, her son’s behavior was disreputable not so much because of his taste for women and gambling, but because he lost everything he had, became a financial burden for his mother, and even dared to ask her for money [1908 – ‘AMB+: 16770; 16772]. Thus, while the witnesses often mention first the question of the mother’s marriage plans, Buwāqīm Mīkhā’īl Afandī immediately puts them back on the track of the son’s requests for money [1908 – ‘AMB+: 16770; 16772]. Moreover, the extreme concision of the interrogations of the two accused and eight witnesses that take place in a single day greatly contributes to the disregard of the other circumstances surrounding the case.

Finally, the judgment of first instance perfectly reflects the dynamics that have been at work among the various participants at the trial. Ignoring both the emphasis placed by the witnesses on the mother’s marriage plans and the father’s disowning of his children, as well the lawyer’s request for mercy [1908 – ‘AMB+: 16773; 16777], the court issues a text that contrasts Shalabiyya’s properties and productivity (Appendix 14: elements in blue) with ‘Āmir’s “preoccupation with the pleasures of life,” his subsequent financial losses and renewed dependence on his mother (elements in red bold and underlined) [1908 – ‘AMB+: 16777-16781]. He is eventually blamed as much for the murder as for becoming a parasite in his family and for his “greed in his mother’s possessions” (elements in bold and underlined) [1908 – ‘AMB+: 16778; 16780]. On these grounds, the “disreputable son” is sentenced to death, and executed on January 18th, 1909 in the presence of journalists eager to capture the moment and immortalize the symbol [1908 – ‘AMB+: 16784].
Interestingly, ‘Āmir’s case echoes the story of twenty-five year old ‘Alī Sulaymān al-Baṭra from Kafr Fīshā (markaz Minūf) who was sentenced to death on March 7th, 1914 for having poisoned his father in an attempt to prevent him from remarrying for the fourth time [1914 – ‘ASB]. The latter, who initially owned a faddān, eight qarārīt, and a house, had gradually sold half of the house and the eight qarārīt and spent the money on his second wife. In addition, he had mortgaged the remaining faddān to a number of people from the village for 25 Egyptian pounds, as well as to the Agricultural Bank for 18 Egyptian pounds. Furthermore, the father gave a quarter of this piece of land to one of his daughters, and, the night of the murder, was about to give another quarter of it to his new wife. Had the marriage been celebrated, it would have left father and son with only half a faddān (around 2100 m²) mortgaged for the huge sum of 43 Egyptian pounds [1914 – ‘ASB: 6158-6165; 6230].

More significantly for our purposes, ‘Āmir’s trial in 1908 takes place amid a period of reflection on the question of the relationship between crime and wealth, initiated by the declarations of a British administration attempting to justify its inability to curb the rise of criminality in the country. As early as 1904, Lord Cromer thus argued that, contrary to Europe, “the multiplication of crimes [in Egypt] [was] due, to some extent, to the increase in prosperity.” He further explained:

a very large number of crimes committed in Egypt are not due to urges arising from need and poverty, nor to the criminal instincts of the perpetrators, but to a desire for personal revenge against an individual or several. (...) the individual who failed to acquire a piece of land, or achieve a goal that he had at heart, envies the parent or the friend that has been luckier than he. He holds a grudge against him, and since he knows that under the existing institutions, he can be punished only if proved guilty, and that this is always difficult to demonstrate, his perverse instincts and undisciplined mind are quick to suggest to him thoughts of revenge.  

Two years later, the British Counselor to the Ministry of Interior, Lieutenant Colonel Machell, would even go as far as asserting: “The extraordinary prosperity of the fellahs has whetted their appetite and instilled in them the love of lucre. This engenders envy, malice, hatred: the recent

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increase in crime in Egypt is directly related to these causes. 322 Interestingly, both quotations are mentioned in Grandmoulin’s textbook on native Egyptian criminal law published in 1908. 323 In 1912, the French anthropologist of law and Professor at the Khedivial Law School, René Maunier, provided further scientific endorsement for this “greed and revenge” theory. 324 In an article entitled “Des rapports entre le progrès de la richesse et l’accroissement de la criminalité en Egypte” (Of the relationship between the progress of wealth and increased crime in Egypt), Maunier begins by outlining the theoretical background of his study and in particular the works of criminologists from the famous Italian School such as Poletti, Ferri, Garofalo and even Lombroso himself. 325 The French Professor then presents a rather simplistic comparison between criminal statistics and figures on the movement of goods in Egypt for the period 1898-1910, a study from which he concludes that “between crime and wealth [there is] a concomitant relationship both in their historical evolution and their geographical distribution.” 326 He eventually suggests a finer but still flawed analysis of the “multiple and complex” ways in which the causal relation between economic progress and increased crime works, and especially the “greed and revenge” dimension which allegedly prevailed among the Egyptian rural population of that time. 327

While opposition to this thesis probably existed already among local legal circles at the time, it was not until the 1920s that articles and books refuting the link between crime and wealth began to be published. In his Cours de droit pénal égyptien pour 1919 (Course in Egyptian criminal law for 1919), Ḥasan Nashāt, then Professor of criminal law at the Cairo Faculty, thus pointed to major contradictions in the line of reasoning of the British administration presented by Professor Grandmoulin in his own textbook a decade earlier, and used the increased crime rate

323 J. Grandmoulin, Le droit, vol. 1, 77-79.
325 Ibid., 27-28.
326 Ibid., 30.
327 Ibid., 38-42.
in the wake of the 1907-1908 financial crisis as a counter-argument.\textsuperscript{328} In his annual report on *The state of public security in Egypt in 1927*, the Head Director for the administration of public security at the Ministry of Interior, Maḥmūd Fahmī al-Qaysī Pasha, offered a similar analysis of the causes of increasing crime for the period 1907 to 1927, underlining a parallel evolution between crime and misery rather than wealth.\textsuperscript{329} Finally in 1929, Muḥammad al-Qulālī, a jurist and a criminologist, proposed a critical assessment of both Maunier’s article and al-Qaysī Pasha’s study, shedding light on the extremely limited impact of economic factors on the evolution of crime but concluding once again on the prevalence of “the spirit of vengeance” among the *fallāḥīn*.\textsuperscript{330}

To conclude, it is worth emphasizing that, at least over the period between 1904 and 1914, the figure of the “disreputable son” and the invocation of his intrinsic “greed” and “love of revenge” conveniently allowed both colonial and local elites to avoid acknowledging the tremendous impact of the large-scale land spoliation of which the peasants had been the victims from the 1880s onwards; a phenomenon that the French diplomat de Chamberet described in 1909 as “a disorganization in the land distribution from one end of Egypt to another, whose inhabitants, divided against one another, in endless vendettas, spend their time burning one another’s crops, poisoning one another’s cattle, denouncing one another, and occasionally killing one another.”\textsuperscript{331}

Furthermore, it is interesting to underline the extent to which the cases studied above contradict the idyllic vision of peasant family life depicted by Yūsuf Naḥḥās, a legal scholar, economist and one of the largest landowners of the country, in his book on the socio-economic situation of the *fallāḥ*, and in particular the idea that strong family solidarity constituted a way to alleviate the effects of the economic crises and to guarantee “a profound peace” in the countryside.\textsuperscript{332}

\begin{itemize}
\item \textsuperscript{328} El-Kolaly, *Essai sur les causes*, 233-35.
\item \textsuperscript{329} Ibid., 235-38.
\item \textsuperscript{330} Ibid., 219-33, 236-56.
\item \textsuperscript{331} De Chamberet, *Enquête sur la condition*, 49.
\item \textsuperscript{332} Joseph Nahas, *Situation économique et sociale du fellah égyptien* (Paris: Rousseau, 1901), 72-75. Yūsuf Naḥḥās thus explains: “Chez les fellahs, l’autorité du père est très grande et elle s’exerce sur les enfants devenus eux-mêmes pères de famille. L’aïeul est l’objet de la déférence de toute la famille, ses descendants lui obéissent et le...
But in spite of these cracks, the figure of the “disreputable son,” by preserving the reverse image of the “good” parents trying to tame their wild children, also contributed to strengthening the patriarchal structure of society and to further promoting the ideal of the productive and obedient sons serving their fathers.
2.4 The “ghafīr-bandit” and the ambiguity of the colonial situation

In addition to the “disreputable sons,” another criminal profile was developed in the courtrooms and widely publicized in official reports and press articles throughout the period, that of the “ghafīr-bandit.” While the institution of the ghafar (or khafara) predated the British occupation, the role of these local guards acquired renewed importance from 1884 onwards. Public ghufarā’ were in charge of general security in the countryside. They were appointed by a village council presided over by the ‘umda and paid through a local tax333 (These public ghufarā’ will be dealt with at more length in the last subpart of this chapter). In addition, private guards were hired by the large landowners of the village – often including the ‘umda himself and the local mashāyikh – to watch over their fields and other prized possessions such as the steam irrigation pump. More importantly, these private ghufarā’ were, along with the supervisors of these large estates (khūlyīn or nuẓẓār), part of a wider repressive system meant to ensure that any kind of resistance to the quasi-feudal exploitative management of these domains be met with the harshest response and completely subdued334. To achieve this goal, the private guards were not only entrusted with power and firearms, but they would also often be chosen amongst villagers known for both their participation in illegal activities and links to local brigands. Furthermore, they would frequently be selected from among Bedouin tribes, since the latter were considered somewhat external to the village community, often had dogs, and knew how to handle a weapon. Lamenting the consequences of such a recruitment, the Egyptian criminologist al-Qulālī still asserted in the 1920s:

(...) some of these [richest] owners, in addition to their guilty abstention from helping justice with their influence, foster crimes in another way, while believing to avoid them. To ensure the safekeeping of their harvest, they often have at their service, as ghaffir, some bandit, who, through his influence, will protect his master from the aggressions of criminals. This cowardly expedient thwarts the action of the government police, increases the audacity of bandits, and fills them with vanity. They become more demanding towards their masters, and, of course, they take advantage of this protection to perpetrate their tricks at their ease and terrify the region.

These complacent masters only think about their personal interests that they seek to secure by any means. A more enlightened conception of the relationship between society and individuals and of the latter’s

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334 For a detailed and enlightening analysis of the quasi-feudal exploitative functioning of the large estates, see Nahas, *Situation*, 130-49.
duties towards it would teach them that it is better to purge society from its unhealthy elements than to promote their development.\textsuperscript{335}

In spite of the fact that similar complaints about both public and private ghufarā’ had already filled the British officials’ reports for the first thirty years of the occupation, and although the ghafara had been the object of four successive reforms over the same period, the situation in the villages did not seem to have much evolved between 1884 and 1914.\textsuperscript{336} I would argue that the very persistence of this apparently dysfunctional institution – described by de Chamberet as a “joke” of “high comedy”\textsuperscript{337} – suggests both that at the local level the village authorities and notables certainly benefited more than they suffered from their collusion with these so-called “ghafīṛ-bandits,” and that, the latter playing, at little cost, a critical role in the protection of the colonial capitalist system at the national level, the British officials’ recurrent complaints about them might well have been to some extent of a rhetorical nature.

In any case, the sources tend to indicate that, while they had undoubtedly been empowered and emboldened by the authority and the weapons bestowed upon them, the accusatory rhetoric against the “ghafīṛ-bandits” seem to have simultaneously affected them negatively; making them more vulnerable, to some extent, to the sudden “unveiling” of their parallel illegal activities by discontented bosses or other local authorities, but more importantly to attacks against both their possessions and their honor by peasants trying to undermine their control. These tense power relations among mashāyikh, ghufarā’ and fallāḥīn might explain de Chamberet’s impression that “these guards guard[ed] nothing but themselves” and would mainly use their service weapons to take “their” law into their own hands.\textsuperscript{338} To illustrate the complexity and fluidity of these power relations within the village community, I have chosen two examples. The first case is that of Muḥammad al-Nakkā’ – or al-Nakkāḥ, depending on the documents – (al-‘Arabī), ghafīṛ on the estates of al-Mu’allim ʿAṭiyya al-Gharbāwī and who was sentenced to death in 1903 for the murder of ʿAbd al-Magīd Ṭāḥā Ismā’īl, one of the mu’allim’s peasant tenants whom al-Nakkā’ apparently suspected of having stolen his rifle

\textsuperscript{335} el-Kolaly, \textit{Essai sur les causes}, 327-28.
\textsuperscript{337} De Chamberet, \textit{Enquête sur la condition}, 45.
\textsuperscript{338} Ibid., 44-45.
[1902 – MN’A+]. The second case is that of Muḥammad Mitwallī Ḯbrāḥīm, the stoker and foreman for the steam irrigation pump of the village ‘umda’s brother, sent to the gallows ten years later for shooting and killing Muḥammad Ḥigāzī, a peasant who was also working as a stoker for the ‘umda and who had allegedly poisoned his murderer’s donkey [1912 - MMI].

Focusing on the interplay between orality, writing and performance, I will pay special attention to:

- how the accused subtly adapt their defense tactics to the prosecutors’ innovative interrogation methods and in particular the linguistic analysis of ambiguous expressions reported from the crime scene and the skillful confrontation of defendants and witnesses;
- how, more generally, the various actors involved (family members, colleagues and employers of the ghufarā’) negotiate issues of complicity and responsibility through shifting strategies of solidarity and betrayal before the inquirers;
- and finally how these strategies facilitate in turn the judicial and social classification of these cases as mere instances of either individual revenge or violent settling of accounts between brigands, thereby allowing to conceal both all the ambiguity of the colonial situation within the village and the intensification of the power and class struggles unfolding there.

2.4.1 “You have to bring this ‘stuff’ before sunset:” Linguistic analysis vs. simplistic dichotomy

When 22 year old ‘Abd al-Magīd Ismā‘īl is shot in the early hours of December 4th, 1902, he is still conscious enough to give a long deposition to ‘Abd al-Raḥīm Zākī, the ma‘mūr of the markaz [1902 – MN’A+: 4574-4577]. The young peasant explains that on the eve of the shooting, “al-‘Arabī Muḥammad al-Nakkā’—the ghafir in charge of the irrigation pump—came to him to inquire about his lost gun, and that in response he assured al-Nakkā’ that he had not seen it. Then, he relates a conversation that he overheard and that took place a bit later between al-Nakkā’ and Abū al-Nagā ‘Azzām, ghafir in the cotton and berseem fields of Rizq Afandī Shalabī, the ‘umda of a neighboring hamlet. The victim quotes more specifically a sentence pronounced by al-Nakkā’ in which he “swore by the divorce”339 and requested from ‘Azzām to

339 This form of swearing takes the following form: “May I be divorced from my wife, if…”
bring him the "stuff," "al-bitā'a dī," before sunset. ‘Abd al-Magīd then testifies that afterwards he saw ‘Azzām coming back from the village with a new rifle which he gave to al-Nakkā’ [1902 – MN’A+: 4574]. Both the victim and the main accused subsequently chatted, ate and smoked together till the first hours of the morning when they decided to go back to the village. At that moment, al-Nakkā’ shot ‘Abd al-Magīd, and threatened the few people who came to his rescue [1902 – MN’A+: 4575]. Following the victim’s long narrative, the police officer asks him a series of questions focusing on what appears from the beginning as the crucial elements of the inquiry: the possible motive of the crime, the nature of the relationships between the three protagonists, and last but not least the “swearing by the divorce” and the bringing of “al-bitā’a dī” [1902 – MN’A+: 4576].

These last two expressions also lie at the heart of the interrogations subsequently conducted with the two suspects, al-Nakkā’ and ‘Azzām, by the prosecutor of Shibīn, ‘Abd al-Ḥamīd Riḍā. For the latter, an analysis of the context of utterance of these idioms, as well as of the manner in which they were interpreted by the various actors, is crucial, insofar as it could allow one to establish both the premeditated nature of the murder perpetrated by al-Nakkā’ and ‘Azzām’s role as an accomplice. As early as the second round of interrogations, the prosecutor thus questions al-Nakkā’ in the following manner:

Q.: Why, when you requested the rifle from Abū al-Nagā ‘Azzām before the victim, did you swear to him [i.e. Abū al-Nagā] by the divorce that he brings the stuff, symbolizing by this phrase, "the stuff," the rifle? So, why didn’t you tell him: “get the rifle”? Was there between both of you a previous agreement about getting [it] and he declined?

A.: Yes, he read the Sūra al-Fāṭiḥa with me [to agree] on [‘Abd al-Mağīd’s] killing, and he didn’t abstain from bringing [the rifle]. It is just that I told him the stuff, because he understood and the victim didn’t understand. [1902 – MN’A+: 4606].

Following this explanation, ‘Abd al-Ḥamīd Riḍā then proceeds to interrogate ‘Azzām on his understanding of the swearing and the request for the stuff (Appendix 15). Probably convinced that these fine elements, mentioned by the victim himself, betray the culpability of both suspects, the prosecutor attempts to corner ‘Azzām in order to make him confess that when he gave his
rifle to al-Nakkār he knew exactly what the latter was up to. In order to achieve his goal, the interrogator alternates a series of open and closed questions that have all the same meaning: how did the suspect understand that by the “stuff” his colleague meant the rifle, and why did the latter “nickname” the weapon in such a way before the victim? (Appendix 15: elements in red underlined). Finally, a last rather rhetorical question translates into juridical terms ‘Abd al-Ḥamīd Riḍā’s strong suspicions that ‘Azzām participated in this “premeditated voluntary homicide” by wittingly providing al-Nakkār with the murder weapon (Appendix 15: elements in purple underlined).

While both suspects are confronted with the prosecutor’s same incisive questions, the defense strategies they adopt are quite understandably very different. While al-Nakkār answers in a manner that confirms a posteriori the relevance of the magistrate’s interrogation about the “stuff,” and seizes the opportunity to further incriminate his partner, ‘Azzām first denies having even heard the phrase, before dismissing its significance and implications (Appendix 15: elements in red non-underlined). More generally, al-Nakkār’s defense strategy from the very beginning is to present ‘Azzām as the instigator of the crime; and even if in the course of the four interrogations to which he is subjected, his attitude towards the inquirer evolves from insolence to surrender and partial confession, he will keep stressing this point till the end [1902 – MN‘A+: 4584-4588; 4606; 4615-4617]. As for ‘Azzām, his line of defense is founded on the idea that he gave his rifle to his colleague in order to allow him to protect the irrigation pump during the night, in a pure gesture of professional solidarity [1902 – MN‘A+: 4590-4591].

Moreover, he is very keen to give from the onset details about his schedule, as well as the names of witnesses whom he allegedly met at the time of the crime, and whose list keeps growing with the successive interrogations [1902 – MN‘A+: 4589-4592; 4607-4610; 4616-4617]. Among the latter, ‘Azzām mentions in particular Sayyid Aḥmad al-Ramlāwī, a man who works as khūlī or supervisor on the same estates as him (‘izbat Rizq Abū Shalabī) and who supposedly gave him the permission to lend his weapon to al-Nakkār [1902 – MN‘A+: 4608] (Appendix 15: elements in orange bold underlined). But when questioned, the witness disavows him and refutes his story [1902 – MN‘A+: 4620-4621]. Interestingly, while ‘Azzām attempts to rely on the network of the estate, al-Nakkār appeals to Bedouin solidarity. In his very last interrogation, he thus explains that he suspected ‘Abd al-Magīd of robbing his gun because “[the latter’s] hand [was] light” (yadhu khaftā), and he substantiates this claim by asserting that the peasant had already stolen...
a *diffiyya* from a certain al-Sayyid Abū Ṣabbā‘ al-‘Arabī [1902 – MN‘A+: 4617]. But once again the witness named by the suspect vehemently denies the allegations [1902 – MN‘A+: 4623-4624]. In the absence of any decisive testimony regarding both the initial theft of al-Nakkā‘’s rifle and ‘Azzām’s possible complicity in the murder, the inquiry naturally slides into the question of the main protagonists’ respective reputation, and the ambiguity of the case suddenly gives way to a very clear black-and-white picture. Regarding al-Nakkā‘ (spelt here as al-Nakkāḥ), his fellow Bedouin strongly asserts: “May his name be cut off! He is an indecent man and his way of living is indecent. He has a bad smell.” ("قطع النكاح وده رجل بطال وسيره بطال ورائحته "[1902 – MN‘A+: 4624]). The young peasant victim on the contrary is said to have been “a good man, a prince” [1902 – MN‘A+: 4622-4623]. As for ‘Azzām, he is described by the brother of his employer as having “a good reputation” and being “honest” [1902 – MN‘A+: 4622].

While the witnesses’ testimonies seem to oppose the “good ghafīr” to the bad one, the prosecutor however refutes this simplistic dichotomy and prefers to follow his intuition. Thus, in the act of indictment that he writes a few days later, ‘Abd al-Ḥamīd Riḍā officially charges ‘Azzām with complicity in the crime (Appendix 16). In this very detailed and extremely well written text, Riḍā establishes the accusation on five different elements. He first mentions al-Nakkā‘’s confession regarding ‘Azzām’s role as the instigator of the crime and the agreement that both men sealed by reciting the Fāțiḥa, and then underlines the fact that the weapon murder was brought to al-Nakkā‘ by ‘Azzām and that it belongs to him. Interestingly, the third piece of evidence mobilized in support of the indictment immediately after is the famous sentence reported from the crime scene by the victim himself and that contains the swearing by the divorce and the request for the “stuff.” Regarding this element, the prosecutor explains:

ثالثاً: ما يدل على أن إيا النجا أحضر البندقية وهو عالم بقصد النكاح هو أن إيا النجا أحضر البندقية فوراً بمجرد رمز رمزه له من محمد النكاح أي بمجرد ما خاطبه محمد النكاح بهذه العبارة "على الطلاق من الخيشة المهريدة دي لازم تجيب البنادق دي قبل المغرب" وما رمز هذا الرمز إلا الصرح هذا القول أمام المقتول حتى لا يفهم قصدهما وفيهم أبو النجا القصد من هذا الرمز لدليل على سبق وجود الاتفاق في ذهنى على القتل

Thirdly, what proves that, when he brought the rifle, Abū al-Nagā was aware of al-Nakkāḥ’s intention is that Abū al-Nagā brought the rifle immediately merely because of a sign that was given to him by Muhammad al-Nakkāḥ, i.e. merely because Muḥammad al-Nakkāḥ addressed him with this expression ‘May I be divorced from this patched tent [if you don’t] bring this stuff before sunset.’ And he wouldn’t have used this symbol, if this speech hadn’t been uttered in front of the deceased so that [the latter] does not understand their intention. So, Abū al-Nagā understood the aim from this symbol, and this is a proof

Finally and even more subtly, the prosecutor interprets ‘Azzām’s sitting with many of the villagers in the local shop, after having given his gun to al-Nakkā‘, as a precautionary measure designed to “drive the idea of evil away from him” and to open the possibility to “call [the people he met] as witnesses when necessary” [1902 – MN‘A+: 4636] (Appendix 16: elements in orange). From a similar point of view, the magistrate considers ‘Azzām’s consulting his colleague Sayyid Aḥmad al-Ramlāwī as meant to show his alleged good intention, a move all the more suspicious that the latter denied the fact (Appendix 16: elements in green).

As can be seen from this short study of the text, ‘Abd al-Ḥamīd Riḍā’s act of indictment is extremely well written and very finely built. While I have not been able to find any element regarding his background, the style and perfect grammar of all of the prosecutor’s writings in this case suggest that he received a high level education before joining the judiciary. In addition, his perspicacity and dedication seem to have subsequently earned him a brilliant career, for he reappears as ‘Abd al-Ḥamīd Riḍā Bey, counselor to the native court of appeal, in the file of Muḥammad Mitwallī Ibrāhīm tried ten years later. In the case of Muḥammad al-Nakkā‘ and ‘Abd al-Nagā‘ Azzām however, the prosecutor’s colleagues do not seem to have appreciated the subtlety of his linguistic analyses for these are fully dismissed by the judges of the tribunal. In order to found their judgment, the latter appear to have rather chosen to take into account the dichotomy between the “good” and the “bad ghafīr” drawn by some of the witnesses.

Interestingly, while all the documents prepared by ‘Abd al-Ḥamīd Riḍā (including the proceedings of the interrogations that he put down on paper himself before the arrival of a professional kātib) are written in fiṣḥā, the minutes of the trial are transcribed in ṣāmīya and reveal a very low register of language on the part of both witnesses and justice professionals. Moreover, whereas the first accused was simply designated in the prosecutor’s writings as Muḥammad al-Nakkā‘, he suddenly becomes on the day of the trial Muḥammad al-Nakkā‘ “al-‘Arabī” [1902 – MN‘A+: 4637]. Whilst al-Nakkā‘’s Bedouin identity – with all the prejudices attached to it – is thus underlined, ‘Azzām’’s story is served by the very rapid unfolding of the procedure. During an extremely hasty trial, only four witnesses are called to the stand. In addition to the three people who met the victim immediately before and after the shooting – and
none of whom saw ‘Azzām on the crime scene –, the judges hear the deposition of the brother of the latter’s employer. If both ‘Azzām’s and al-Nakkā’s respective bosses (Rizq Afandi Shalabi, umda of Ḥiṣṣat Akwā and al-Mu’allim ‘Aṭiyya al-Gharbāwī) are conspicuously absent from the inquiry and probably unwilling to get too closely associated with the case, the testimony of Rizq Afandi’s brother proves decisive. The latter explains both how the supervisor of their fields, al-Sayyid Aḥmad al-Ramlāwī, confessed to him that ‘Azzām had indeed informed him that he would give his gun to al-Nakkā for his night duty, and how al-Ramlāwī subsequently lied to the prosecutor out of fear for his children [1902 – MN‘A+: 4641-4642]. A last element that plays in favor of ‘Azzām is the pleading of his lawyer, al-Shaykh Ḥasan ‘Abd al-Qādir, who skillfully requests a not-guilty verdict on the grounds that his client had no knowledge of the intentions of al-Nakkā, and that contrary to him, he had no motive for the crime either [1902 – MN‘A+: 4642-4643].

The judgment of first instance is eventually founded on an interesting combination between the initial theft of al-Nakkā’s rifle as the motive for the crime (Appendix 17: elements in orange) and the evil nature of his soul. The president of the tribunal even goes to great lengths to explain that, while one “naturally” considers that “[such a robbery] is insignificant in itself, does not call for bloodshed,” and should have consequently been “overlooked” by the accused, “the anger of the evil soul is aroused by what does not arouse other souls, and it tends to avenge the most minor incident” (Appendix 17: elements in red underlined). In addition, the judge also underlines that, in this case more than in any other, law should be applied given not only the strength of the evidence, but also “the great horror” of a crime in which “the accused dared to shed blood that, according to the sharī’a, should have been spared340 and by annihilating an innocent life;” all this in obedience to “the whim of a soul” that did not appear to him as evil, even “after the accused had been fed and reassured by the victim” (Appendix 17: elements in purple underlined). Following this surprising reference to Islamic law, the death penalty is eventually justified not only by a strict application of the penal code, but also by an invocation of its “profound wisdom:” “a life for a life and retaliation as the precept to be followed” (Appendix 17: elements in blue underlined).

340 The crime was perpetrated during the holy month of Ramadān.
While al-Nakkā’ the Bedouin is thus accused of all evil, ‘Azzām is concomitantly cleared of all charges (Appendix 17: elements in green underlined). First, the latter’s claim that he had no knowledge of al-Nakkā’’s intentions is considered as a possibility that no evidence contradicts. In addition, the fact that ‘Azzām allegedly asked one of his colleagues for advice before lending his gun is seen as supporting his claim, for no accomplice would publicize his link to the murder. More importantly, all of the prosecutor’s analyses around the swearing by the divorce and the request for the “stuff” are dismissed on the ground that they do not constitute conclusive evidence that both accused had agreed to the crime. As for the magistrate’s interpretation of ‘Azzām’s meeting with many of the villagers, after lending his weapon to al-Nakkā’, as a precautionary measure to strengthen his defense, it is rejected as a weak element of proof. On March 25th 1903, the Ṭanṭā tribunal consequently acquitted ‘Azzām, and sentenced al-Nakkā’ to death. The latter contested the judgment, but the court of appeal considered that given the “atrocities” of the crime and its dimension of “unexpected betrayal,” no mercy could be shown; and Muḥammad al-Nakkā’ was eventually hung in the vicinity of the Minūf tribunal on October 10th, 1903 [1902 – MN‘A+: 4658; 4663-4664].

The case of al-Nakkā’ and ‘Azzām, and especially the manner in which it was tried, illustrates once again both the local notables’ and the judicial authorities’ desire to draw a veil over the ambiguity of the colonial situation in the village, an ambiguity somehow epitomized in the swearing by the divorce and the request for “al-bitā’a dī.”

In addition to the already mentioned conspicuous absence of the employers of both accused from the inquiry and the trial, it is remarkable to note that, while the murder weapon isn’t the property of ‘Azzām himself but that of his boss – the ‘umda of Ḥiṣṣat Akwā –, this fact is never investigated and no serious attempt to find the rifle is made. Furthermore, while a number of disturbing elements seem to link ‘Azzām to the crime (among which, first, the fact that, when the initial rifle robbery took place, he was actually in charge of the surveillance of al-Nakkā’’s possessions in the latter’s absence, and, second, the fact that an ammunition bag belonging to him was found in al-Nakkā’’s tent in the wake of the murder), the “good ghafir” is never really considered as a defendant in the course of the trial, and the support of his boss’s brother is sufficient to override the charges brought against him by the prosecutor of Shibīn. As for the “bad ghafir,” his being an “Arab,” a Bedouin, greatly facilitates his depiction as an “evil soul”
and the consequent classification of the case as yet another instance of the “love of revenge.” Furthermore, it offers the judges an opportunity to strengthen the legitimacy of the judicial system by invoking the *sharīʿa* and the “wisdom” of the retaliation principle against the Bedouins’ customary law and their code of (dis)honor. More importantly, the dismissal of the prosecutor’s linguistic analyses on “*al-bitāʾa dī*” to the benefit of the adoption of the simplistic dichotomy between “the good and the bad *ghufarāʾ*” also allows both to avoid questioning the responsibility of the local notables in maintaining a highly problematic institution, and to draw the ideal picture of a healthy and harmonious rural community that merely needs to be cleared of its bad elements.

### 2.4.2 “We eat bread and salt together, and the living is better than the dead:” Solidarity, confrontation, and betrayal

While in the case of al-Nakkāʾ and ʿAzzām, the ʿumda/boss is conspicuously absent, he is almost omnipresent in the file of Muḥammad Mitwallī Ibrāhīm who is tried for the murder of Muḥammad Ḥīgāzī in 1912 [1912 – MMI]. On August 3rd of that year, it is indeed Maḥmūd Bey Sūsā, the ʿumda of Kafr al-ʿĀmira near Minūf, who first notifies the *maʾmūr* of the *markaz* of what happened to Muḥammad Ḥīgāzī, one of “his” peasants who was also working as a stoker (*waqqād*) for his steam irrigation pump. In the initial report, written by the Bey following the declaration of Ibrāhīm Zaʾlūk, the agricultural supervisor (*khūlī al-zirāʾa*) of his estates, there is however no question of murder. The glass of the device measuring the pump water is said to have broken and to have hit Muḥammad Ḥīgāzī, seriously injuring him [1912 – MMI: 3344]. A second report is sent by the ʿumda a few hours later to inform the authorities of the death of the victim, but again there is no mention of any element that might suggest a suspicious death. Upon the arrival of the police superintendent and the health inspector in the village the next day, a radically different version of the facts nonetheless emerge rather abruptly: the victim was shot by a pre-fragmented bullet that opened his skull, left him with other wounds in the chest, right side and right arm, and eventually broke the twenty centimeter long pump glass [1912 – MMI: 3346]. While the ʿumda himself is not immediately questioned, the explanation provided by the five people present on the crime scene for the discrepancy between the initial notification and what seems to have actually happened is enlightening.
Interestingly, almost all five witnesses are ghufará’ of one kind or another employed by the ‘umda, and almost all of them possess weapons: as previously mentioned, Ibrāhīm Za’lūk is the agricultural supervisor of the Bey’s estates; Bahnašī Sha’lān is both a fallāḥ and the ghafīr in charge of the distribution of the irrigation water; Sulaymān al-‘Arabī is the ghafīr in charge of the pump itself; Aḥmad al-Ṭūkhī is both a fallāḥ and a stoker; and Mitwallī Ibrāhīm happens to be the pump foreman (‘ustā al-wābūr) and the father of the main suspect. When interrogated by Ibrāhīm Mumtāz, the representative of the public prosecutor’s office in Minūf, Bahnašī Sha’lān describes with much detail how he saw the suspect, Muḥammad Mitwallī Ibrāhīm, shoot Muḥammad Ḥigāzī with a rifle before fleeing towards the fields. He then asserts that when he tried to pursue the attacker, the latter’s father discouraged him from doing so by declaring: “there is no need for scandal, so [just] say that the glass suddenly came into him. And we, we eat bread and salt together [i.e. We are going through thick and thin together].” [1912 – MMI: 3350-3351]. The witness then explains that, “given the fact that [they] were sitting together,” the people present “endorsed his word” by saying: “There is no need. The living is better than the dead.” [1912 – MMI: 3351] (Appendix 18).

If Bahnašī Sha’lān, along with Sulaymān al-‘Arabī, suggests that both the sharing of a common condition ("واحنا ناس مع بعض") and the idea that further loss of life should be avoided ("الحي أفضل من الميت") account for the witnesses’ solidarity with the murderer’s father, Ibrāhīm Za’lūk insists for his part on the group’s alleged fear of reprisals from the suspect and his family. After a description of the events that is very similar to that of his colleagues, he thus declares:

I told Sulaymān: “let’s go, inform the ‘umda.” So, we went and informed him. And we told him [that] the glass came into Muḥammad Ḥigāzī and killed him. And we didn’t mention to him the gunshot because we were afraid to say that, since some of us go back and forth at night, and the kid Muḥammad is a brigand. He was previously accused of the murder of a Bedouin, [and] he, his brother Muṣṭafā, and their brother-in-law ‘Abd al-Salām are among the thieves, and it is marked in his body. And of course, he has to be a brigand, because this is what we hear about him. And Mitwallī, when he told me: “it’s [the] glass,” I couldn’t answer him back and tell him “it’s a gunshot” out of fear from him because he’s a brigand by reputation. [1912 – MMI: 3356].

قلت لسليمان بلي نخير العمة فرحنا أخبرنا وقلنا له الفضيحة جأت في محمد حجازي موته و لم نذكر له العيار الناري لأنه خفنا نقول ذلك لأن الواحد منا راهج جاي بالليل و الولد محمد شفي و سبق إنهم في قل واحده عبري هو وأخوه مصطفى ونسبهم عبيد السلاطين من السلاطين ومضروب في جسمه وطبعا لازم يكون شفي لأننا نسمع عنه كنه و متولي لما قال لي ه فضيحة ما قدترش أردي عليه و أقوله دا عيار ناري خوفنا منه لأنه شقي بالسمعة.

I told Sulaymān: “let’s go, inform the ‘umda.” So, we went and informed him. And we told him [that] the glass came into Muḥammad Ḥigāzī and killed him. And we didn’t mention to him the gunshot because we were afraid to say that, since some of us go back and forth at night, and the kid Muḥammad is a brigand. He was previously accused of the murder of a Bedouin, [and] he, his brother Muṣṭafā, and their brother-in-law ‘Abd al-Salām are among the thieves, and it is marked in his body. And of course, he has to be a brigand, because this is what we hear about him. And Mitwallī, when he told me: “it’s the glass,” I couldn’t answer him back and tell him “it’s a gunshot” out of fear from him because he’s a brigand by reputation. [1912 – MMI: 3356].
Here, the khūlī’s revelations about the reputation of the suspect’s family are very telling, insofar as, in the absence of any recorded judicial antecedents, the witness underlines the weight of the village rumor and presents it as compelling evidence. His suggestion that he and his colleagues covered up the crime for fear is however inconsistent with the ghufarā’’s rather confident attitude when confronted with Muḥammad Mitwallī.

In the course of the face-to-face encounter organized by the representative of the public prosecutor’s office, Sulaymān and Bahnaṣī do not hesitate to address the suspect directly, not only strongly maintaining that “[they] saw [him] with [their] own eyes,” but also advising him to tell the truth [1912 – MMI: 3358]. As the latter subsequently persists in his denial, the ghufarā’ even begin to pressure him through a series of questions that take exactly the form of a magistrate’s interrogations – “Aren’t you the one who...?” – and allow them to reveal yet more incriminatory details about the events [1912 – MMI: 3358]. The impact of the confrontation on the suspect is such that, after a long silence, he is eventually forced to abandon his denial strategy, and launches into a lengthy narrative aimed at presenting the death of Muḥammad Ḥīgāzī as accidental [1912 – MMI: 3358-3359].

In addition to breaking down the ghufarā’’s communal solidarity, the confrontation techniques employed by Ibrāhīm Mumtāz, along with his other interrogation methods, affect the cohesion of the suspect’s family itself. Thus, while the father, Mitwallī Ibrāhīm, begins by firmly reaffirming the story of the broken glass, the inquirer’s revelation that his son has already confessed to shooting the victim accidentally leaves him almost voiceless [1912 – MMI: 3362-3363]. He is subsequently led by the skillful magistrate to acknowledge that the rifle found by the police at his son-in-law’s actually belongs to his son, and that he had hidden it out of fear from the authorities (al-ḥukūma) [1912 – MMI: 3363]. More interestingly, in an attempt to explain the presence of the weapon, the father ends up declaring that his son does not have a permit for his gun, that he brought it to hunt, and that he is a brigand (shaqī) [1912 – MMI: 3363].

It is this same portrait of Muḥammad as a brigand, first depicted by Ibrāhīm Za‘lūk and subsequently alluded to by his father, that is completed by the ‘umda himself when he is eventually interrogated by Ibrāhīm Mumtāz, the inquirer. After a painstaking but rather doubtful narrative aimed to substantiate the claim that he unwittingly presented the case as an accident to
the authorities, Maḥmūd Bey Sūsa reiterates his khūlī’s version of the facts, and explains that his workers concealed the truth from him firstly by fear of Muḥammad the “brigand,” and secondly because of his father’s request not to reveal the whole “story” (ṣīra) [1912 – MMI: 3371-3372] (Appendix 19: elements in blue).

Then, when asked whether Muḥammad Ḥigāzī had been at his service for a long time, the ʿumda launches into a defensive response meant to justify his ambiguous relationship not to the victim but rather to the suspect [1912 – MMI: 3372] (Appendix 19: elements in orange). While he underlines that “Muḥammad Mitwallī was also working for [him], and [that he] expelled him a few times because of his ‘bad lifestyle,’” Maḥmūd Bey conveniently forgets to mention that, when the crime happened, the suspect was in fact employed by his brother, Aḥmad Sūsa, as a stoker (ʿatashgī) and foreman for the latter’s irrigation pump, and that it is at his workplace that he was eventually apprehended [1912 – MMI: 3359; 3375]. To give credit to the idea that he has long distanced himself from the suspect, the ʿumda specifies that he had even threatened to fire Muḥammad’s father if the latter didn’t send his son away, and he turns to him in a very paternalistic manner requiring the confirmation of his statement [1912 – MMI: 3372] (Appendix 19: elements in orange underlined).

More interestingly, when questioned about the respective reputation of victim and suspect, the sixty year old patriarch asserts that both were known for troubling people, destroying crops and poisoning cattle. In addition, to substantiate his claim that “a day before the incident, [he] found [Muḥammad] at [his] brother’s pump and expelled him for [he] knew about his bad behavior,” Maḥmūd Bey directly addresses his (allegedly ex-)employee demanding again the corroboration of his declaration [1912 – MMI: 3372] (Appendix 19: elements in red underlined).

Finally, after depicting both parties as brigands, the ʿumda provides the motive of the crime that fits best into his narrative: "الثأر" or the revenge. Invoking “the recurrent rumor [found] on the tongues of the people” ("الإشاعة المتواترة على ألسنة الناس"), he points both to Muḥammad Mitwallī’s female donkey, that was allegedly poisoned by Muḥammad Ḥigāzī, and to a fight in which the latter is supposed to have been implicated and during which the former’s brother-in-law, ‘Abd al-Salām al-ʿArabī, was injured [1912 – MMI: 3372-3373] (Appendix 19: elements in green). Following the Bey’s testimony, the stories of the poisoned donkey and the attack on the Bedouin
brother-in-law are confirmed first by the witness’s three private ghufarā’ (Ibrāhīm Za’lūk, Bahnaṣī Sha‘lān and Sulaymān al-’Arabī) and then, by the shaykh of the local public guards and two of the village mashāyikh (including a younger brother of the ‘umda/Bey) [1912 – MMI: 3373-3377].

Although the representative of the public prosecutor’s office had initially ordered the detention of both Mitwallī Ibrāhīm and Muḥammad Mitwallī and in spite of the evidence incriminating the former (if only in his attempt to cover up the crime), the ‘umda’s influence seems to have been strong enough to lead Ibrāhīm Mumtāz to immediately release the father while requesting the prolongation of the son’s imprisonment on charges of premeditated voluntary homicide [1912 – MMI: 3373-3377]. Two weeks later, the inquirer consequently shapes his prosecution report on the classical “revenge model” by beginning his narrative with the stories of the poisoned donkey and the beaten brother-in-law and concluding it by the suspect’s partial confession and the multiples changes in his statements induced by his confrontation with various witnesses [1912 – MMI: 3394-3395].

In this power struggle between the ‘umda and his worker, Muḥammad Mitwallī does not, however, remain helpless, and he seizes the opportunity of an additional interrogation by the Juge de Renvoi ("قاضي الإحالة") – who rules on the nature of the court to which the file should be transferred – to assert that “Maḥmūd Bey Sūsa is the one who incited [the witnesses] to testify [against me]” [1912 – MMI: 3408]. Questioned on his partial confession before the representative of the public prosecutor’s office, he further explains: “The Bey asked me, and he is the one who dictated that to them” [1912 – MMI: 3408]. While at the trial the three ghufarā’’s testimonies then strikingly focus not only on the poisoned donkey and the beaten brother-in-law but also on threats against the victim allegedly uttered by the defendant before the crime, Muḥammad Mitwallī’s lawyer raises again the idea of the Bey pulling the strings of the case, and requests both a not-guilty verdict and a reclassification of the crime as accidental manslaughter [1912 – MMI: 3411-3415]. The members of the court, however, followed the rather neat narrative already developed by Ibrāhīm Mumtāz, the prosecutor. The text of the judgment itself thus elaborates on the theme of the individual revenge ("إنتقام") and of the rage ("الغيظ") provoked mainly by the poisoning of the defendant’s donkey and to a lesser extent by the supposed implication of the victim in his brother-in-law’s beating [1912 – MMI: 3419]. On
the basis of this analysis, Muḥammad Mitwallī Ibrāhīm was sentenced to death by hanging on January 14th, 1913, and, after the refusal of the court of cassation to overturn the verdict, he was eventually executed on March 16th of that same year.

In this case, the evolution of the relationships between Ibrāhīm Mumtāz, the prosecutor, Maḥmūd Bey Sūsa, the ‘umda/boss, and “his” ghufarā’ and other khūliyyīn, usṭawāt and ‘aṭashgiyya, throughout the procedure – in particular as revealed through the various confrontations orchestrated by the magistrate –, perfectly illustrates how the different actors played with the dynamics of the inquiry and the trial to prevent any questioning of the fundamental ambiguity/hypocrisy of the colonial situation at the local level.

After the ghufarā’’s initial attempt to cover up the crime – a initiative most probably motivated by solidarity rather than fear and undoubtedly supported by the ‘umda/boss –, the Bey is able to progressively impose a strategy of partial unveiling of his employees’ “bad behaviors.” The powerful depiction of both accused and victim as brigands, associated with a careful narrative of distanciation of the patriarch from his “disreputable” workers, allows him not only to “save” the defendant’s father but also and more importantly to circumscribe the event. While the close focus on Muḥammad Mitwallī Ibrāhīm and his personal revenge undeniably drives away the suspicions surrounding his father (the foreman of the Bey’s pump) and his brother (stoker for the pump of ‘Alī Afandī Ṣabrī in a neighboring village), it also pushes to the background the question of the responsibility of the local notables in hiring and arming potentially dangerous individuals. Thus, as in the case of al-Nakkā‘ and ‘Azzām, the issue of the origins of the murder weapon, as well as the question of why the defendant was permitted to illegally carry a gun on a daily basis, are never really addressed [1912 – MMI: 3374]. Finally, the classification of the case as a mere settling of accounts among brigands (a fallāḥ/stoker, an ‘usṭā wābūr, and a badawī) allows the different actors involved to overlook the bigger picture of the general violence associated with the intensification of power and class struggles in the countryside, and ultimately to safeguard the whole system of the local elites’ exploitation of both workers and resources. In that sense, the image of the irrigation pump guarded by four armed “ghufarā’-brigands” whose mission is to ensure that none “steals” the Bey’s water, is particularly telling.
2.5 The law of “bad reputation” and the honor of the “ghafīr-bandit”

While the task of the ghfarā’ in the estates was both to guard their employers’ crops, cattle, and water, and to deter any sort of resistance against the exploitative management of the domain, the mission of their counterparts who patrolled the villages was more widely to ensure “order” in the countryside. The British had initially claimed that a major dimension of their project for Egypt was to liberate its peasantry, but there is no doubt that their understanding of the preservation of order in the villages meant both to safeguard the foreign and native local notables’ interests and to guarantee the safety of the occupation troops marching through the Delta. In other words, it meant the protection of the colonial situation itself in all its ambiguity.

As previously mentioned, the institution of the ghafara predated the occupation, but with the rapid increase in the rate of rural crime that ensued, it soon became the target of reform. Conceiving of it as “a cheap and decentralized partial solution to its problems,” the government of Nūbār Pasha reorganized the system as early as 1884. The law of November 10th, 1884, provided that the ghfarā’ would henceforth be chosen by a village security council presided by the ‘umda and composed of “the [mashāyikh] of the district, a delegate of the [qāḍī], and from four to eight notables.” The guards would still be paid by a tax levied on the villagers themselves, and their salaries would be raised to “30 piasters per month for each [ghafir], 45 piasters for the [ones] on patrol, and 75 piasters for the [mashāyikh al-ghafar].” In addition, a number of measures were to address the issues of the ghfarā’’s inefficiency and of their collusion with the brigands. The guards would be officially registered, and would have to supply a financial guarantee. They would also be inspected, punished in case of negligence, and “held mutually responsible if a crime took place in the village and they could not ascertain its perpetrator.”

341 Tollefson, Policing Islam, 29.
342 A supplementary law was subsequently passed on February 11th, 1885 with the aim of extending the implementation of the system to the poorest and smallest communities. Ibid., 35.
343 Ibid.
344 Ibid., 31.
345 Ibid., 30.
In spite of these provisions, the British officials remained very critical of the institution, and soon undertook an “Indianization” of the system through a series of laws and decrees passed in 1889-1890, 1896, and 1903-1904.\textsuperscript{346} The recurrent elements of these successive reforms can be summarized as follows: an increased surveillance of the ghufarā’, a stricter selection (quality rather than quantity), the supply of service weapons, and pay raises\textsuperscript{347}. The latter element constituted the cornerstone of the first reforms, and in 1903, after inquiring into why the ghufarā’ of the Minūfiyya were not able to prevent the spread of cattle poisoning and crop destruction, Colonel Harvey Pasha, the Director of the Anthropometric Bureau and Commandant of the Cairo police, would once again reach the same conclusion: “All [the low salaries offered to the guards] could attract were the dregs of society; they were unreliable in detecting crime and were susceptible to bribes to commit crimes.”\textsuperscript{348} On the basis of his analysis, an experiment involving the selection of the ghufarā’ by a British inspector and the provision of higher salaries was subsequently launched in the six villages of the Minūfiyya with the worst crime records, and in early 1904, these measures were generalized to the rest of the province.\textsuperscript{349}

By thus focusing on the idea of changing “the people” rather than the organization and by emphasizing the necessity to cleanse the institution through discriminating between “good” and “bad” guards, the rhetoric behind the reform actually allowed one to conceal the internal contradictions of a system supposed to simultaneously ensure the preservation of “order” in the villages and the perpetuation of a highly exploitative and oppressive situation. But at the same time, by leaving the institution in the hands of the ‘umad, most of whom were still officially considered as “dishonest” or “incompetent,” the various reorganizations of the ghufarā’ initiated by the colonial authorities did contribute to an exacerbation of these very contradictions. The phenomenon reached its peak in the wake of the Dinshawāy “incident,” when local authorities and notables, both emboldened by the support of the British and fearful of the spread of unrest in the countryside, lobbied the colonial state to adopt two extremely

\begin{footnotes}
\footnote{346} Ibid., 53.
\footnote{347} Ibid., 55-57, 63-66, 104-5, 117-29.
\footnote{348} Ibid., 118.
\footnote{349} Ibid., 119.
\end{footnotes}

The “Law imposing police surveillance upon particular individuals,” or law of “bad reputation,” was designed in early 1909 under the pressure of both foreign and Egyptian notables. It stipulated that the “bad characters” of the villages having demonstrated anti-social tendencies – notably through a “criminal” way of life – could be sentenced to “up to five years of police supervision in their districts” along with the obligation “to provide a monetary guarantee of their good behavior.” Furthermore, “if they could not provide [the latter] guarantee, violated the terms of the police supervision, or committed a crime, the authorities would send them to a penal colony in the [Kharga] oasis in the Western Desert.” As early as January 1909, lists of “suspects” were drawn up by committees including ‘umad and local notables. By the summer, they comprised the names of 12,000 people, but were subsequently reduced to the 286 “most dangerous” individuals. In August and September, special commissions established on the model of the “Commissions of Brigandage” were set up, and sentenced 281 of the accused to police supervision on the basis of “prior criminal records, the testimony of witnesses, and cases in which the accused was acquitted but the evidence against him strongly suggested his guilt.” The penal colony of Kharga consequently grew from 272 prisoners in early 1911 to 500 in early 1912. The Police Supervision Law constituted an additional and highly significant step in the process of moralization of the law, insofar as it granted local authorities and notables the ultimate right to discriminate between “good” and “bad” people. In addition to exiling a few individuals who might have been a “threat” to the security of the villages, the law also, and maybe primarily, allowed authorities to discipline nationalist activists, recalcitrant workers, and the ‘umad’s enemies, with the added irony that until the end of the period some of the local notables continued to recruit their ghufarā’ among the “bad characters.” The law unsurprisingly initiated a vicious circle of violence, revenge and repression, and was eventually abandoned in 1912.

350 Ibid., 145.
351 Ibid., 145-46.
352 Ibid., 146.
353 Ibid., 146.
Along with the law of “bad reputation,” the colonial authorities were working on a project of militarization of the ghufarā’, an idea that had been suggested to the government by both the Legislative Council and a number of leading nationalist figures.\textsuperscript{355} The official rationale behind the reform was to improve the village guards’ efficiency in repressing and deterring crime through the introduction of the military discipline to which policemen were already subjected to.\textsuperscript{356} The law passed in July 1909 was first applied on a small scale in the Qalyūbiyya province in the Spring of 1910, and the experiment was to be progressively extended to the whole country. New ghufarā’ were recruited, trained in army camps, and equipped with Remingtons.\textsuperscript{357} As in the case of the Police Supervision Law, however, the contradictions inherent to this measure were soon to prevent its full implementation. While the reform was meant to discipline not only the guards, but the entire countryside, and to ultimately protect the colonial situation as a whole, the British became gradually worried that “a militarized \[ghafīr\] force might turn against them.”\textsuperscript{358} In the Summer of 1910, the new adviser to the Ministry of Interior consequently opted for a “partial demilitarization” of the training, and, in the following months, he was to keep a very close eye on the institution.\textsuperscript{359} Overall, the reform was so ineffective that “in 1912 Alfred Cunningham, the author of \textit{Today in Egypt: its Administration, People, and Politics}, suggested a total disbanding of the \[ghufarā’\] and its replacement with the police constabulary.\textsuperscript{360}” More than two decades later, Lord Lloyd, who served as the British high commissioner in the 1920s, would even go as far as declaring: “The Ghaffir force was not by any means free from the suspicion of criminal activities, and to instruct it in the use of rifles was a doubtful first step in the prevention of crime.”\textsuperscript{361}

Against the background of these exacerbated contradictions, I argue that the colonial rhetoric on the reform of the ghufarā’ did have an impact on the fallāḥīn of the Minūfiyya, leading them to

\textsuperscript{355} Ibid., 142-43.
\textsuperscript{356} Ibid., 147.
\textsuperscript{357} Ibid., 148-49.
\textsuperscript{358} Ibid., 149.
\textsuperscript{359} Ibid.
\textsuperscript{360} Alfred Cunningham, \textit{Today in Egypt: Its Administration, People, and Politics} (London: Hurst and Blackett, 1912), 89-90, as cited in Ibid., 164.
\textsuperscript{361} Lord George Lloyd, \textit{Egypt since Cromer}, vol. 1 (London: Macmillan, 1933), 155, as cited in el-Kolaly, \textit{Essai sur les causes}.
take the security of the villages in their own hands by organizing in patrols,\(^3\) and encouraging them to oppose to some extent the “brigands” hired as guards by the local notables. Besides the above-mentioned case of Muḥammad Mitwallī Ibrāhīm whose possessions and honor were threatened by a simple fallāh in spite of his father’s protection, the latter argument is suggested by the analysis of two other cases of ghufarā’-brigands whose honor was insulted by members of the village community in 1912 and 1913. The first case is that of Barūd Ḥammad al-‘Arabī, agricultural ghafīr for the ‘izba of Mursī Bāshā Abū Gāzya, who shot to death Muḥammad Ḥaggāg, the ‘izba’s supervisor, for having tried to oppose his misdeeds, objected to his possessing dangerous dogs, and last but not least called him a “gypsy” ("غجر") [1913 – BH‘A]. The second case is that of the three ‘Aṭiyya Ḥammād brothers, ‘Abd al-‘Aẓīm the ghafīr, ‘Abd al-Ḥāris the brigand, and Muḥammad the young married man, who all became the shame of the village after the local religious Shaykh allegedly cast a spell on Muḥammad and made him impotent [1912 – ‘A’AH+]. As I will demonstrate in what follows, this latter story also sheds light on how the ghufarā’-brigands creatively adapted to the effects of the colonial rhetoric against them by raising the figure of the “ghafīr-criminal” who avenges his honor to the status of hero and by developing through this image a dynamic of emulation in violence.

2.5.1 “You made us like the women in the hamlet:” Spell, sexual impotence, and the ghufarā’-brigands’ honor

When interrogated by the ma’mūr of the district of Talā on July 25\(^\text{th}\), 1912, Quṭb ‘Alī Mu’tī the shaykh al-ghafar recounts his version of the death of al-Sayyid Ḥammād, a (probably Sufi) Shaykh of the hamlet [1912 – ‘A’AH+: 3178-3180] (Appendix 20). Yes, the murder weapon is the Remington rifle provided by the state ("الحكومة") to the ghafīr ‘Abd al-‘Aẓīm ‘Aṭiyya Ḥammād, but the murderer is the latter’s brother, ‘Abd al-Ḥāris, the “brigand.” Relying on two eyewitnesses of the crime, he describes how immediately after having shot the victim, the accused ran into his nearby house along with his two brothers, ‘Abd al-‘Aẓīm and Muḥammad, and how they locked themselves up there [1912 – ‘A’AH+: 3177-3178]. He then proceeds to the heart of the matter: the motive of the crime. Quoting the declarations of al-Sayyid Ḥammād himself before he succumbed to his injuries, the shaykh al-ghafar explains how at the moment of

\(^3\text{Ibid., 171.}\)
the crime the three brothers were requesting from the victim – who was also their uncle – to unknot the spell ("فك رباط محمد" - هو مربوط - "عند الحريم") and that they believed had been cast by the Shaykh. As the latter answered that he was not responsible for Muḥammad’s condition and that he could not do anything to help him, ‘Abd al-Ḥāris got angry, fetched the rifle, and shot him [1912 – ‘A’AH+: 3178] (Appendix 20: elements in orange).

In the course of the interrogation, Qutb ‘Alī Muṭī reveals further very interesting details about the case. He first asserts that nineteen year old Muḥammad had become impotent upon getting married four months earlier, and that the Shaykh had genuinely tried to solve his problem – going as far as taking him to the prostitutes ("المومسات") in Ṭanṭā and giving him some medication – but to no avail [1912 – ‘A’AH+: 3178-3179] (Appendix 20: elements in red). Invoking the rumor ("الإشاعة") circulating in the hamlet, he then explains that the victim was believed to have bewitched Muḥammad in order to force him to divorce his wife, Ṣiddīqa, and marry her to ‘Uqqāb Maʿrūf Ḥammād, one of his “farmers” ("مزارع") [1912 – ‘A’AH+: 3179] (Appendix 20: elements in blue). Regarding Muḥammad’s recent marriage, the shaykh al-ghafar indicates that the three brothers had already divorced Ṣiddīqa from a previous husband to marry her to Muḥammad, and that they were consequently all the more “ashamed of the spell” ("مكسوفين من ربط أخينهم") [1912 – ‘A’AH+: 3179-3180].

The details regarding the marriage plans of the various actors unveiled by the other witnesses in the course of the police inquiry shed light on a seldom-explored dimension of the power struggles playing out in the villages. Thus, we first learn from the local butcher that after her divorce, Ṣiddīqa had actually been briefly engaged to ‘Uqqāb before Muḥammad married her [1912 – ‘A’AH+: 3191]. The two “lovers” subsequently reveal that in spite of the Shaykh’s influence and affluence – he was “a rich man who own[ed] twenty-five feddan” –, Ṣiddīqa’s parents agreed to ‘Abd al-‘Aẓīm’s plan to marry her to (her cousin) Muḥammad because her sister was already living with the three brothers as the ghafīr’s wife, and more importantly because the former were wealthier than (her other cousin) ‘Uqqāb [1912 – ‘A’AH+: 3192-3194; 3217]. Regarding this last point, while both Muḥammad and ‘Uqqāb present themselves to the inquirer as fāllāḥīn, the latter is referred to by many witnesses as the Shaykh’s “man” ("راجله") or “servant” ("خادمه"), while the former is understood to be working on the land owned by his
family under the supervision of his brother ‘Abd al-Ḥāris, the “boss of the fields” ("رئيس الغيط") [1912 – ʻA‘AH+: 3184, 3186, 3188, 3191, 3192, 3194, 3218]. The conflicting marriage plans that constitute the background story of the Shaykh’s murder betray not only the complexity of the strategies for social advancement at work even within extended families, but also the acuteness of the related struggles that are played out around questions of honor and women. But, while the latter seem to be considered as resources (almost in the same way as land, water, and cattle) and tend to appear as passive objects that are married, divorced, engaged to one and eventually remarried to another according to the will of the various families’ men, the figures of both Muḥammad’s wife and his mother suggest another picture.

Thus, although she has been strictly instructed by ‘Abd al-Ḥāris, her brother-in-law, to accuse her husband of the crime, twenty-seven year old Ṣiddīqa immediately discloses to the maʾmūr what she witnessed inside the house the night of the murder: ‘Abd al-Ḥāris is the one who took the service weapon from her room and came back with it after she heard the gunshot, and the three brothers subsequently agreed in the corridor to collectively accuse Muḥammad [1912 – ʻA‘AH+: 3193]. Interestingly, she also distances herself from the rumors regarding the victim’s alleged responsibility in her husband condition, explaining that these were the sayings of the three brothers, and that the Shaykh did not “write” spells [1912 – ʻA‘AH+: 3193; 3217]. Finally, by revealing how both ‘Abd al-Ḥāris and Muḥammad proudly reported to their mother that “[they] shot him in the face,” she is the one to allude to the role that the matriarch of the family might have played in the crime by inciting her sons to avenge their honor [1912 – ʻA‘AH+: 3193; 3216]. Ammūna, the sixty-year-old mother of the accused appears indeed as a very influential woman. Questioned for the first time by Sayyid Afandī Muṣṭāfā, the assistant prosecutor in Shibīn, the matriarch engages in a struggle with the magistrate, directly accusing Muḥammad, interrupting the inquirer to virulently deny any kind of agreement among the three brothers, and refusing to answer any further question when realizing that she said too much [1912 – ʻA‘AH+: 3218-3219]. Finally, she underlines the victim’s responsibility for her son’s condition, strongly asserting that: “[the Shaykh] could tie the whole hamlet [with a spell] and deprive them of the pleasure of women” ("يمكنه يربط الكفر كله ويحرمهم من لذة النساء") [1912 – ʻA‘AH+: 3218].
According to Muḥammad, it was yet another woman, ‘Uqqāb’s mother, who actually instigated the spell out of anger to see her son’s marriage plans thwarted [1912 – ‘A‘AH+: 3199]. But that is not to say that magic charms, bewitchment, and the supernatural were an exclusively female domain, since the young married man reveals how he went several times to seek the help of male clairvoyants who by “opening the sand” ("فتح الرمل") allegedly gave him a precise physical description of the man who had enchanted him, a description that (conveniently) perfectly matched the Shaykh al-Sayyid [1912 – ‘A‘AH+: 3199] (Appendix 21: elements in green).

Gender roles are ultimately blurred in this case by the spell itself and the symbol it conveyed. The manner in which the charm was actually interpreted by the three brothers and the rest of the hamlet community is probably both best expressed and encapsulated in the threats against the Shaykh uttered by ‘Abd al-Ḥāris just before shooting and reported by his younger brother: “you, why don’t you free Muḥammad, my brother, [from the spell]? No impotent man ever came out of us. You want to make us [like] women in the kafr!” ("إنت ليه ما بتفكش محمد أخي أحنا ما طلعتش فيها واحد محلول") [1912 – ‘A‘AH+: 3201] (Appendix 21: elements in red).

Before Muḥammad’s first interrogation by the police, this last allegation thrown by ‘Abd al-Ḥāris against the Shaykh had already been mentioned by the three main eyewitnesses of the crime, two peasants (Ibrāhīm Shinayshin Ḥammād and Al-Kūmī Jāhīn Ḥammād) and the local butcher (Gābir Zalaṭ). The expression “You made us like the women in the hamlet!” ("أنت خلتنا زي النساء في الکفر") is thus repeated several times in their testimonies both before the police officer and the assistant prosecutor, as a summary of the case emphasizing the feeling of humiliation felt by the brothers and substantiating the motive of the crime [1912 – ‘A‘AH+: 3188; 3190; 3191; 3206; 3213; 3214]. Concomitantly, the various depositions – and more specifically among the latter that of the butcher – also emphasize the direct link between the brothers’ shameful state and the fact that they had initially prevented ‘Uqqāb, the poor fallāḥ, from proceeding with his plan to marry Ṣiddīqa [1912 – ‘A‘AH+: 3191]. The content, strength, and extent of the rumor cited by all the witnesses does not leave any doubt about the fact that most inhabitants of the hamlet were secretly “laughing” at Muḥammad – as his wife allegedly used to do every night –, and were interpreting his sexual impotence as both a punishment for and a revenge against the brothers’ mistreatment of ‘Uqqāb, a weak member of the community whom they had wronged, in spite of his being protected by the “good” ("طيب") and rich Shaykh [1912 – ‘A‘AH+: 3206]. Although al-Sayyid Ḥammād himself kept claiming that he had no knowledge of magic charms,
the villagers were prompt to attribute the cause of the young married man’s condition to him. Within this context of tense social struggles in the hamlet, the “Shaykh’s spell,” along with the ruthless rumor that accompanied it, was indubitably perceived by all as an attack on the honor, and hence power, of the “ghufarā’-bandits” family.

Although the witnesses of the crime clearly identified ‘Abd al-Ḥāris as the murderer, the whole family was indeed more or less involved. In addition to the fact that the killer had used the service weapon of his brother, the shaykh al-ghafar reveals at the very beginning of the inquiry that the three brothers were present on the crime scene, that they all ran back home after the gunshot and locked themselves up, and that, when first questioned by the ‘umda, they used the “stratagem” (حيلة) of collectively accusing Muḥammad for the latter is “impotent,” “does not have children,” and “is the cause of all that happened” [1912 – ‘A‘AH+: 3179-3180] (Appendix 20: elements in purple). When interrogated about ‘Abd al-Ḥāris’s likelihood to have perpetrated the murder merely on the basis of his conviction that al-Sayyid Ḥammād had bewitched his brother, the shaykh al-ghafar answers that given the accused’s bad reputation and morals, he would not shy away from such a deed [1912 – ‘A‘AH+: 3180] (Appendix 20: elements in green underlined). Regarding ‘Abd al-‘Aẓīm’s potential implication in the crime, he indicates that he does not know about it, but specifies that the ghafīr was “very concerned with his brother’s spell” and that the three brothers might have well agreed to the murder [1912 – ‘A‘AH+: 3180] (Appendix 20: elements in green non-underlined).

While the issue of the brothers’ respective responsibility appears to have been very blurred, the testimony given by the ‘umda immediately after that of the shaykh al-ghafar already leads the inquirer towards a conveniently dichotomous picture. When questioned about the behavior (سير) and (سلوك) of the three accused, the seventy year old mayor exclusively focuses on ‘Abd al-Ḥāris, asserting that his way of life is “very indecent” (سيره بطال جدا) and that his name is recorded on the hamlet’s “register of suspects” (ومكتوب في كشف المشبوهين), the infamous list of “bad characters” that accompanied the law of “bad reputation” [1912 – ‘A‘AH+: 3182]. Later in the inquiry, the main suspect’s criminal profile is further expanded with his own revelation to the assistant prosecutor that “fifteen years earlier” (in fact seven) he had been convicted for burglary [1912 – ‘A‘AH+: 3224; 3234]. But while these few element tend to suggest once again a “neat”
distribution of the roles among ‘Abd al-‘Azīm, the honest ghafīr, ‘Abd al-Ḥāris the evil bandit, and Muḥammad the impotent young married man, another factor disturbs the picture: the murderer’s own perception of his act.

2.5.2 “If [he] does not free [my brother] from the spell (...), I’m gonna do to you like the affair of ‘Alī Bilāl from Ṭūkh.” The “ghafīr-criminal” avenging his honor and the restoration of the colonial order

A few days before perpetrating the murder, ‘Abd al-Ḥāris had already threatened the Shaykh indirectly through the intermediary of two fallāḥīn to whom he had delivered a crucial message. According to their testimonies, while both protagonists were chatting with the main accused in front of the irrigation pump one afternoon, the latter asked one of them to warn al-Sayyid Ḥammād by telling him that “if he did not free his brother [from the spell], he [‘Abd al-Ḥāris] would make in the village an affair like the affair of Ṭūkh made by ‘Alī Bilāl” [1912 – ‘A‘AH+: 3186]. As we subsequently learn through the explanations provided by the witnesses to the police officer, ‘Alī Bilāl, the shaykh al-ghafar of the village of Ṭūkh (located in the neighboring province of Qalyūbiyya), became infamous in the region around 1909 for killing two of his relatives and wounding seven others by shots fired with his service weapon [1912 – ‘A‘AH+: 3186]. ‘Abd al-Ḥāris’s virulent threats through the reference to the massacre committed by ‘Alī Bilāl are mentioned by the two fallāḥīn that were supposed to deliver the message to the Shaykh and the father of one of them [1912 – ‘A‘AH+: 3185-3189] (Appendix 22). The witnesses indicate as well how they then tried to assuage the main accused’s anger by assuring him that “the Shaykh was like Muḥammad’s father” and that “had he known how to untie the spell, he would have done it long before” [1912 – ‘A‘AH+: 3187; 3189].

What strikes me in these depositions is ‘Abd al-Ḥāris’s self-identification with ‘Alī Bilāl, the shaykh al-ghafar of Ṭūkh who made the fateful decision to avenge a personal grudge (that remains mysterious in the records) by shedding the blood of his relatives with his service weapon. The brigand’s evocation of this story as a source of inspiration for cleansing his family’s honor blurs the line that purportedly separated him from his brother, the ghafīr. While in this case, the figure of the “ghafīr-bandit” seemed to have been clearly broken up into two
distinct characters, it suddenly reemerges as a whole, reconstituted through ‘Abd al-Ḥāris’s reference to the events of Ṭūkh.

Interestingly, the humiliation of having been reduced to the status of “women,” felt by both brothers, the ghafīr and the brigand, closely echoes the demeaning comments made around 1905 by P. W. Machell, then adviser to the Ministry of Interior, regarding the equal fearfulness and lack of courage of both guards and criminals. In Cromer’s *Annual Report for 1905*, he is thus quoted as claiming:

> Police reports relating how ‘the ghafirs and thieves exchanged shots, no one was injured, and the thieves effected their escape’ are far too frequent. The assailants are usually only one shade less cowardly than the ghafirs. The cowardice displayed on both sides is absolutely incredible. I always tell people that, if I had an Ezba (farm) myself, I should provide myself with a shot gun and an Erment dog, and should feel absolutely safe in any part of Egypt. P. W. Machell, adviser to the Ministry of Interior

In his statement, the Lieutenant-Colonel Machell – who fought in Sudan and would become a decade later the Great War hero who died leading his battalion in the trenches of the Somme – contrasts the image of the virile and brave English landlord, who merely needs a gun and a dog to defend himself, with that of both Egyptian ghufarā’ and rural bandits, who, although they are equally armed, lack the “guts” of “real men.” In a sense, the parallel between the British adviser’s humiliating official declaration and the village rumor around “the Shaykh’s spell” is remarkable, and it further emphasizes the undeniably political nature of both hearsay and magic at more than one level. Within this context, imitating ‘Alī Bilāl the *shaykh al-ghafār* was a way for the brothers to creatively and subversively respond to the emasculation attempts of both the colonial authorities and the *fallāhīn* of the hamlet, and eventually to reclaim their virility.

Finally, I would interpret more broadly the fact that the episode of ‘Alī Bilāl both left a lasting impression on the neighboring communities and became a model of emulation for some of their members, as evidence of the ghufarā’-bandits’ reaction to the state’s hypocritical denial of the fundamental ambiguity of the colonial situation at the local level, and to its feigned and awkward attempt to “separate the wheat from the chaff” by criminalizing the ones rather

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arbitrarily defined as “bad characters” (as ‘Abd al-Ḥāris) and by militarizing the others (as ‘Abd al-‘Aẓīm). I would indeed suggest firstly, that the ostensibly moral dimension of this endeavor, embodied in the “law of bad reputation,” incited ordinary members of the rural communities to challenge the hitherto protected position of the ghufarā’-bandits in their villages, and secondly, that the latter eventually responded to this undermining of their power by taking “their” law into their own hands and using the new training and equipment at their disposal to cleanse their honor.

Now, while the discovery in the course of the preliminary inquiry of ‘Abd al-‘Aẓīm’s Remington, ‘Abd al-Ḥāris’s reference to the events of Ṭūkh, and the three brothers’ secret agreement to collectively accuse Muḥammad underlined the essential blurriness of the case and their shared responsibilities in perpetrating the crime, the judicial machinery was soon to negate all ambiguity and restore the neat picture of the colonial order through a clear redistribution of the roles among the honest ghafīr, the evil bandit, and the impotent young married man.

The day following al-Sayyid Ḥammād’s murder on July 26th, 1912, ‘Abd al-Ḥāris, ‘Abd al-‘Aẓīm, and Muḥammad have all been arrested by order of the assistant prosecutor under the charges of “premeditated and voluntary homicide” for the first one, and “participation in the crime” with “incitation to murder” and “prior agreement” for the two others [1912 – ‘A‘AH+: 3224-3225]. Three days later, however, the same magistrate demands and obtains the immediate release of ‘Abd al-‘Aẓīm [1912 – ‘A‘AH+: 3225]. Suddenly and without any sort of justification, the ghafīr is not considered among the accused anymore. In the report that the prosecutor of Shibīn subsequently sends to the juge de renvoi ("قاضي الإحالة") in Ṭanṭā, the very name of ‘Abd al-‘Aẓīm has disappeared [1912 – ‘A‘AH+: 3249-3250].

Two months later, on September 25th, 1912, the trial is held in the presence of the two remaining accused and their two lawyers hired by the family. Interestingly, the victim’s wives are plaintiffs in the case. They are also represented by a lawyer who requests a judgment in their favor and the payment by the accused of the huge sum of two hundred Egyptian pounds as compensation for the death of the Shaykh and financial resources for his ten minor children. When first interrogated by the president of the session, ‘Abd al-Ḥāris persists in his denial of the charges. Muḥammad, however, acknowledges the facts and claims that he is the murderer.
The fifteen witnesses are subsequently heard one after the other at an incredibly rapid pace. They are asked a single question, either “what happened?” ("ما الذي حصل؟") or “what do you know?” ("ما الذي تعرفه؟") and the court is satisfied with a single sentence answer [1912 – ‘A‘AH+: 3262-3265]. The very same words are repeated over and over again: ‘Abd al-Ḥāris first threatened the Shaykh and then shot him. Any additional element to this basic storyline seems to be henceforth irrelevant; and when one of the witnesses, the butcher, mentions that he has been previously convicted of false testimony, his deposition is nonetheless taken into account [1912 – ‘A‘AH+: 3262]. Conversely, the women of the accused’s family persistently accuse Muḥammad. Even, his wife, Ṣiddīqa, joins them [1912 – ‘A‘AH+: 3263]. Eventually, the peasant who was supposed to deliver ‘Abd al-Ḥāris’s important message to the Shaykh briefly mentions the reference to the “revolt” of Bilāl in Ṭūkh ("المتهم الأول قال لي أخبر السيد القتيل بأن يفك أخي محمد وأن لم يفكه أعمل في البلد ثورة مثل التي عملها بلال في طوخ وهي قتل") [1912 – ‘A‘AH+: 3264-3265].

Founding his pleading on these testimonies, the prosecutor subsequently requests the punishment of the defendants, and insists that “the particularly horrible character of the crime” be met with “severity” [1912 – ‘A‘AH+: 3265]. The lawyer of the plaintiffs, for his part, explains that the family of the defendants testified against Muḥammad and in favor of ‘Abd al-Ḥāris, because the latter is “the boss in the fields,” the household’s support ("المكافح") and its protector [1912 – ‘A‘AH+: 3265]. As for ‘Abd al-Ḥāris’s lawyer, he simply requests a not-guilty verdict on the basis of Muḥammad’s “confessions” and the women’s depositions [1912 – ‘A‘AH+: 3265-3266]. More interestingly, the legal representative of the unfortunate young married man finally demands a not-guilty verdict as well “against [the] will [of his client], and even if he hates it” for “much evidence in the case proves that Muḥammad’s recognition of the facts is a lie in order to save the first accused, the useful one” [1912 – ‘A‘AH+: 3266]. On the very next day, September 26th, ‘Abd al-Ḥāris is eventually sentenced to death by hanging, the payment of two hundred Egyptian pounds to the plaintiffs, and the reimbursement of the legal fees incurred by the latter. As for Muḥammad, he is found not-guilty [1912 – ‘A‘AH+: 3272].

The text of the judgment itself begins by describing what the court has considered as the plot of the case: whereas Muḥammad’s sexual impotence actually finds its origins in “the weakness of his constitution” ("ضعف بنيته"), he and his brother ‘Abd al-Ḥāris became convinced that their
relative al-Sayyid Ḥammād had cast a spell on him because the brothers had thwarted the marriage plans he had for one of his servants [1912 – ‘A‘AH+: 3270]. This situation had had a tremendous impact on ‘Abd al-Ḥāris who had seen it as a “dishonor for his family” (عَارٍ عَلَى عَائِلَتِهِ), and this conception, epitomized in his accusation that “[the Shaykh] had made [them] like the women in this village,” eventually led him to perpetrate the murder [1912 – ‘A‘AH+: 3270] (Appendix 23: elements in orange).

What is interesting in this general summary of the case is that besides ‘Abd al-‘Azīm’s conspicuous absence (he is only cited once as a mere witness of the crime), the murder weapon is said to have belonged to the murderer [1912 – ‘A‘AH+: 3270]. In addition to ‘Abd al-Ḥāris’s previous threats and the reference to ‘Alī Bilāl that is mentioned en passant, the premeditated nature of the crime is subsequently founded on the cold-bloodedness of the killer (حالة الهدوء”), an element that simultaneously permits the exclusion of any kind of mercy on the grounds that the crime might have been committed as an honor killing under the influence of passion [1912 – ‘A‘AH+: 3270-3271] (Appendix 23: elements in red). In contrast, Muḥammad’s “confessions” are deemed of “no value” because of the contradicting testimonies of the various witnesses and of the obvious pressure of his own family [1912 – ‘A‘AH+: 3271] (Appendix 23: elements in blue). On this last point, the court also considers that there is not enough evidence of the existence of a previous agreement to commit the crime between both brothers, for, Muḥammad’s will being as “weak” as his constitution (كما هو ضعيف البنية هو أيضا ضعيف الإرادة”), he cannot be held responsible for acquiescing to ‘Abd al-Ḥāris’s plans [1912 – ‘A‘AH+: 3271] (Appendix 23: elements in green).

Through this judgment, all the ambiguity of the case is suddenly erased. Whatever the extent to which ‘Abd al-‘Azīm, the “good” ghafīr, might have been involved, his disappearance from the entire trial proceedings betrays both the considerable influence of his patrons and an undeniable political will to keep the institution he represents at the local level out of the inquiry. Concomitantly, the link clearly and publicly established by ‘Abd al-Ḥāris between his act and the ghafara is carefully concealed, and his profile as the evil bandit is further strengthened by the mention of both the cold-bloodedness with which he committed the crime and the bad influence he exercised over his helpless younger brother. The “brigand” appealed his death sentence to the court of cassation, but his request was rejected on November 28th, 1912. With
his execution in the Ṭanṭā prison on January 6th, 1913, the colonial “order” was eventually restored, at least on paper [1912 – ‘A‘AH+: 3273; 3276].

Fourteen years after ‘Abd al-Ḥāris’s hanging, the Director General of Public Security in Egypt, Maḥmūd Fahmī al-Qaysī Pasha would still lament the curse of the “ghufarā’-bandits” by asserting: “(...) the majority of ghaffirs consists of wrongdoers, sometimes even of real criminals who have seriously violated public security through murders, attempted homicides, [and] robberies with violence. The ghaffirs thus count among the most dreadful factors of the growth in crime that increased so much for many years.”

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2.6 Conclusion

At the close of this chapter on criminals’ “profiles” – from “the vengeful Bedouins,” to “the illiterate (and by extension) immoral peasants,” to “the disreputable sons,” and the “ghufarā’-bandits” –, I would like to emphasize the novel elements unearthed by the approach focusing on the interplay between orality, writing, and performance I have adopted in this work.

Through a very close examination of the archival material and a recontextualization of the documents within the scholarly debates of the time – revolving around the issues of a criminal “race” and the links among crime, primitiveness, education, and richness —, this analysis has shed light on the various innovative methods used by the police and justice professionals to both make bodies and souls “speak” and, in a dialectical process, discursively create their “villains.” Anthropometrical measurements, fingerprints, and the forensic determination of race; “skillful” interrogations, the confrontations of accused and witnesses, and the strategic use of the “refrain” throughout the procedure: all these techniques contributed to the progressive shaping of well-defined categories of “criminals” to which the portrayals of the various accused were made to fit. Concomitantly, they also led to the construction of simplistic dichotomies – cruel primitives vs. noble savages, rebellious children vs. good parents, and professional brigands vs. honest ghufarā’ – meant to conceal the intrinsic contradictions of the colonial situation in the villages and the inescapable ambiguity of the mission to render “justice” in these circumstances. Against this general background, the picture should nonetheless be refined. In the image of ‘Abd al-Ḥamīd Riḍā, prosecutor of Shibīn around 1902, certain members of the judiciary also drew on linguistic analysis to unravel the complexity of the cases, and disclose the networks of the local actors implicated in the crimes. Their rare contributions would nonetheless be promptly discarded in the course of the procedure. In contrast, some lay participants in the judicial inquiry – members of the family of the accused, fellow-workers, or local notables such as the “‘umad-bosses” – also played a significant role in the elaboration of these criminals’ profiles and hence of the colonial grand narrative about peasants’ criminality. Depending on the circumstances, their participation would be either onstage or behind the scenes, either willfully initiated or obtained under pressure. It would, however, almost invariably lead to the strengthening of the patriarchal and exploitative nature of the relationships and the exacerbation of the social tensions within the village.
More importantly, this chapter has also revealed the complex ways in which this process of moralization of the law – and its accompanying colonial rhetoric aimed at stigmatizing certain populations and epitomized in the 1909 “law of bad reputation” – affected the members of the local community. On this issue, the sources suggest that, while some were encouraged to confront their fellow-villagers recently defined as “immoral,” the latter would respond by taking “their” law into their own hands and cleanse their honor in blood. As the example of the “ghufarā’-brigands” shows, the reaction of these disgraced groups would sometimes translate into a phenomenon of emulation in violence around heroized figures such as ‘Alī Bilāl. In a sense, the latter did prefigure the character of Adham al-Sharqāwī (from the neighboring province of Sharqiyya) who became famous in the early 1920s for avenging his uncle’s murder and subsequently becoming an outlaw chased by the authorities (“al-ḥukūma”) till they shot him in 1921. Although Adham was not a ghafīr, he is nonetheless pictured in the folksongs that were created in his honor as playing on the ambiguities and contradictions of a corrupt official power, notably by disguising himself as the chief of police.\(^\text{365}\) Just as the epics of ‘Antara and Abū Zayd, the stories of ‘Alī Bilāl and Adham al-Sharqāwī were not mere means of promoting an allegedly ageless “love of revenge.” On a first level, they constituted, I would argue, these villainized fallāhīn’s creative response – between violence and poetry – to their concomitant emasculation and criminalization by the colonial state. On a second level, they represented as well their reaction to the latter’s hypocritical attempt at “moralizing” law, while keeping the protection of the colonial situation at the local level at the heart of its conception of justice.

3 The Trial: Roles, Procedures, Narratives, and the Question of the Performance of the Law

3.1 Introduction

This chapter looks at the trials of first instance through the lens of performance. Here, I understand performance as a linguistic event involving a dialogical interaction between performers and audiences, in which all these various actors are conscious that they are playing a role, and through which social reality is reflected and transformed. In the legal context, both the interactional nature\footnote{Elizabeth Mertz, “Legal Language: Pragmatics, Poetics, and Social Power,” Annual Review of Anthropology 23 (1994): 446.} of the performance and its reflective character\footnote{Bauman, “Poetics and Performance,” 73.} allow me to explore not only the linguistic but also the legal ideologies that underlie the event. By emphasizing the fundamental openness of the process, such an approach also enables me to show that, in spite of the severe constraints placed on the performance, the latter involves the possibility for each actor to “misperform,” to move away from the script, and to (re)interpret the entire event according to his/her own terms.\footnote{Ibid., 70, 77.} By prompting me to focus on these “cracks,” the concept of performance eventually leads me to shed light on the negotiation that occasionally takes place among lay and professional actors around the de-/re-contextualization of the case, and hence around their respective conceptions of the law.

More specifically, this chapter shows how, alongside their attempt at moralizing the law, the judicial authorities conceived of its “staging” as an integral part of the functioning of justice (subpart 3.1 “The Professional Actors”). From within this perspective, appearance and language were key elements meant to make visible the “majesty” and “dignity” of both the magistrates and the law itself defined as a superior and objective abstract principle. In such a context, the mastery of the high form of Arabic, European languages, and legal terminology long constituted the main evaluation criteria of the justice professionals’ competence and promotion. Behind the scenes, however, career advancement also depended on the latter’s ability to speak the “language of power,” and secure the support of high ranked native and colonial officials. Concomitantly,
local dynamics of power also represented an important center of interest for Egyptian magistrates conceiving of the judiciary as a privileged avenue of access into politics.

This view of legal professionals as profoundly entangled into socio-political networks from the local to the national level was perceived by the court users both within and from the margins of the courtroom. In spite of the judicial institution’s efforts to preserve the integrity of the “spectacle of the law,” the magistrates’ regular “misperformances” betrayed strong racial and social prejudices, as well as, in some cases, a propensity to accept bribes. While the justice professionals were thus identified as members of the community possessing specific interests, law itself was consequently seen as a highly malleable field susceptible to manipulation.

The very strict regulation of the legal performance did not however allow peasants much opportunity to influence the interpretation of the cases and thereby the decision-making process (subpart 3.2 “Distribution of the roles & courtroom procedure”). In addition to an oppressive physical setting, the introduction by the British colonial authorities of elements of the adversarial legal system into an originally inquisitorial criminal procedure ensured a much more expeditious and repressive justice than the initial model would have allowed by depriving the defendants of their most basic rights. While these various measures essentially silenced accused and to a lesser extent witnesses, they empowered the prosecutor to enact before the court the simple and compelling story of the case he had developed in the course of the preliminary inquiry. On this point, a close analysis of the 1908 trial of ‘Āmir Muḥammad Badawī provides valuable insight into the additional techniques used in practice by the prosecutor to put forward his narrative of violence and greed and eventually portray the defendant as a “disreputable son.”

The analysis of two other files (Ḥaggāg Yūsuf Ḥabīb in 1900 and Muḥammad ‘Alī Sālim in 1913) nonetheless reveals how, within this highly repressive environment, the very performative nature of the trial opened up a space to resist the prosecutor’s power by proposing an alternative, recontextualized understanding of the events. The examination of the first case (subpart 3.3 “Village rumors, (false) testimonies and court cases: the question of ‘grudges’ and the public production of evidence”) shows first that the public production of evidence involved for the prosecutor the possibility that his key witness could “misperform.” In addition, it demonstrates that the contradictory nature of the hearings then offered the defendants’ lawyers an opportunity
to exploit this misperformance, expose the profound ambiguity of the relationships linking the protagonists of the case, and thereby affect the judgment. The study of the second file (subpart 3.4 “From dramatic confessions to narratives of hatred: theatricality and storytelling”) sheds light first on the fact that, while during the preliminary inquiry the various actors were forced to evolve in a hidden theatrical setting, during the trial they were compelled to assume the role of storytellers. It also reveals that, in this last case, witnesses nonetheless retained the capacity to reject the formulaic and moralistic nature of the genre, and provide the audience with elements of context that restored to the crime its complexity. Thereby, they also proved able to influence to some extent the court’s interpretation of the murder, and lead its members to reconsider the place that should be granted to the social context in the legal decision-making process.
3.2 The professional actors

*Tant valent les juges, tant valent les lois.*

*(John Scott, “Judicial Reform in Egypt”)*

After having explored the development of the colonial grand narrative about peasant criminality and the concomitant process of moralization of the law, mainly through the study of investigation and interrogation techniques used in the course of the preliminary inquiry, I turn now to the key moment of the first trial. Given the dire lack of sources on the physical setting of the courts, I focus first on the professional actors present on the scene of the tribunal. But let us begin with a few elements of context.

When the native courts of first instance were established in 1884, they were staffed by three judges, including the president or vice-president of the tribunal chairing the session, one prosecutor, one or several defense lawyer(s) and a court clerk. All were Egyptians. The common colonial rhetoric of the time denounced these personnel’s lack of modern legal training and – allegedly – integrity, and the argument conveniently served to progressively strengthen British control over the entire judicial system. As soon as he was appointed in 1890, the British judicial adviser, Sir John Scott, thus launched a series of reforms meant to “cleanse” the judicial body through the reorganization of the Khedivial Law School; the regulation of the appointment, promotion, and dismissal of judges; the creation of a Committee of Judicial Control; and the introduction of European magistrates as both judges and prosecutors.

Regarding the supervision committee, Scott awkwardly conceded:

> I know it will be difficult to persuade an English audience that the superintendence of judicial work and the inspection of judges can possibly be good things. Still, things that sound bad in theory are sometimes excellent in practice; and England, with its centuries of freedom and education, cannot be taken as a model for an ignorant country like Egypt, which had been oppressed by foreign masters for a period beyond the memory of man.

As for the participation of the “European element,” he similarly explained:

369 For a more nuanced version of this rhetoric, see: Grandmoulin, *Le droit*, vol. 1, 46-47.

370 Ibid., 47.

The establishment of a judicial system in a country which had not known independence or justice for many centuries could hardly be secured without the assistance of Europeans. Lord Dufferin, in his report on the future of Egypt, maintained that European aid in the administration of justice would be necessary in the proportion of one European to three natives.372

The project eventually proved unfeasible, and, in the system of first instance, the presence of Europeans was eventually limited to the courts of Cairo, Alexandria, and the appeal court.

At the turn of the century, however, these tribunals of first instance were still deemed “uncertain and too slow,”373 and on January 12th, 1905, a scheme of courts of assizes was implemented with the hope that it would “bring justice closer” to the offenders, “intimidate” them, and eventually quell the rise of crime in the country.374 The new courts were periodically held in the premises of each tribunal of first instance375, and were composed of three counselors to the court of appeal, including one acting as president, a prosecutor, lawyer(s) and a clerk.376 Since the court of appeal was, in 1899, “composed of 20 members, of whom ten [were] European, and ten [were] Egyptian lawyers,”377 the introduction of the counselors into the courts of assizes logically meant an increased European presence at this first level of jurisdiction. The legal scholar, Joseph Achkar very tellingly explained in 1909: “[Made up] of a very simple structure, our Court of Assizes resembles a little an exceptional jurisdiction (i.e. a special tribunal), improvised for a while, by an occupying nation, on a foreign territory, until the end of hostilities allow the reconstitution of the country’s ordinary courts.”378 From a more sociological perspective, the transition from tribunals of first instance to courts of assizes also meant that the fellahs on trial would increasingly face beys, bāshās, British “misters” and French “messieurs,” rather than simple afandīs. Overall, the period considered was also marked by a process of professionalization of the various judicial personnel, from judges to lawyers and clerks, illustrated by the development of more specific training programs and more stringent qualification requirements to join the native courts.

372 Ibid., 247.
373 Grandmoulin, la procédure, vol. 2, 90-92; see also: Achkar, L’instruction, 103-106.
374 Grandmoulin, la procédure, vol. 2, 92.
375 Grandmoulin, la procédure, vol. 2, 92; for more details and a comparison with the French system, see Achkar, L’instruction, 111-127.
376 Grandmoulin, la procédure, vol. 2, 92; for more details regarding this point, see Achkar, L’instruction, 128-134.
377 Grandmoulin, la procédure, vol. 2, 92.
378 Achkar, L’instruction, 111.
Through an exploration of the backgrounds, career paths and ultimate fates of prominent and unknown staff members of the Ṭanṭā court between 1886 and 1914, this subsection reveals first the crucial importance attributed, in judicial circles, to language. Taking the term in its broadest sense, i.e. as encompassing not only the oral and written Arabic language(s), the European languages, and the legal language, but also the notions of “language of power” and “language of the people,” this study shows that all these different “languages” constituted shifting evaluation criteria of the judges’, lawyers’ and court clerks’ competence. In addition, the analysis also underlines how, in the course of the professionalization process of the judiciary, the ability to address the powerful retained its relevance, while the skill to communicate with the peasants seems to have lost of its value.

Approaching the justice professionals from a different perspective, i.e. “from the margins of the courtroom,” the second part of this study formulates a few hypotheses about the perceptions of the various judicial actors held by the lay people of the community in which the tribunal was located. This work is based on the examination of accusations of corruption raised in 1889 and in 1915 against current or former members of the Ṭanṭā court, as well as a British judge’s recollections of his work in that same court between 1905 and 1914. The analysis sheds light on the fundamentally ambiguous position of the minor civil servants, such as the court clerks, who tended to arouse both contempt and jealousy. In addition, it suggests the extent to which some judges seem to have been conceived of as potential associates in a clientelist relationship. Finally, this study also sheds light on the significance attached by the justice professionals to the locals’ perceptions of them, and consequently to the manner in which they would “stage” themselves.

3.2.1 Professional backgrounds: Language proficiency, legal training, politics, and career advancement

Language truly lies at the heart of both the court’s work and the justice professionals’ career. As in most modern judicial institutions, the mastery of the legal terminology, the ability to rigorously conduct interrogations, as well as, for prosecutors and lawyers, some degree of eloquence in pleading, are – theoretically at least – considered as sine qua non to be recruited as a member of the tribunal. But since the maḥākim ahliyya are patterned on the French model, partly staffed with European judges (mainly after 1905 and at the appeal level), supervised by
both British and local inspectors, and meant to adjudicate, in Arabic, cases involving almost exclusively Egyptian subjects, proficiency in three different languages is also one, if not the most, crucial requirement. In October 1886, the language competence demonstrated by one of the first kuttāb of the native court of Ṭanṭā, Shākir Afandī Aḥmad, seems to be such that he is hired as a professor of translation at the Khedivial Law School. Conversely, in July of that same year, Muḥammad Afandī Muṣṭafā, a translator who has spent four years working in the administration of the Khedive’s estates and another seven years at the Ministry of Public Works, is suddenly appointed as a deputy-judge to the native court of Alexandria, before being promoted to the position of judge at the Ṭanṭā tribunal two years later.

In addition to its being rooted in languages and not in law, Muḥammad Afandī Muṣṭafā’s meteoric career in the judiciary is revealing in many other respects. When first posted to the Alexandria court after 11 years of public service, Muḥammad Afandī earns 25 Egyptian Pounds per month. When transferred to the Ṭanṭā tribunal after only two years, his salary increases to 35 E.P. Such a rapid promotion suggests that the position of judge is still considered in the late 1880s as a government job open to various kinds of civil servants, but also that the former translator has probably benefited from the support of “friends at court.” This second hypothesis is substantiated by the fact that, in 1892, the year in which Muḥammad Afandī tries the case of Mikhīmar ‘Abd al-Nabī analyzed in the first chapter of this dissertation, the Minister of Justice requests from the Council of Ministers his promotion from the fourth grade to the second grade, both as a reward for “the satisfactory performance of his duties” and his “excellent conduct.”

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379 Such an emphasis on the knowledge of foreign languages and translation also finds its origins in the manner in which European legal education was conceived and developed in Egypt, especially during the period 1836-1888. On this theme, see: Byron Cannon, “Social Tensions and the Teaching of European Law in Egypt before 1900,” History of Education Quarterly 3 (1975): 299-304; and Farhat Ziadeh, Lawyers, the Rule of Law, and Liberalism in Modern Egypt. (Stanford, CA: Stanford University Press, 1968), 19-21.


382 Ibid.
and so as “to stimulate the emulation of others.” Two years later, the former translator has become Muḥammad Bey Muṣṭafā. He pursues his career in Asyūṭ with a salary of 45 E.P. a month, thanks to an exchange with the President of this court who is transferred to Ṭanṭā. In January 1898, after 11 years of experience in the judiciary and 22 in public service, Muḥammad Bey is back in Ṭanṭā. He then earns 50 E.P. a month, and has reached the highest level of the professional scale. As a point of comparison, two judges of the same court, Muṣṭafā Sāmī Bey and Wahba Ḥannā Afandī, respectively receive a salary of 35 E.P. and 25 E.P. after working for 27 and 38 years as civil servants in various capacities. At the turn of the century, Muḥammad Bey Muṣṭafā is transferred from the Delta to Cairo, and, in late 1912, he is eventually appointed to a position at the Ministry of Justice. This ultimate promotion caps an extremely successful 25 year career in the judiciary undertaken without formal legal training. As such, Muḥammad Afandī Muṣṭafā’s path perfectly illustrates the fact that a number of judges appointed to the native courts in the very first years of their establishment are “self-made’ elites” who quickly climb the professional ladder thanks to both the recognition of “a practical savoir-faire” – rather than “university diplomas” – and the pervasiveness of “favoritism.”

Not all the judges without formal legal training are, however, as successful as Muḥammad Afandī. In 1915, a judge from the Ṭanṭā native court of first instance, Ibrāhīm Afandī Tawfīq, is thus prematurely put into retirement for “his lack of legal knowledge [in spite of his long experience], a laziness in performing his duties, his tendency to abuse travel allowances, a stinginess when it comes to his living conditions, and [last but not least] a silliness that leads him to verbally attack the litigants, experts and lawyers in words that the ears would hate and
modesty would be shy of.”

Regarding this last point, the report goes as far as specifying that “[the judge would] utter obscenities or refer to them with gestures that contradict the dignity [expected] in the house of law.”

But let us go back now to the beginning of the period considered in this dissertation. In 1887, a year before Muḥammad Afandī’s nomination as a judge to the native court of Ṭanṭā, Aḥmad Zīwar, who would sit in the Ṭanṭā criminal court twenty years later, receives a law degree from the new legal program created at the French university of Aix-en-Provence. Like Muḥammad Muṣṭafā, Aḥmad Zīwar has begun his studies with training in languages at the famous Madrasat al-Alsun (مدرسة الألسن), but he decides to complete his education with a licence en droit from Aix. In the next few years, Zīwar will be emulated by many students for whom the Aix short program represents an opportunity to quickly and relatively easily obtain the legal credentials henceforth needed to undertake a career in the Egyptian judiciary, at a time when studies in Paris are still limited to a happy few, and when the Khedivial Law School and the Cairene Ecole Libre de Droit have not yet acquired a solid reputation. Following the completion of his degree, Aḥmad Zīwar is nominated to the Parquet, before being promoted as a judge to the native courts in 1899, and eventually as a counselor to the national court of appeal around 1908-1910. It is in this last capacity that he appears in our corpus of archives, as a member of the Ṭanṭā criminal court that tries the cases of ʿĀmir Muḥammad Badawī Ḥasan [1908 – ‘AMB+] and Sayyid Aḥmad Basyūnī al-Haynī [1910 – SAB].

With his dual education in languages and law, followed by a practical training at the Parquet and a step-by-step professional path, Aḥmad Zīwar’s career is representative of that of many members of the Ṭanṭā court who, at the turn of the 20th century, were appointed as local prosecutors in Minūf or Shibīn and who ten years later found their way into the tribunal of

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389 Ibid.
392 Goldschmidt, Biographical Dictionary, 239.
Cairo (e.g. Mitwallī Ghunaym) and eventually back to Ṭanṭā as counselors to the court of appeal (e.g. ‘Abd al-Ḥamīd Riḍā). As a judge of Turco-Circassian origin promised a bright future as minister, premier, and eventually King Fu’ād’s chef de cabinet, Ahmad Zīwar also exemplifies the new model adopted by the sons of both the Cairene and Alexandrian old aristocracy to achieve their political ambitions. For many members of this social group, the judicial path was no longer considered a mere means of career advancement in administration, but rather a privileged avenue of access into political life. A few of these magistrates from Turco-Circassian extraction who were to become prominent figures of Egypt’s interwar political life appear in the archives of the Ṭanṭā tribunal after the establishment of the courts of assizes. In addition to Ahmad Zīwar, we can cite Muḥammad Tawfīq Naṣīm Bey who, after graduating from the Khedivial Law School in 1894, begins a successful career in the judiciary that leads him to take part, as a counselor to the native court of appeal, in the trials of both the ‘Aṭiyya Ḥammād brothers [1912 – ‘A‘AH+] and Muḥammad Mitwallī Ibrāhīm [1912 – MMI]. Following a path very similar to that of Zīwar, he will subsequently be appointed as minister of awqāf, finance and interior, and eventually as premier, on three different occasions, between 1920 and 1936.

To be sure, the Turco-Circassian elites are not the only ones to view the judiciary as a convenient means to enter politics. Many sons of both Egyptian urban upper classes (Ismā‘īl Ṣabrī and Ismā‘īl Ṣidqī) and prominent rural notables (Yaḥyā Ibrāhīm, Sa‘d and Aḥmad Fatḥī Mitwallī Ghunaym is a local deputy-prosecutor at the native tribunal of Minūf in 1899 [1899 – HYH+], and a judge at the Cairo tribunal of first instance in 1912 (see: Egypt, Egyptian National Archives, Haqqāniyya – mahākim ahliyya, [0075-042342], Mudhakkirat al-ḥaqāqīniyya wa mashrū’ ’amr ‘alī bi-ijrā’ ta’iyānāt wa tanaqqulāt fī waṣā’il al-qāḍā’ al-ahli naẓaran li-khalū waṣīfāt wakīl mahkamat Ṭanṭā al-ahliyya (16.11.1912)).

‘Abd al-Ḥamīd Riḍā is the local prosecutor at the Parquet of Shibīn in 1902 [1902 – MN’A+], and serves as a counselor to the native court of appeal at the Ṭanṭā criminal court in 1912 [1912 – MMI].


On this case, see the subpart 2.4 of the second chapter of this dissertation entitled: “The law of ‘bad reputation’ and the honor of the ‘ghafīr-bandit’.”

On this case, see the subpart 2.2.1 of the second chapter of this dissertation entitled: “‘The indecent proposal:’ Disobedience, ‘bestial lust’ and ‘love of revenge’ vs. domestic violence and overcrowded housing.”

Goldschmidt, Biographical Dictionary, 153.
Zaghlūl, Aḥmad Luṭfī al-Sayyid) also count among Aḥmad Zīwar’s and Muḥammad Tawfīq Nasīm’s fellow students in Aix, Paris and at the Khedivial Law School between the late 1880s and the late 1890s. During the interwar period, these former classmates will find themselves at different points of the political spectrum, developing unstable alliances or lasting rivalries, and adopting complex stances that, regardless of the influence of their respective social backgrounds, will often be marked by a combination of idealism, opportunism and ambiguity. Between 1890 and 1914 however, they are still colleagues, serving in one capacity or another in the native courts of appeal and cassation. These famous figures will be dealt with at more length in the fourth chapter of this dissertation.

From the establishment of the courts of assizes in 1905 onwards, these newly trained Egyptian magistrates are sometimes joined by European counselors to the court of appeal. Among the latter, we have already mentioned the Greek magistrate, Megalos Caloyanni, who sits at the trials of Ibrāhīm Ḥasan Salīm [1912 – IHS+], ‘Alī Sayyid Qirba [1912 – ‘ASQ+], and Bārūd Ḥammad al-‘Arabī [1913 – BH’A], who writes on Egyptian criminals’ tattoos and psychoses, and who will achieve some fame during the interwar period for his leading role in the creation of the international criminal court.400

Another foreign judge who serves at the Ṭanṭā criminal court in 1908 is the British John Hope Percival [1908 – ‘AMB+]. John Hope and his brother, Philip Edward, are remembered in the colonial milieux as two extremely successful legal experts. From a Scottish background, they both have received their training in Oxford-Cambridge and have become barristers in London in 1894-1895. But while Philip Edward, chooses to enter the Indian civil service and pursues a 35 year career in the Judicial Department of the Bombay Presidency, John Hope, himself born in India, prefers to settle in Egypt. There, he is first appointed as a judge of the native courts of first instance in 1903, then as a counselor to the native court of appeal in 1909, and eventually as the vice-president of the latter in 1919. That same year, he becomes the legal adviser to the

399 See the subparts 2.1.1 and 2.1.2 of Chapter 2.
General Officer Commanding in Egypt, and subsequently the judicial adviser to the government of Egypt and legal adviser to the High Commissioner between 1925 and 1928.  

Far away from Percival’s brilliant career – but also far more fascinating – is the experience in the Egyptian judiciary of John Edwin Marshall. Marshall is the third foreign counselor to the native court of appeal sitting at the Ṭanṭā assizes who appears in our records [1914 – ‘ASB+]. He recounts his Egyptian years as “a tale” in a book entitled The Egyptian Enigma 1890-1928. Coming from a family of lawyers, Marshall is called to the bar in 1889. In search of a climate more favorable to his failing health than that of Great Britain, he first travels to India – where, incidentally, his brother is also posted –, before settling in Alexandria in 1890. There, he begins his career as a barrister at the consular and mixed tribunals, while progressively becoming acquainted with the French law, the Egyptian codes, and the Arabic language.  

Regarding the latter, Marshall explains that it is the Judicial Adviser himself, Sir John Scott, who “advised [him] to study [it] with a view to a Judgeship, should one fall vacant in the Native Tribunals.” He then specifies:

At that time it was very difficult to find anyone who was qualified to teach Arabic, but at last a certain Mohammad Effendi Ghareeb was recommended to me. He taught the officers who went up for the Arabic examinations for the Army, which meant less than it sounded, for their knowledge was not overtaxed. His method was purely Ollendorf. He had not a sufficient grasp of his own language to enable him to teach it properly, but through him I acquired a certain colloquial knowledge.

Interestingly however, Marshall’s relatively poor proficiency in Arabic does not constitute an insurmountable obstacle to his appointment as a judge of the native courts. After being successfully elected as a member of the Mixed Bar Council in November 1897, the British lawyer is again approached by Scott, and despite the fact that he fails the Arabic test, he is nominated for a position of judge at the Alexandria tribunal of first instance. On his knowledge of the language – or lack thereof –, he explains: “I was examined in Arabic, and I

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403 Ibid., 2.
404 Ibid., 2-8.
405 Ibid. 7.
406 Ibid. 7-8.
407 Ibid. 44-45.
confess I did not distinguish myself. The paper was too technical, and the words were unfamiliar to me, though at that time I could speak the language quite fluently in everyday matters.\textsuperscript{408} When his appointment as a judge is advertised a couple of weeks later in the \textit{Egyptian Gazette}, the article however reads: “[Mr. Marshall] is a good French scholar, and has a considerable and literary knowledge of Arabic, so we venture to predict that in due course he will earn and obtain further promotion.”\textsuperscript{409} And indeed, in early 1904, a post is specially created to allow his promotion as a counselor to the court of appeal. In 1905, he earns 1,200 E.P. a year, plus an additional 300 E.P. for sitting on the assizes courts.\textsuperscript{410} In spite of his personal connections with both colonial administrators and local politicians, he will nonetheless never be appointed as adviser to the ministry of the interior, as he would have liked, and will “remain tied to the wheel of the Courts until the end of [his] career.”\textsuperscript{411}

While Marshall’s own knowledge of Arabic was imperfect at best, the British judge does not shy away from criticizing the linguistic abilities of one of his colleagues, the Syrian ‘Abd al-‘Azīz Kaḥīl (also read as Kuḥayl), whom he first met as the vice-president of the Alexandria tribunal of first instance in 1898 and who reappears in our archival corpus as the vice-president of the Ṭanṭā criminal court in 1912-1913.\textsuperscript{412} Although Kaḥīl translated, from Arabic into French, al-Gabarti’s chronicles, two books on Islamic law and \textit{waqf}, and a repertoire of Egyptian legislation, and although he authored (or co-authored) four books in Arabic on Egyptian civil verdicts, civil rights, commercial law, and the taking of the oath in the native courts, Marshall declares: “[Aziz Kahil Bey] spoke and wrote French like a Frenchman, and undoubtedly French was more his native language than Arabic, in which he could not claim to be a scholar.”\textsuperscript{413}

More interestingly, Marshall contrasts ‘Abd al-‘Azīz Kaḥīl’s way of interrogating the witnesses in court with that of Ḥasan Galāl, the president of the Alexandria tribunal of first instance.

\textsuperscript{408} Ibid. 45.
\textsuperscript{409} Ibid. 48.
\textsuperscript{410} Ibid., 87, 89.
\textsuperscript{411} Ibid., 61.
\textsuperscript{413} Ibid., 54.
While the former is nicknamed “the ‘Waboor’ or express,” the latter is described as “perhaps not being too quick witted.”

Regarding Galāl, Marshall further explains:

He took copious notes of everything that was said in Court, and what with that and shouting and arguing every point with [the] Counsel [for the Defence], it was not much wonder that occasionally he said his head was spinning and that we must adjourn for a few moments. (...) Every litigant always got a good run for his money, and whether Gellal’s decision was right or wrong, it was only arrived at after he had given it most careful consideration.

As for “the Waboor,” the British judge asserts:

I have known Kahil examine nine witnesses in a murder case in twenty minutes. As soon as they entered the room he began on them, and by the time the witness was in front of him, he was ready to administer the oath, which is always done by the Court. I sat a great deal with Kahil, and he was an excellent judge, but it was always considered best that he should have two careful men sitting with him. He was naturally very staccato in his speech, and sometimes abrupt to the verge of rudeness.

More generally, J. E. Marshall’s memoirs betray the strength of the racial prejudices he held towards his Egyptian colleagues on the Bench, and shed light on the complex political and professional rivalries that played themselves out in the courtroom. On this last issue, he recounts the misadventure of Wilmore, one of the British judges sitting at the Cairo court of appeal, who saw his ambition to become “the President of an Assize Court” thwarted by a coalition of various interests: those of his closest collaborators Aḥmad Zīwar and Muḥammad Saʿīd, but also those of Walter Bond, the almighty vice-president of the court of appeal.

Marshall explains that, although Wilmore “was the author of an Arabic grammar of some merit,” “he would never have an interpreter,” and “used to sit up all night reading depositions,” he was pushed out by “native Judges [who] in their hearts were averse to an Englishman presiding” and who used the fact that “he would write all the judgments whilst the Court was sitting, and [that] he was very slow at it.” Overall, Marshall sounds very proud to have taken part in a colonial enterprise that, through the establishment and supervision of the native tribunals, allegedly brought justice to “the indigenous population,” and he was very keen to underline that “it was [...] the collaboration of European Judges with their Egyptian colleagues which alone made justice possible.

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414 Ibid., 53, 54.
415 Ibid., 53.
416 Ibid., 54.
417 Ibid., 59.
418 Ibid., 106; emphasis added.
While the British judge seems to have respected a few of the local justice professionals to some extent, his racist contempt for the court users – both accused and witnesses – appears to have been boundless. As a solution to the problem of insecurity in Egypt, he advocates the reintroduction of flogging sentences, since he deemed the death penalty as inefficient, and the placement of Bedouins “in a reservation out of which [they] could not emerge without being shot on sight,” “in the same way that America has treated her Red Indians.”

As for the *fallāḥīn*, he would regularly encounter in the assizes court or in appeal, Marshall very tellingly takes up Cromer’s opinion on the topic but without quoting his source. Plagiarizing his “hero,” he thus asserts:

> The mind of the Egyptian is eminently wanting in symmetry and in the logical faculty. He is often incapable of drawing the most obvious conclusions from the most simple premises. If you try to elicit a plain statement of facts from an ordinary Egyptian, his explanation will be lengthy and involved. He will probably contradict himself half a dozen times before he has finished his story, unless he has learnt it by heart in order to give evidence before the Courts, but even then he breaks down under the most mild cross-examination.

Interestingly, it is this very scornful attitude towards peasants’ depositions in courts that is strongly condemned by Nicola Toma, one of the first lawyers to plead before the Ṭanṭā tribunal of first instance in the early 1890s. His target, however, is not so much the British judges as the Egyptian barristers who, at the time, have recently graduated from the law programs of Paris, Aix, or Cairo, and constitute a menace to his own career. In an article published in 1888 in his own legal journal, *al-Aḥkām*, Toma, a Lebanese who has begun his Egyptian career as a civil servant in 1875, thus denounces the gap that henceforth threatens to “separate” these new graduates from “the elementary social reality which underlay almost all Egyptian litigation.”

He further blames his colleagues with a legal education, by “comparing them to ‘the foreigners

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419 Ibid., 136-137.
420 Ibid., 133.
421 Ibid., 187-188; to be compared to Cromer, *Modern Egypt*, 147 (passage quoted in the subpart 1.2.2 of the first chapter of this dissertation).
423 As Cannon underlines, “one year later Toma himself would fail a new formal examination required of all candidates to the reorganized native bar in Cairo.” Ibid., 307.
424 Ibid., 307.
in the mixed courts [...] who cannot represent peasant clients, either because they fail to comprehend colloquial Egyptian, or because of cultural snobbery.’”

At that time, many lawyers pleading before the native courts are still former petty officials, wukalā’, or even petition writers, ‘ardahālgīyya, whose main competence lies not so much in some knowledge of legal terms and administrative formulae as in their ability to play the role of mediator, interpreter between the court users – more specifically the fallāhīn – and the judicial institution. At the other end of the professional ladder stand famous lawyers such as Sa’d Afandī Zaghlūl [1892 – M‘AQ] and Aḥmad Afandī al-Ḥusaynī [1892 – M‘AQ] who, while equally lacking any formal modern legal training, have both received a much more thorough education at al-Azhar, have acquired a much more valuable administrative experience, and distinguish themselves by their eloquence. Between these two groups, we find a host of middle lawyers such as Rāghib Afandī Dāwūd [1899 – HYH] - [1902 – MN‘A+], ‘Abd al-Wahhāb Muḥammad [1900 – MMM], or al-Shaykh Ḥasan ‘Abd al-Qādir [1902 – MN‘A+] whose backgrounds and career paths are very difficult to trace. Towards the end of the period, however, new names appear and the two titles “afandī” and “al-muḥāmī” (“The lawyer”) attached to them suggest that, through the development of the legal programs criticized by Toma, the establishment of stricter requirements to plead before the courts, and the creation of the native bar association, the lawyers have become at the eve of World War I both more professional and more socially recognized.

The same can be said of the many court clerks who emerge from the archives. In the late 1880s and early 1890s, the case of the overqualified kātib of the native court of Ṭanṭā, Shākir Afandī Aḥmad, who is appointed as a translation professor at the Khedivial Law School in October

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425 Ibid.
427 On the role played by both lawyers in the trial of Mikhīmar ‘Abd al-Nabī al-Qādī, see the subpart 1.4 of the first chapter of this dissertation.
429 On the evolution of the qualifications required to become a muḥāmī, see Ibid., 40-43.
430 On the creation of the native bar association, see Ibid., 44-46.
1886, seems to have been an extremely rare exception. At least, this is what suggests the fate of Ismā‘īl Afandī Abī Shanab, assistant clerk in that same court, who is allowed to retire in 1894 not only because “he served the government for more than 40 years,” but also because he had previously been reported as being “unable to properly perform the tasks entrusted to him.”

Before the establishment of the court of assizes, the turnover among the kuttāb also seems to have been very high. After 1905, Maḥmūd Fikrī Afandī appears to have secured one of the positions as “clerk of the tribunal” ("كاتب المحكمة") (as opposed to “clerk of the session” "كاتب الجلسة") for himself [1908 – ‘AMB+] - [1910 – SAB] - [1913 – BH‘A]. In 1912, however, three other civil servants are mentioned in various cases in that same capacity: ‘Alī Kāmil Afandī [1912 – IHS+] – [1912 – ‘ASQ+], Ḥusayn Sulaymān Afandī [1912 – ‘A‘AH+], and Muḥammad Ḥāfiẓ Afandī [1912 – MMI]. More research undeniably needs to be done on these court clerks whose mission is so crucial, but who still remain very shallow in the records.

To conclude, I would like to reiterate the idea that, for the court clerks, as for all the other professional actors of the native courts, language truly lies at the heart of their work. Throughout the period, their respective competence is evaluated according to shifting criteria of proficiency in European languages, knowledge of legal terminology and texts, and oral and written mastery of Arabic. In addition to these objective qualifications, another rather subjective element seems to remain unchanged: these actors’ ability to speak the language of power. From Muḥammad Afandī Muṣṭafā to John Edwin Marshall, this language of connections and negotiations allow them to advance their careers – and sometimes their political ambitions – by playing, through intermediaries, with the complex relationships existing between the Khedive and the British Consul-General, the two ultimate masters of the judicial system. Finally, one of these actors, Nicola Toma, also points at a last type of language the command of which, he argues, has been lost in the course of the professionalization process of the judiciary: that of the ordinary people

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432 Egypt, Egyptian National Archives, Ḥaqqāniyya – maḥākim ahliyya – kataba wa muḥḍirūn, [0075-041812], Mudhakkirat al-ḥaqqāniyya wa ra’y al-lajna al-māliyya bil-muwāfaqa ‘alā iḥālat Ismā‘īl Afandī Abī Shanab aḥad kuttāb māḥkamat Ṭanṭā al-ahliyya ‘alā al-ma‘āsh naẓaran li-‘adam qiyām bi-ta’diyyat waṣīfatihī kamā yajib (05.03-06.05.1894).
they are supposed to serve, and more specifically that of the fallāḥīn. And indeed, between Ibrāhīm Afandī Tawfīq’s verbal attacks on both plaintiffs and defendants, ‘Abd al-‘Azīz Kaḥīl’s interrogation of nine witnesses in 20 minutes, and John Edwin Marshall’s contemptuous and stereotypical conception of peasants’ examination before the courts, one has the feeling that, in this “multilingual” cacophony, the court users are neither understood, nor heard.

3.2.2 Perceptions from the margins of the courtroom: Jealousies, briberies, and the “spectacle of the law”

After having examined the professional – and to some extent political – dimension of the backgrounds of judges, lawyers and clerks between 1884 and 1914, I would like now to explore the social perceptions of these various actors of the judicial scene, held by the lay people of the community in which the court is located. I will attempt to do so, through the analysis of three different sources: an inquiry into accusations of fraudulent enrichment locally leveled against Muṣṭafā Afandī Ḥammūda the chief clerk of the Ṭanṭā native court of first instance in 1889; a memorandum regarding the situation of Ibrāhīm Mumtāz Afandī, former prosecutor at the Ṭanṭā court of assizes whose recent career as a judge is abruptly put to an end in Suhāg in 1915 after it has been proved that he used to accept bribes from prominent local notables; John Edwin Marshall’s memories on “the crowd of [local] political hangers” who would follow Muḥammad Sa’īd Bey, counselor to the native court of appeal, when he was sitting at the Ṭanṭā court of assizes between 1905 and 1908; and finally the British judge’s reflections on the “mean little Rest Houses” in which the assizes judges would stay for the duration of the trials and which, according to him, weakened “the majesty of the law” in the eyes of the locals.433

In early September 1889, two petitions are sent by a certain Śādiq (whose family name is indecipherable) to the prime minister and the minister of justice. In both texts, the author denounces “the behavior and manners” (سير و سلوك) of Muṣṭafā Afandī Hammūda, the chief clerk (باشكاتب) of the Ṭanṭā court of first instance. The petitioner more specifically accuses the bāshkātib of having dishonestly amassed a fortune by “interfering in the cases,” to the extent that he was able to buy a great amount of land on behalf of his wife and daughter, as well as

another plot on which he built a huge garden with a “wooden gazebo.” In addition, the clerk is also charged with speculating on crops. Following the receipt of the letters, an inquiry is discreetly launched by the ministry on September 11th, and inspectors are immediately sent to the tribunal. A week later, these agents “unofficially” present a report that fully clears Muṣṭafā Ḥammūda. The document reveals that the allegations were considered by the authorities with much gravity, and that the ensuing investigation has been conducted extremely thoroughly. Not only have all the clerk’s sources of income and properties been checked very carefully, but the purchase conditions of the latter have also been duly verified.

This detailed information sheds an interesting light on both the Cairene roots of the civil servant and the close ties that link him to the local community. We thus learn that Muṣṭafā Ḥammūda acquired, “in the name of his wife and daughter,” “two feddans and one eighth in Ṭanṭā for 207 E.P.” The document further specifies that, to pay the sum, the court clerk used part of his wife’s “private revenues,” the sale result of the land she owned in the province of Qalyūbiyya, and money he borrowed from the khawāga Yakhūr Buṭrun, a merchant in Ṭanṭā. Regarding this loan, the text even explains that the installments would be paid with the rent of the land Muṣṭafā owns himself further “south” (qiblī). After a review of past land transactions in Qalyūbiyya involving again his wife, daughter, brother, another Ṭanṭā khawāga, and a local Bey, the clerk’s other properties and sources of revenue are listed. We thus discover that Muṣṭafā also owns, along with his brother, 83 feddans in the southern part of the Delta and four houses and shops in Cairo; all inherited from his parents and the total rent of which represents an income of around 200 E.P. per year. Given these strong family roots in Cairo, the bāshkātib’s investments in Ṭanṭā appear all the more significant.

But more importantly, the clerk’s complex relationships to the local community members are further revealed by the manner in which the inquirer eventually accounts for the accusations raised against him. After briefly addressing the issue of Muṣṭafā Ḥammūda’s behavior ("سير") in

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435 At the time, the term khawāga can designate either a foreigner, a Copt, Jew, Syro-Lebanese, or merely a merchant.
the performance of his duties and strongly asserting that the bāshkātib is above all suspicion, the authors of the report suggest that the allegations contained in the petitions are merely the result of a plot ("مكيدة") orchestrated by a local “enemy intending to harm him.” The inspectors further explain that the latter is “most likely” “one of the Ṭanṭā [religious] scholars” with whom the clerk, who happens to be “a Shaykh of one of the Aḥmadiyya Sufi orders”436 (الطريقة الأحمدية), has grudges (ضغائن). While this revelation appears surprising, the Sufi connection is further substantiated by the fact that, in Ṭanṭā, Muṣṭafā rents the house of al-Sayyid al-Bakrī, a famous Sufi leader who resides in Cairo and only comes to the Delta for the mawlid or annual birthday celebration of the local Saint, Aḥmad al-Badawī. On the basis of such an interpretation of the case, the inspectors very interestingly advise the court clerk not to pursue the matter any further and even to abandon his Sufi activities since “this would not harm either religion or righteousness.”

Beyond its singularity, Muṣṭafā Ḥammūda’s story is significant insofar as it illustrates some of the perceptions held by members of the local community about the court clerk. To be sure, it is certainly the latter’s position within the Sufi order that first arouses the enmity of his rivals. But it nonetheless appears that both the bāshkātib’s material possessions and his function at the court have also played a major role in awakening their jealousy. The most recent land transaction and, above all, the garden with the “wooden gazebo” – about which the accuser is extremely well informed – undoubtedly lie at the heart of the matter. Their being mentioned in the petition quite clearly suggests the idea that such an opulence contrasts with the standard of living expected from a court clerk;437 an assumption substantiated by the fact that the inquirers are keen to specify that the garden is “planted with vegetables” and the gazebo is “five-meter-wide and six-meter-long” and intended for family use. While these elements seem to point towards a rather condescending conception of the profession, the very allegations that the clerk has illegally enriched himself underline that the position also provides valuable opportunities to

436 The Grand Sufi Order of al-Ahmadiyya (or Badawiyya) was founded by al-Sayyid Ahmad al-Badawī in Ṭanṭā where he died in 675 A.H. The mawlid al-badawī referred to in this text is the celebration of the Saint’s birthday that takes place annually around his shrine.

437 In 1885, the salary of a court clerk amounts to 600 piasters per month. See: Egypt, Egyptian National Archives, Ḥaqqāniyya – maḥākim ahliyya, [0075-041677], Mudhakkirat al-ḥaqqāniyya bi-taʿīn kātib fī maḥkamat Ṭanṭā al-ahlīyya (31.08.1885)
get in contact – for honest or dishonest purposes – with local merchants and notables, and they may imply that Muṣṭafā Ḥammūda’s work at the tribunal has actually brought him additional social power and recognition amongst the community. Finally, his “enemy’s” accusations also lead one to think that the court members might have been seen by many as easily corruptible.

Corruption is the major theme of the case involving Ibrāhīm Mumtāz Afandī, a former prosecutor at the Ṭanṭā court of assizes [1912 – IHS+] – [1912 – MMI] who becomes a judge at the eve of World War I. This time, the issue seems to have been raised by the magistrate’s colleagues and superiors in al-Bilyanā (in the vicinity of Suhāg) and at the tribunal of Asyūṭ with which he is affiliated in 1914-1915. The accusations are all the more serious that they have been reiterated by two different court presidents over a period of more than a year. Alerted as soon as 1914, the ministry of justice launched a first inquiry in the region, the conclusions of which are summarized in a 1915 memo as follows: “[Ibrāhīm Mumtāz Afandī] has a bad way of life ("سيء السيرة"), and his moral consciousness is contested ("مطعون في ذمته").” To substantiate these charges, the authors of the document further describe how the judge’s lifestyle had arisen “doubt and suspicion,” how overspending first led his collaborators to believe that he was receiving some additional income from his family, and how it was eventually concluded – from his expensive “nights of pleasure” ("ليالي سرورة") and his participation in late night parties and games organized by “some of the rich people of the province (…) known to have major interests and many cases in the court” – that he was “partial in his judgments” ("محاب في أحكامه") or, in other words, that he was corrupted.

This first investigation had also brought to light the fact that he had repeatedly borrowed money from “lawyers who plead[ed] before him” in court and whose clients he would rule in favor of. In one specific instance, Ibrāhīm Mumtāz had thus released on a bail the brother of an ‘umda who was accused in a criminal case, simply because the latter’s lawyer had vouched for a loan he had taken at the National Bank. The suspicions of the magistrate’s colleagues in Asyūṭ had interestingly been aroused by the fact that he had justified his (unjustifiable) decision through long “ḥaythiyyāt” ("حيثيات") or reasons, which implied that “he had studied the case extensively,

although the time the file had remained in his hands would not have allowed him to study a fourth of it.” It was therefore deduced that the lawyer himself had prepared the text of the ruling for the judge. The Asyūṭ court of assizes subsequently revealed that the ‘umda had “manipulated” ("تلاعب") the investigation, and found the latter’s brother guilty of the crime.

Following the results of this first inquiry, the ministry merely wrote “a secret letter” ("جوابا سريا") to Ibrāhīm Mumtāz stressing that such deeds were “inconsistent with the dignity of his function” and merely expressing “the hope” that he would not repeat them. A year later, however, the same allegations of corruption against the judge were reiterated by the new president of the Asyūṭ court, and once again an inspector was sent to the field. This second investigation reveals, not only that the magistrate still maintains strong links with lawyers of ill repute, but also that he has developed questionable relationships with some of the locals ("الأهالي"). Regarding the barristers, the memo documents a new series of four criminal and civil suits (crime, robbery and forgery) in which Ibrāhīm Mumtāz either released on bail, or cleared, accused against whom compelling evidence had been presented, and who were later sentenced to heavy penalties by higher jurisdictions. One of these instances involves a moneylender who initiated a civil suit against his debtors, claiming that they had forged the receipts attesting to their successive payments, and who was subsequently proved to have lied and to have filed the same case before three different tribunals. As for Mumtāz’s links to the locals, the text mentions the story of an unemployed inhabitant of the region who used to work as a contractor and who gained “the judge’s friendship” “because he knew how to serve an unmarried young man.” In exchange for his services, the contractor was repeatedly appointed by the magistrate as an “expert” in court, all this with the connivance of the lawyers. With the disclosure of this new evidence of corruption, Ibrāhīm Mumtāz Afandī was eventually put to early retirement by the ministry on December 14th, 1915, along with two other incompetent colleagues.

Mumtāz’s fate sheds light on the tergiversations of a ministry of justice which, although it has been informed of the judge’s misconduct and provided with proof of it by conscientious colleagues and superiors, takes more than a year to remove him from office. More specifically, the discreet inquiries and the secret letter through which the corrupt judge is given a chance to amend himself betray the ruling elites’ embarrassment when it comes to cases of corruption, and their keen attempt – also discernible in other archival sources – to create and maintain,
against all odds, the image of a healthy and honorable judicial body. But Ibrāhīm Mumtāz’s short-lived career as a magistrate also illustrates the extent to which the (corrupt) judge is seen either as a potential client by the rich and powerful (notables, merchants, ‘umad, and moneylenders), or as a patron by more ordinary members of the local community (the unemployed contractor). As such, the judicial function at the time resembles very closely that of other senior civil servants and that of aspiring politicians, with the added idea that, through the intermediaries of skillful barristers, law itself can be manipulated.

The validity of this parallel between magistrates and politicians is substantiated by the fact that, as has been mentioned in the previous subsection, the judiciary was often considered the “antechamber” in which the sons of prominent families would prepare for higher posts in the administration of the country. And this strategic period would not only play itself out in the corridors of the justice ministry in Cairo, but also in and around the court in which the aspirant had been appointed, with various members of the local community. In this regard, John Edwin Marshall’s memories of his sitting at the Ṭanṭā court of assizes with Muḥammad Saʿīd Pasha are very telling. The British judge thus recounts:

Mohamad Saïd had no desire really to stop on in the Courts. (...) We were sitting together at the Tanta Assizes when the news came that he had been appointed a Minister. He had not expected it and was proportionately pleased. He was, of course, the Khedive’s man. (...) Saïd afterwards became Prime Minister of Egypt, a position which he occupied two or three times, and was given a G.C.M.G. by the British Government. He naturally occupied himself a good deal with politics when he was a Judge. I sat a good deal with him on Assize, and wherever we went he always had his little crowd of political hangers on, who believed that one day he might achieve a position of usefulness to them.⁴³⁹

The first scene depicted by Marshall took place in 1908. Saʿīd had then just become minister of interior in a government led by Buṭrus Ghālī. Upon the assassination of the latter two years later, the former judge would be nominated as prime minister, and he remained in office until 1914.

Within the framework of this study on the perceptions of the court members, Marshall’s memoirs also prove useful insofar as the author provides some reflections on the housing conditions of the magistrates, and how these would negatively impact, he argued, the residents’ conception of the judiciary. Contrary to the judges of the first instance tribunals, those of the

assizes courts, created in 1905, did not live in the town in which the court was located. Primarily practicing as counselors to the court of appeal, they very often lived in Cairo or Alexandria, and would only temporarily reside in other provincial towns when the assizes were convened, and this only for the duration of the session. At this occasion, they would be accommodated in what Marshall describes as “mean little Rest Houses.” He further explains:

[A] cause for complaint was the Judges’ Rest Houses, provided for the convenience of Judges when on Assize. Each had a sitting-room, two bedrooms and a bathroom, and while not bad of their kind, these were very flimsy for hot weather residences. (...) The only one that was at all well-furnished was that of Tanta, for which Maple’s secured the contract, but even that was nothing in particular. The others were furnished with rubbishy, country-made furniture, and had such ill-fitting doors to the wardrobes that a rat ate Talaat’s shirt one night in one of them. The Judges’ Rest Houses were completely overshadowed and outclassed by the houses of the English Judge of First Instance and the irrigation officials, and it was accordingly very difficult for a native to understand that the Assize Judges were so very much important. How could they be, when they were housed in such very inferior dwellings?

Interestingly, the British judge considers the issue as being of outmost importance, and he even goes as far as attributing to it much of the failure of the assize courts to reduce crime in the country. In a memorandum sent to Lord Kitchener, the British Consul-General, in 1912, Marshall bluntly argues:

About eight years ago, the Government was suddenly struck with the idea that the institution of Assizes at the different provincial centres was the long-sought panacea for the increasing criminality in the country. (...) Mean little Rest Houses, which are very hot in summer and very cold in winter, were built at great expense for the Assize Judges. They look like the outhouses of the neighbouring residences of the English Judge of First Instance and the Irrigation officials. No attempt was made to herald the arrival or departure of the Judges by any of the Moodiria [i.e. provincial] authorities. The Judges arrived and left with less ostentation than the humblest native merchant in the Assize town. No official recognition was made of their presence. Nothing was done to emphasise the dignity and importance of an Assize, or to bring home to the minds of the people the object lesson it should have conveyed. Yet the East always responds readily to display, and the spectacle of these men driving in a rickety old street arabieh to the Court would not be likely to suggest any intention of creating a sensation or making an impression. The pageantry which is still thought necessary, even in England, to uphold the majesty of the law and the dignity of the Judges on Assize was conspicuous by its absence in Egypt. Yet the Assizes were instituted with the object of making an impression in the native place of those who were brought before them on trial. They were supposed to deter as well as to punish.

To be sure, the text much more betrays Marshall’s own frustration at his “inferior” housing conditions and his lack of recognition by local residents, than it reveals anything about the latter’s real perceptions of the assize magistrates. The document is nonetheless very valuable

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440 Ibid., 88-89.
441 Ibid., 126-127; emphasis added.
insofar as, beyond the racist reflections on the Eastern peoples’ alleged sensitivity to spectacle, it exposes the British judge’s conception of how the “staging” of law constitutes an integral part of the functioning of justice. Let us now explore how this notion was implemented inside the courtroom and how it partly framed the power relations among professional and lay actors.
3.3 Distribution of the roles and courtroom procedure

While the cases tried at the Ṭanṭā tribunal between 1884 and 1914 remain visually undocumented, the few photographs of the Dinshawāy trial taken in 1906 might give us some insight into courtroom set ups at the time (Appendix 24). To be sure, the Dinshawāy court was a “special court” – not a regular native tribunal of first instance – and the hearings were held at the provincial palace of Minūfiyya in Shibīn al-Kūm – hence in an administrative not a judicial edifice. Despite these essential differences, it is worth mentioning that out of the six members of the Dinshawāy tribunal, three did sit either in the native or the mixed courts: Walter Bond, vice-president of the native court of appeal; Aḥmad Bey Fathī Zaghlūl, president of the native court of first instance of Cairo; and ‘Uthmān Bey Murtadā, judge of the Alexandria mixed court of appeal. The prosecuting counsel, Ibrāhīm Bey al-Hilbāwī, and the lawyers Aḥmad Bey Luṭfī al-Sayyid (appointed by the government) and Muḥammad Yūsuf (commissioned by the villagers) would also plead before the native courts.442 In addition to this permeability of personnel between the special and ordinary tribunals, the code of procedure followed in both structures was the same.443 For these reasons and in the absence of any other iconographic source of comparison, a short study of the Dinshawāy court setting can prove enlightening.

In his report on the first session of the trial held on Sunday morning, June 24th 1906, Aḥmad Ḩilmī, the correspondent of al-Liwā’, explains:

I went to the Mudīriyya, and then I saw a large pavilion pitched in its courtyard. At the rear [of the pavilion] (fī ṣadrihi) there was a podium (minaṣṣa) for the members of the tribunal to sit. On the right side [of this podium] was the place of the correspondents of the Arab newspapers; on the left side, was the place of the correspondents of the European (ifrankiya) newspapers; and between them, in front of the center of the tribunal, was the place of the lawyers. Then, in the rest of the pavilion around four hundred chairs were aligned for those who had printed tickets (tadhākir maṭbū’a) in hand. As for the accused, two wooden docks (qafasāni khashabiyyani) were set up on the model of the docks of the new criminal courts of appeal, each one of them on one side. The deliberation room was placed on the right side of the podium of the tribunal. At nine o’clock came his Honor the [British] Adviser to the Interior. He inspected the place of the newspapers, and ordered the upholding of its organization and that of the organization of the spectators’ (al-mutafarriḥin) seats.444

443 See article 4 of the Khedivial decree establishing the “special tribunals,” Correspondence Respecting the Attack on British Officers, 3.
444 Majallat al-majallāt al-‘arabiyya, 236; emphasis added.
Through Aḥmad Ḥilmī’s eyes, the physical setting of the special tribunal seems to differentiate between various groups. On the “stage” sit the members of the court who thus present themselves as the real “actors” of the performance, unlike the lawyers who are lost in the middle of the huge crowd of journalists and are thereby reduced to mere “supporting roles.” The audience is composed of two different sections, the journalists, themselves categorized into “Arabs” and “Europeans” facing each other, and the authorized “spectators,” who have obtained the “printed tickets”.

As for the fifty-two accused, they seem to be displayed as wild animals in a zoo. Aḥmad Ḥilmī thus describes their entrance into the courtroom:

> At 9:45 a.m. the accused came in the midst of an escort of soldiers armed to the teeth. They were without handcuffs, and on the chest of each accused there was a number in the numerals of the Europeans (bi-l raqam al-ifrankī) from one to fifty-two. Their ages ranged from fifteen years old to approximately sixty; the older was the number one and the younger was the number forty-three.445

The system of signs hung around the necks of the accused and which bear “European” numerals is designed not only to facilitate the identification of the offenders by the four British witnesses (the “victims of the aggression”), but also to depersonalize the defendants. The latter’s alleged state of ignorant passivity that this depersonalization implies is further emphasized an hour later when the members of the court, noticing that the accused have been seated randomly, request that they be placed in order following the numbers hung on their chests, and suspend the session for fifteen minutes to allow this “adjustment” to be performed (taʿdīl tartīb al-muttahāmīn).446

Although the trials of the Ṭanṭā native court were undoubtedly less followed by the media and less heavily guarded, they were also governed by the essential principles of publicity and policing of the hearings. Regarding the repressive nature of such an environment, both Grandmoulin and Achkar underline that, although the code of criminal procedure provided that the accused should be brought “free” to the courtroom, i.e. “without irons,” the non-compliance with this clause did not invalidate the judgment; and a number of decisions from the court of

445 Majallat al-majallāt al-ʻarabiyya, 237; emphasis added
446 Further Paper Respecting the Attack on British Officers at Denshawai, 67; Majallat al-majallāt al-ʻarabiyya, 239.
cassation in this regard suggests that the appearance of handcuffed defendants was not infrequent.\textsuperscript{447} According to the code, the president of the tribunal also had the power to expel anyone “disturbing the order,” and to take “measures to ensure, in the courtroom, the order, security, and calm of the justice operations.”\textsuperscript{448} It seems that the feeling of insecurity probably experienced by the accused in such a setting was also sensed, even though to a much lesser extent and unquestionably for very different reasons, by the lawyers pleading before the court. The British judge John Edwin Marshall thus interestingly confesses: “[As a lawyer,) I always felt nervous in Court until things had got under way, but on the Bench, fortunately, I was never conscious of any such feeling.”\textsuperscript{449} The judges’ positioning on a higher “stage” allowing them to supervise the proceedings from above, as well as their wearing either red or green sashes,\textsuperscript{450} might well have contributed to this sentiment of power and authority. Having thus set up the scene and identified the various actors, we can now further explore the dynamics of courtroom procedure, first in theory and then in practice.

### 3.3.1 In theory: Orality, performances, and the defendant’s rights

The main theoretical tenets upon which the courtroom procedure is founded are the publicity, orality and contradictory nature of the hearing;\textsuperscript{451} and these apply both to the phase of evidence production, through the interrogation of accused and witnesses, and that of legal decision making, through the pleadings, the deliberations and eventually the drafting and reading of the judgment. As was mentioned in chapter 1, these principles were initially presented by the colonial authorities both as a rupture with the procedure hitherto used in the double system of \textit{sharī‘a}-\textit{siyāsa} courts, and as the best means of ensuring at the same time the interests of society and the rights of the persons questioned.\textsuperscript{452} The condition of orality was especially highlighted as a key guarantee of the fairness of the trial, and an essential element to prevent miscarriages of justice. When the highly disputed project of assize courts was debated between the 1890s and

\textsuperscript{448} Grandmoulin, \textit{La procédure}, vol. 1, 281.
\textsuperscript{449} Marshall, \textit{The Egyptian Enigma}, 3.
\textsuperscript{450} Ibid., 127.
\textsuperscript{451} Grandmoulin, \textit{La procédure}, vol. 1, 268-277.
\textsuperscript{452} See chapter 1 - subpart 1.2.1 “‘Le Parquet ne frappe pas:’ The new judicial procedure and the liberation of the peasantry.”
1904, the argument underlining the crucial importance of both directly hearing the witnesses’ and defendants’ oral depositions and personally witnessing these depositions’ performative dimension acquired an additional strategic value.\textsuperscript{453}

This point would be once again put forward on March 6\textsuperscript{th}, 1905 by Sir Walter Bond, the vice-president of the Cairo appeal court, in the inaugural address he delivered at the opening session of the assizes. Bond thus declared: “[Today] marks a very important day for the administration of justice. Henceforth, the magistrates, called by the sovereign’s confidence to render criminal justice in his name, will issue their decisions in full knowledge, basing their conviction on the evidence produced before them, and not anymore, as in the past, on written documents, cold and impassive...,\textsuperscript{454} “papers that do not speak.”\textsuperscript{455} The magistrate then explained that “they would examine each felony as to whether the accusation is confirmed, and second, study the danger posed by the criminal for the social order and the size of the punishment to be imposed.”\textsuperscript{456} He concluded that the courts would hence be able “to punish real criminals with the appropriate penalty’ while ‘preventing the punishment of the innocent.”\textsuperscript{457} In a report published a year later as part of the judicial adviser’s report for 1905, Bond would reassert that, thanks to the assizes “the accused, after the hearing of the case, ha[d] become a real and living being; [while] under the old system, he was rather an abstract idea.”\textsuperscript{458}

A close examination of the three key moments of the trial – the questioning of the accused, the cross-examination of the witnesses, and the making of the judgment – sheds light, however, on how the judicial orality practiced in the courtroom was synonymous with oppression rather than fairness, how the essential hybridity of the Egyptian criminal procedure reflected the very internal contradictions of the colonial legal system, and how the successive law reforms that

\textsuperscript{453} See chapter 1 – subpart 1.2.3 “The ‘anthropological’ focus on peasants’ ‘appearances’ and the lowering of evidence standards.”

\textsuperscript{454} Achkar, \textit{L’instruction}, 106.

\textsuperscript{455} Hill, “The Golden Anniversary,” 215. (Note: Achkar cites from the original source: \textit{“Journal Officiel du 8 mars 1905,”} whereas Hill refers to an article on the history of the native courts, written by Muḥammad Sāmī Māzin and published in 1933 in the famous commemoration volume entitled \textit{Al-kitāb al-dhahabi lil-mahākim al-ahlīyya}).

\textsuperscript{456} Ibid.

\textsuperscript{457} Ibid.

\textsuperscript{458} As quoted in Grandmoulin, \textit{La procédure}, vol. 2, 96.
eventually deprived the accused of his/her basic rights were always justified by conveniently invoking the peasants’ allegedly pernicious language uses.

While the official rhetoric claimed that, within the new system of native courts, the accused would be offered an opportunity to explain themselves and give their versions of the events, the study of the archives reveals that the interrogation of the defendants was limited to a single question. After the reading of the indictment act – most often performed by the court clerk – and the presentation of a summary of the prosecutor’s requests, the president of the court would thus merely “ask the accused about the charges attributed to them,” a query to which the latter would answer in a single short sentence, either denying or acknowledging the facts. In his textbook on Egyptian criminal procedure, Grandmoulin confesses that the code of criminal procedure contains “two prescriptions that seem in opposition regarding the interrogation of the defendant or the accused: article 134 orders it at the onset of the hearing, while article 137 forbids it in the course of the debates.” He nonetheless asserts that this “contradiction” “is only apparent.”

The French legal scholar further explains that the president’s initial question to the accused is a mere “interpellation” aimed at “sparing the [court’s] time” in case of spontaneous confession. If the defendant recognizes the facts, the judges are indeed allowed to rule on the case without hearing any of the witnesses or proceeding any further with the trial. Grandmoulin interestingly mentions that “the provision was borrowed from the English procedure in which the accused is asked (arraignment) whether he intends to plead guilty or not guilty.” More surprisingly, he specifies that the court of cassation has repeatedly established that the omission of this initial question by the president did not constitute a sufficient reason for nullifying the procedure “since it [did] not prejudice the defendant in any way.” In other words, the courts could – and obviously did many times at the turn of the century – reduce the accused to absolute silence, and their rulings would – and were – still considered as valid.

459 Grandmoulin, La procédure, vol. 1, 295.
460 Ibid.
462 Achkar, L’instruction, 205-206.
463 Grandmoulin, La procédure, vol. 1, 296.
464 Ibid.
In case the defendant was not questioned on the charges or declared that he would plead not guilty, the Egyptian code of criminal procedure concomitantly forbade him from being interrogated any further in the course of the hearing. In this respect, it significantly differed from its French model. Now, the rationale provided by Grandmoulin to justify what can be described as a flagrant legal irregularity is extremely enlightening and deserves to be quoted in its entirety. The law professor awkwardly explains:

According to Bentham, “interrogation is the most effective way to extract the truth, the whole truth.” The Egyptian legislator has thought, however, that the accused should not be led to give evidence against himself through an induced confession, because often ignorant or intimidated by the prosecution and the judiciary, he would be unable to defend himself against the skillful dialectics of the opposing sides and their counsels.

The interrogation by the magistrate, sometimes tinged – in practice – with harshness, hostility, and bias, is itself likely to degenerate into an indictment all the more dangerous that it emanates from a judge who should reserve his opinion until the judgment. On this point, the Egyptian law thus gets closer to the English procedure, and moves away from the French procedure where [the interrogation by the judge] is practiced.

Following Grandmoulin’s line of reasoning, the by-definition law-illiterate defendant is silenced to protect him/her from himself/herself. In addition, the techniques of judicial orality – and in particular dialectics – that had hitherto been described by the law professor mainly as a crucial opportunity for the interviewee to defend himself/herself and for the interviewer to perform the “delivery of the truth,” are now seen as a major danger that the accused would be unable to meet. Similarly, the judge – who in the inquisitorial system is supposed to actively take part in the investigation of the facts – is depicted here as being occasionally “harsh[, hostil[e], and bias[ed].” And it is allegedly on the basis of this dysfunctional practice, and hence on the threat posed once again by the magistrate to the accused, that the rule forbidding the interrogation of the latter is set. As with the “interpellation [aimed at] sparing the [court’s] time,” the explanations provided by the French legal scholar reveal how the colonial authorities conveniently “borrowed” elements from the English criminal procedure to establish a much more expeditious and repressive justice than the initial model would have allowed. Finally, the awkwardness and eventual inadmissibility of Grandmoulin’s rationale is further underlined by a

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465 Ibid., 297.
466 Ibid., 297-298.
467 Ibid., 154-161, 176-180; for a discussion of this view, see also chapter 1 - subpart 1.2.1 “‘Le Parquet ne frappe pas;’ The new judicial procedure and the liberation of the peasantry.”
legal principle he presents on the next page of his textbook, and that reads as follows: according
to Egyptian law, the defendant himself can request to be interrogated by the court (article 137);
and, as was decided by the cassation court as early as 1893, if this request was to be refused, it
would be considered as “an infringement of the rights of the defense” causing a “substantial
nullity” of the judgment.468 This last element clearly exposes the fallacy of the main argument
claiming that the interdiction to interrogate the accused was a mere measure of protection, as
well as the reality of the internal contradictions of colonial law pretending to liberate and defend
the fallāḥ while further silencing and repressing him/her.

The idea that the colonial authorities borrowed elements from the English criminal procedure at
will to alter the very nature of the trial procedure is substantiated by an examination of the rules
that governed the questioning of witnesses.

In addition to the previously mentioned fact that the accused’s direct relatives and allies could
be called to testify,469 the format of the interrogation constitutes another crucial point that
differentiates the Egyptian procedure from its French model. On this issue, Grandmoulin
explains that, while in the French system, the witnesses were merely “heard” and their
testimonies “spontaneously” delivered, they were, according to Egyptian law, to be subjected to
a true “interrogation” that took the form of a “cross-examination.”470 The law professor
mentions that this sort of questioning was “borrowed” from the English adversarial system, and,
quoting at length from the Egyptian code of criminal procedure, he further specifies: “the
witnesses of each party are alternately interrogated by this party or its counsel, and then by the
opposing parties. The judge remains an impartial listener of this examination, although he may
ask, himself, any question he deems useful for the manifestation of the truth.”471 More
significantly, the legal scholar underlines the crucial importance of the oral nature of the
testimonies, claiming that “[the witnesses’] attitudes, their hesitations, the more or less assured
tone of their words and quality of their poises are [elements] proper to inform [the court] on the

468 Grandmoulin, La procédure, vol. 1, 299.
469 Grandmoulin, La procédure, vol. 1, 315-317; Achkar, L’instruction, 200-201. See also: chapter 1 –
subpart 1.2.3 “The ‘anthropological’ focus on peasants’ ‘appearances’ and the lowering of evidence
standards.”
471 Ibid., 318.
value, veracity, or passion of their statements.” Interestingly, one finds again, in Grandmoulin’s presentation of this hybrid criminal procedure, the arguments already put forward seven years earlier by the judicial adviser, Malcolm McIlwraith, in his defense of the controversial assizes project: a boundless confidence in the technique of cross-examination and a decisive significance attributed to the witnesses’ “appearances.” In order to further demonstrate the legitimacy of this procedure, the author of the textbook explains that the accused has the right to request the hearing of witnesses for his defense, and that, following numerous rulings by the court of cassation, the judge’s refusal to accede to this demand constitutes a sufficient reason to invalidate the judgment. The professor also mentions that the defendant is allowed to question both prosecution and defense witnesses, that he has been placed by the law “on equal footing” with the public prosecutor, and that he had even been granted “the privilege to have the last word” at the trial.

In this scheme, the previously assumed law-illiteracy of the accused – that prevented him from being interrogated by the judge – has ironically disappeared. The defendant is described as mastering the rules of the game, and being perfectly able to make full use of his allegedly extensive rights. Far from being “intimidated” by or lost in the law professionals’ “skillful dialectics,” he is now seen as following the debates so closely that he can take an active part in them and pertinently question the witnesses that have just been interrogated by the magistrates. To be sure, these defense techniques were performed, in practice, by a lawyer either chosen by the defendant himself or directly appointed by the tribunal. But even for these, who were officially considered – for most of the period – inadequately trained and who were most often ill-informed about the case, it was not an easy task to meet what was depicted by Achkar as a “general attack against the accused.” Overall, the sudden introduction – at the trial phase – of adversarial elements within a broader inquisitorial system undoubtedly constituted a major legal anomaly that significantly restricted the rights of defendants who, in the course of the

472 Ibid., 320-321.
473 See: chapter 1 – subpart 1.2.3 “The ‘anthropological’ focus on peasants’ ‘appearances’ and the lowering of evidence standards.”
474 Grandmoulin, La procédure, vol. 1, 324-326 ; Achkar, L’instruction, 205.
475 Achkar, L’instruction, 179-191.
476 Ibid., 188-190.
477 Ibid., 209.
preliminary inquiry, had already been subjected to numerous interrogations and confrontations by the public prosecutor’s local representative and who, in the courtroom, had little chance of having their defense heard without the help of rare skilled legal counsels.

Incidentally, Grandmoulin himself acknowledges the dangers of such a technique of cross-examination, and mentions in passing that in England it had led to “some abuse.” QUOTING a comparative history of British and French law and institutions, he explains: “Lawyers for both sides […] question the witnesses with incredible vivacity, lead them to [make] statements, the scope of which they do not understand, and thus succeed, by dint of persistence and skill, in obscuring the truth and throwing into confusion the minds of jurors.” In order to prevent such a situation in Egypt, the French law professor recommends “a strong leadership in the debates” by a court president who is supposed to protect the witnesses from any “disturbing,” “intimidating,” or “indecent” forms of language. But one could also add, in a rather sarcastic tone, that the best way to avoid confusing the jurors is, more radically, to dispose of the very idea of the jury.

The absence of jury in the assize courts created in 1905 represents the last element that differentiates the Egyptian criminal procedure from its French model. In the Egyptian system, the cross-examination of witnesses performed by both prosecution and defense, as well as the pleadings of both parties that ensued, were thus not directed towards jurors but rather towards the three judges of the court. While in the French procedure, the introduction of a people’s jury was meant to guarantee the preservation of the defendant’s rights despite the elimination of the possibility to appeal the verdict, the successive British judicial advisers who designed the Egyptian project considered this latter element appropriately compensated by the fact that the three assize judges would sit in the assizes in their capacity as counselors to the appeal court. Faced with widespread and vehement criticism, the colonial authorities would also argue that they had initially proposed the appointment of two local notables as assessors but that the idea

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478 Grandmoulin, La procédure, vol. 1, 319.
479 Ibid.
480 Ibid.
481 Grandoumoulin, La procédure, vol. 2, 93,
482 Egypt, Egyptian National Archives, Majlis al-wuzarā’ - nizzārat al-ḥaqqāniyya, [0075-040099], Report for the Year 1904 (Cairo: National Printing Department, 1905), 37-42.
had been rejected by the legislative council. More generally, the rationale justifying that juries were used in the mixed assizes but not in the native courts was the colonial argument *par excellence* that the “natives” had not acquired a sufficient degree of legal consciousness to be able to serve as jurors. Egyptian legal circles were also divided on the issue, and the idea of a people’s jury did not find much support among these local elites either. Joseph Achkar was one of these reticent legal scholars. In his doctoral dissertation dedicated to the assize courts and published in 1909, he thus gives a true apology for the jury in general, but eventually concludes that the introduction of such an element in the Egyptian judicial system would prove extremely dangerous given the prevalence of racial, religious, and social prejudice in the Egyptian population.

It is telling, however, that the question of the extent to which the Egyptian beys, bashas, British “misters” and French “messieurs” sitting in the assizes might have been similarly prejudiced against the peasants who appeared before them was never raised.

The direct consequence of this absence of the jury was that the final ruling was made by the president of the tribunal after deliberations with his two other colleagues. Instead of being founded on the “intimate conviction” of the jurors – who lacked the legal knowledge to reach a decision on other criteria –, the judgment was eventually based on the “intimate conviction” of the judge. As was mentioned in the first chapter of this dissertation, the idea that the magistrate found the final decision on his “intimate conviction” was then presented as a major historical innovation, that constituted an intermediary solution between the alleged excessive legalism of *sharī‘a* law and the assumed flagrant violations of basic legal principles in the *siyāsa* courts, and opened the way to a swifter and more “effective” judicial system. The issue in which this transition from the concept of “legal proof” to the notion of the judge’s “intimate conviction” was most disruptive was that of the death penalty. As early as 1897, following a modification of the penal code adopted under the pressure of the British judicial adviser, Sir John Scott, the *sharī‘a* requirement to find two Muslim male eyewitnesses of the crime or have

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484 Grandoumoulin, *La procédure,* vol. 2, 93.
the accused confess publicly in order to sentence him to death was abandoned, and the number of death sentences significantly increased. In such cases, the president of the assize court still had to send the file to the muftī for approval before the verdict was issued, but the opinion of the latter was not binding. Interestingly, the argument mobilized to justify this reliance on the judge’s “intimate conviction” was once again the Egyptians’ – and more specifically the peasants’ – alleged habit to either refuse to testify or give false testimonies.

Both Grandmoulin and Achkar – the latter of whom was nonetheless a fierce opponent to the system of assize courts – dwell at length on this question of perjury; the French law professor concluding that “more than in other countries, the Egyptian judge [had] to critique testimonies [that were] often deceptive, weigh them more than count them, and rule according to his pondered conviction.”

To conclude, this analysis sheds light, in contrast with the rhetoric of the time, on the oppressive dimension both of the judicial orality practiced in the courtroom and of a law system that gave the leading role to the sly oratory skills of prosecutors, and – to a lesser extent – to lawyers and judges. In such a scheme, the mission of the latter was not so much to “hear” the lay participants at the trial as to “stick” and gauge them notably through their “appearances” and “performances.” In addition, the close examination of the legal texts and their interpretations clearly reveals the internal contradictions of a fundamentally colonial – highly hybrid and ambiguous – criminal procedure, claiming to constitute the peasant on trial – accused or witness – as a free subject, while further silencing, coercing, and eventually objectifying him. Finally, this study of courtroom procedure also shows how, from his assumed ignorance to his so-called shrewdness, from his supposed inability to pertinently present his version of the facts to his suspected irrepressible tendency to give false testimonies, all the contradictory language acts and uses attributed to the fallāḥ were successively mobilized to justify legal reforms that eventually deprived the defendants of their most basic rights.

490 Grandmoulin, La procédure, vol. 1, 301-302.
3.3.2 In practice: Power relations in the enactment of the prosecutor’s story

After having studied the trial procedure from a theoretical point of view, let us try now to get a sense of what happened in practice. A close examination of the entire archival corpus reveals two major trends over the period 1892-1914. The first one is a tendency towards a progressive silencing of the witnesses. While, in the file of Mikhīmar ‘Abd al-Nabī tried in 1892, the proceedings of the trial spread over 23 pages, with nine witnesses heard in two different sessions [M‘AQ – 1892: 140-162]; in the similar case of Barūd Ḥammād al-‘Arabī judged in 1914, they extend over only four pages, with six witnesses interrogated on the same day [BH‘A – 1913: 4300-4303]. In a few of the assize cases, the notes seem to have been taken in a summarized fashion, a practice that the code of criminal procedure allowed;491 but this element alone cannot account for the difference. The sources rather suggest that, over time, the example of ‘Abd al-‘Azīz Kaḥīl, who would interrogate nine witnesses in 20 minutes,492 was emulated by many. This evolution is also confirmed by the legal scholar Joseph Achkar, who, citing astonishing self-congratulatory statistics and reports from the ministry of justice, deplored, as early as 1909, that the greater swiftness of the judicial process induced by the creation of the assize courts had been obtained to the detriment of both the “solemnity” of the procedure and the rights of the defendants.493 Commenting on the first session of the Ṭanṭā assize court in March 1905, he thus explains: “[the session] was held for ten days, and tried 21 cases. The Judicial Adviser, who quotes these figures in his report for 1905, notes with satisfaction that the celerity with which justice then accomplished its work, has strongly affected popular imagination in Lower Egypt.”494

The second trend is related to the manner in which the public prosecutor would conduct the interrogations at the trial. Before 1895, the preliminary investigation of the case was in the hands of an independent inquiry judge (“juge d’instruction” or “قاضي تحقيق الجنايات”), and, during the hearing, the public prosecutor was mainly concerned with verifying in detail the validity and

491 Grandmoulin, La procédure, vol. 1, 322-323; Achkar, L’instruction, 204.
493 Achkar, L’instruction, 110-111, 128-130, 227.
494 Ibid., 129.
veracity of the main testimonies collected by the *juge d’instruction*. In a sense, the prosecutor was to undertake the investigation once again in a public setting; and his pattern of questioning resembled very much that which Kershaw advised the local *substituts* to use during the investigation phase, focusing on issues of precise places, dates, and times, as well as on the origins of the witnesses’ knowledge. After the suppression of the *juge d’instruction*, the preliminary inquiry fell under the responsibility of the local prosecutor who, in most instances, would also be the one to bring the case before the court. Consequently, the latter’s main objective at the trial was not anymore to authenticate the results of an investigation he had conducted himself. His aim then became to “sell” to the judges the well-structured and compelling “story” of the crime he had elaborated in the course of the inquiry, in order to obtain the punishment he deemed appropriate for the accused. Here again, most prosecutors seem to have followed Kershaw’s recommendations, assuming that the court had not read the file of the case and pressing the witnesses so that they disclose – and limit themselves to – the key elements of the “story” officially built during the investigation: the motive and the evidence of culpability. Such a tendency increased with the creation of the assize courts, and it remained unaffected by the introduction into the system of a transfer judge (“*juge de renvoi*” or “قاضي الإحالة”) described by Achkar as “a mere stooge,” “an ordinary extra,” supposed to rule on both the nature of the charges and the kind of court in which the case should accordingly be tried, but who would almost never alter the prosecutor’s simple narrative.

Apart from these two main trends, the performance of the various actors at the trial differed from one case to the other, as well from the theory. Although this practice was considered illegal, the defendants were sometimes interrogated by the prosecutors. In other instances, they were completely silenced, not even subjected to the initial interpellation. The witnesses were more or less pressed by magistrates of variable abilities and aims. Finally, the latter pleaded and eventually ruled through techniques and arguments of inconsistent relevance, but often questioning either the believability of the testimonies or the conditions in which partial testimonies were given.

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495 For a very telling example of such a pattern, see: [1892 - M’AQ: 140-157].
496 See chapter 1 – 1.2.2 “‘Best method of obtaining fellah’s evidence-in-chief’ and of developing a simple and compelling ‘story.’”
confessions had been obtained from the accused. Let us examine now more closely the case of ‘Āmir Muḥammad Badawī [1908 – ‘AMB+], and more specifically the different methods used by the prosecutor inside the courtroom to put forward his narrative of violence and greed.498

When the trial of ‘Āmir and Qandīl begins on August 1st, 1908, all the actors are present: Aḥmad Ḥilmī Bey, who presides the tribunal; ‘Alī Dhū al-Faqār Bey and Aḥmad Zīwar Bey, the counselors to the native appeal court; Buwāqīm Mīkhāʾīl Afandī, the deputy prosecutor; Maḥmūd Fikrī Afandī, the court clerk; the legal counsels of the two defendants: ‘Uthmān Muḥammad Bey “the lawyer” and al-Shaykh Muḥammad Nawwāra; and finally the witnesses and the accused themselves. The latter are first asked to confirm their respective identities. Following the reading of the act of indictment by the court clerk, the deputy prosecutor – who has not conducted the investigation himself, but is extremely well acquainted with the file – requests the sentencing of the defendants according to the article 194 of the penal code, a text that applies to voluntary homicides. In compliance with the usual procedure, ‘Āmir and Qandīl are then “questioned about [the charges] attributed to them” (“سُئل عما نُسب إليهما”). ‘Āmir denies the facts, denounces a plot from two of his brothers and the two main witnesses, and in a rather dramatic move rhetorically asks: “how could I kill my mother?!” [1908 – ‘AMB+: 16767]. Now, in contradiction with the code of criminal procedure, he is subsequently interrogated by the deputy prosecutor. The text of the examination reads as follows:

Q.: Had you previously asked something from your mother?
A.: No.
Q.: Who killed her?
A.: I was lying in the room. And when they asked me, I said that I saw Qandīl and Darwīsh standing on (...)

498 For a broader analysis of the case, see chapter 2 – 2.2.2 “‘Finish her off:’ Violence and ‘greed’ or the relationship between crime and poverty.”
Q.: You said during the inquiry that you saw Qandîl and Darwîsh strangling her.
A.: I didn’t say that I saw them strangling her.
Q.: You said to the second accused that you had a dead donkey?
A.: No.
Q.: Are there grudges between you, ‘Abd al-Magîd and Muḥammad Ismā’îl?
A.: No, and their brother incited them against me.

[1908 – ‘AMB+: 16767-16768].

In this exchange, the prosecutor begins by directly addressing the issue of the motive: money. In doing so, he follows the advice offered in Hints on the Conduct of Criminal Investigation published a year before. When ‘Āmir denies having asked for money from his mother, Buwāqīm Mīkhā’îl Afandī’s aim becomes to make the defendant appear as a liar before the court by giving him an opportunity to present one of his multiple versions of the facts, and by subsequently confronting him with his previous testimonies. In a similar way, the deputy prosecutor plays with Qandîl’s accusations that ‘Āmir has tricked him with a “dead donkey” story. Finally, the magistrate skillfully brings up the theme of the relationships between the accused and the main witnesses. Since, in the minute or so in which this dialogue has taken place, ‘Āmir has already been proved to be lying, the deputy prosecutor’s question about ‘Abd al-Magîd and Muḥammad Ismā’îl contrastingly confers to the latter an aura of truthfulness. A first false syllogism is established: if ‘Āmir is a liar and he says that his neighbors are wrongly accusing him, then they must be telling the truth. Interestingly, Qandîl is interrogated following a very comparable pattern [1908 – ‘AMB+: 16768]. After presenting a complex version of the facts that combines old and new elements, the fallâḥ is confronted with the testimony he gave before the local prosecutor during the preliminary inquiry and which is then read to him. To this exposition of his lies, Qandîl awkwardly reacts by asserting that his first declarations in the course of the investigation are the “truth.”

In addition to his illegal questioning of the defendants, another technique used by the deputy prosecutor consists of pressing the witnesses in order to obtain a specific answer. Thus, while ‘Abd al-Magîd, the neighbor, has provided the court with a very well structured and succinct summary of his previous testimonies and has taken great care to quote the gruesome “refrain,” “finish her off,” Buwāqīm Mīkhā’îl Afandī still insists on one issue of importance. Their exchange reads as follows:

س: سمعت صباح الحرمة
Here, the deputy prosecutor reiterates the same question four times in slightly different ways in order to have the witness testify that, contrary to his initial account, he actually heard the victim shout. For Buwāqīm Mikhā’il Afandī, the scream of ‘Āmir’s mother is essential insofar as it substantiates the violent nature of the crime, and by extension the evil nature of the “disreputable son.”

Another example of the manner in which the magistrate redirects the interrogations so as to lead the witnesses to focus on the defendant’s “greed” can be found in the following excerpt:

Q.: Before the night of the incident, did you hear an altercation between them?
A.: One night before the incident, I heard her son say: “you marry [one] younger than me!”
Q.: Was he asking for money from her?
A.: He was asking for money from her to open a shop, and I heard him quarrel with her three nights before the incident. He was asking money from her, and asking that she sell the half feddan and that she give him cash to open the shop.
[1908 – ‘AMB+: 16769].

In this exchange, while the witness questioned first mentions the issue of the mother’s marriage plans, thus suggesting that the dishonor entailed by the project was the main motive for ‘Āmir to commit the crime, the deputy prosecutor immediately puts him back on the track of the money requests. This same pattern occurs with two different witnesses [1908 – ‘AMB+: 16770; 16772], and the marriage issue seems so irrelevant to Buwāqīm Mikhā’il Afandī that he interrogates the
ex-prospective groom only very superficially, asking him a single question: “what do you know?” The latter answers in an equally laconic manner: “Shalabiyya told me that I [should] marry her, so I told her: ‘ok,’ and I [don’t] know how she was killed” [1908 – ‘AMB+: 16773]. This cryptic statement puts an end to the overall extremely swift examination of the two defendants and eight witnesses. In his pleading, the deputy prosecutor does mention the marriage, but only to suggest the idea that the implementation of the mother’s plans would have meant an additional loss of resources for the main accused, shortly after his father had passed away without leaving him anything as inheritance. While ‘Āmir’s lawyer puts forward the idea that Shalabiyya was not a respectable woman and requests the court’s mercy on these grounds, the deputy prosecutor’s simple and decontextualized story of violence and greed eventually proves more powerful, and the main defendant is sentenced to death on August 5th, 1908 [1908 – ‘AMB+: 16773; 16777-16781].

Thus, in spite of the fact that ‘Ămir has initially tried to adopt a theatrical tone by exclaiming “how could I kill my mother?!,” the unfolding of the proceedings clearly shows that the “stage” of the courtroom is dominated by one main actor, the prosecutor. By means of oppressive interrogations and oratorical pleadings, the latter (ab)uses the power conferred on him by his position to “stick” defendants and manipulate witnesses. Through a skillful arrangement of successive very short acts involving different supporting roles, the magistrate enacts the crude story he (or in a few cases, one of his colleagues) has elaborated in the course of the preliminary inquiry. As “a good actor on the stage,” he emphasizes the inherent untruthfulness of the accused, the motive of the crime, and its “auditory” dimension so as to “impress everyone in court” and to eventually silence any contending or complementary stories that might have been presented or suggested by secondary trial participants.499 Not all of these other actors are totally helpless however, and, while ‘Ămir’s trial can be considered as a general pattern representative of many other cases, the files of Ḥaggāg Yūsuf Ḥabīb [1899 – HYH+] and Ibrāhīm Ḥasan Salīm [1912 – IHS+] to be discussed in the two following subparts reveal a much more complex model of interactions.

499 Kershaw, Hints on the Conduct, 125-126.
3.4 Village rumors, (false) testimonies, and court cases: The question of “grudges” and the public production of evidence

When al-Gūrbagī (or Shūrbagī, according to different spellings) Muḥammad from Şarāwa (markaz Ashmūn) comes back from the fields on November 27th, 1899, he finds all six women and three children of his extended family sick. The women explain that they ground the flour in the mill, baked bread out of it, ate it, and after that they immediately began vomiting. Suspicion falls very quickly on Ḥaggāg Yūsuf Ḥabīb, another peasant from the village. Ḥaggāg curiously entered the mill four times during the grinding process; initially showing some impatience to grind his own corn and plunging his hand into the women’s flour, before abandoning his project, alleging that he had not found any cow to spin the wheel.

Questioned by the police, the head of the Gūrbagī family progressively reveals that, the previous summer, Ḥaggāg Yūsuf Ḥabīb attempted to take over the cultivation of a half feddan field that he himself had already farmed for two years. Al-Gūrbagī then raised a customary case (قضية عرفية”), and his initial partnership agreement with the land owners was upheld. In the course of the interrogation, he also specifies that Ḥaggāg is a close friend of a spice merchant (عطار”), a certain ‘Abd Allāh al-Sha’rāwī, whose wife, who is also al-Gūrbagī’s cousin, had recently filed a civil suit against him in the Minūf summary court to obtain recognition of her property rights over a house he had appropriated. Despite the fact that the tribunal partially ruled in favor of al-Sha’rāwī’s wife, al-Gūrbagī suspects him of having provided Ḥaggāg with the poison and of having incited him to commit the misdeed [1899 – HYH+: 7887-7888; 7894]. Ḥaggāg, for his part, denies the charges attributed to him, but asserts first that ‘Abd Allāh al-Sha’rāwī asked him to drop in the flour a product “that turns the stomach” (تموع النفس”), then that he refused, and eventually that a third henchman, ‘Abd al-Rabbuh Ḥanṭūr, did it [1899 – HYH+: 7891-7892].

On December 5th, the three suspects are jailed and officially charged with attempted murder against the Gūrbagī family by means of poisoning. Five days later however, while all the victims seemed to have recovered very shortly after the incident, al-Gūrbagī Muḥammad’s 60 year old mother, ‘Izz, passes away, and her death is cautiously described by the forensic doctor in charge of the investigation as having “possibly” resulted from the initial poisoning [1899 – HYH+: 7932]. The act of indictment prepared by the local prosecutor is very severe, but after a
swift trial on March 14th, the Țanță court of first instance decides to show mercy by sentencing Ḥaggāg to penal servitude for life, and pronouncing al-Shaʿrāwī and Ḥanṭūr not guilty. The appeal court modifies to some extent the ruling, and chooses to condemn Ḥaggāg Yūsuf Ḥābīb to death by hanging, while endorsing the release of the two others. Following a last confirmation of the verdict by the court of cassation, Ḥaggāg is finally executed in the vicinity of Ashmūn on August 15th, 1900.

In order to shed light on the complex interactions that led to the first judgment, we will first examine how, in spite of the existence of multiple “grudges” (“ضغائن”) diversely mobilized by victims and defendants in the course of the preliminary inquiry to substantiate contending stories and advance their respective interests, the local prosecutor proves able to use these same elements to develop a well-structured and compelling narrative in the act of indictment. We will then analyze how, at the trial, the dynamics of the courtroom procedure – governed by the principle of the public production of evidence – however prevent him from successfully basing his narrative on these grudges, and from eventually obtaining the sentences he has requested.

3.4.1 Initial accusations and counter-accusations: From an inextricable net of entangled cases to a well-structured and linear story

When interrogated on al-Gūrbagi’s statements regarding the land case that occurred between them a five months earlier, Ḥaggāg simply confirms that he wanted to grow corn on the half feddan in question, and that he was prevented from doing so [1899 – HYH+: 7895]. He is much more loquacious however concerning the house lawsuit between al-Gūrbagi and al-Shaʿrāwī; an element he spontaneously brings up to substantiate his own accusations against the spice merchant. Answering the question why al-Shaʿrāwī would have asked him to poison al-Gūrbagi’s flour, Ḥaggāg thus mentions the case “in the government” (“في الحكومة”) as a source of “hatred” (“كراهة”) between both protagonists [1899 – HYH+: 7893].

The merchant’s successive reactions to the authorities’ referring to the lawsuit as a possible motive for the crime are finer. Interrogated by the police on al-Gūrbagi’s allegations, al-Shaʿrāwī first vehemently denies: “They are liars! They don’t have the right to say that!” (“هم كذابين لم لهم حق في الكلام ده”) [1899 – HYH+: 7897]. As for the house case, he explains:
Q.: It is established from al-Gūrbagī Muhammad’s statements that there is a grudge between you and him because of the lawsuit filed by your wife and her relatives regarding the house belonging to the aforementioned al-Gūrbagī. You wanted to take the house in its entirety, and in 1898 the court granted you rights over 100 ḍhirā’ from the house. And because of that, you held rancor against the aforementioned al-Gūrbagī Muḥammad, and you did this act with the participation of the rest of the accused. So what do you say?

A.: The court granted us the whole house. I mean, [to] my wife, her sister, and their children. And there is no grudge at all between me and him.

[1899 – HYH+: 7897-7898].

Now, confronted with Ḥaggāg’s allegations, the spice merchant initially refutes the charges brought against him in a firm but polite manner, addressing the police officer with a deferent “yā Afandī” [1899 – HYH+: 7897]. In order to substantiate his denial, al-Shaʿrāwī also provides the names of three people meant to serve as alibi witnesses, but who eventually fail to support him [1899 – HYH+: 7897-7900]. When interrogated again on this same issue, this time by the substitut, the merchant counterattacks by asserting that Ḥaggāg is a liar (“كذاب”), by bringing up the land case opposing him and al-Gūrbagī, and above all by revealing that about three years before he had already poisoned the latter’s filly (“مهرة”). Questioned about how he has come to know about this last fact, al-Shaʿrāwī explains that he has learnt it from “the people’s rumor” (“إشاعة الناس”), and that since there was no evidence, the victim did not file a complaint at the time [1899 – HYH+: 7914]. At this point in the inquiry, al-Gūrbagī had already been asked
about Ḥaggāg’s antecedents, but he had been careful to mention only the established cases for which the main suspect had been tried in court: a case of donkey theft for which he was found not guilty, and a case of calf theft for which he was sentenced to three months in prison [1899 – HYH+: 7888]. Following al-Sha‘rāwī’s revelations however, al-Gūrbagī is encouraged by the substitut to expand on the filly poisoning [1899 – HYH+: 7917]. When asked why in the current case of the mill he did not immediately mention his suspicions against Ḥaggāg to the ‘umda, he tellingly answers: “because I had not taken my revenge (”ما كنت واخد خوائة“)” [for the filly poisoning], and I thought that it was a disease.” [1899 – HYH+: 7917].

Finally a couple of additional rumors and court cases involving the various protagonists of the case are revealed through the interrogation of the third suspect, ‘Abd Rabbuh Ḥanṭūr. In the course of his initial questioning by the police officer in charge of the investigation, ‘Abd Rabbuh counters Ḥaggāg’s accusations by declaring that it is the latter who asked him to participate in the poisoning of the flour, and that he refused [1899 – HYH+: 7895-7896]. At this point, the third suspect, who – we learn – is a cousin of al-Sha‘rāwī’s wife, also confesses that in 1898 he was accused of pulling out the cotton of a certain “Mubāraka [from] the village,” but that he was eventually found not guilty [1899 – HYH+: 7896]. When interrogated again by the substitut, ‘Abd Rabbuh is much less assertive. He first drops his allegations against Ḥaggāg, and only reiterates them after being confronted with his initial testimony and after giving it some thought (“بعد أن تفكر”) [1899 – HYH+: 7908-7909]. In addition, he suddenly claims that he has never been accused of anything. In the meantime however, the magistrate has discovered that the “Mubāraka” who a year earlier had charged him with destroying her crops was actually al-Gūrbagī’s sister. The very difficult situation in which ‘Abd Rabbuh finds himself during this interrogation eventually leads him to declare that Ḥaggāg’s allegations are mere lies motivated by “grudges” (”ضغائن”) between them [1899 – HYH+: 7910-7911]. He explains:

س: لأي سبب يدعى عليك بذلك
ج: بيني وبينه ضغائن
ج: ما هي الضغائن
ج: نسيبه محمد مصطفى الطبال كنت نظرته يسرق في قطن أبو العينين زيد أخ العمدة فاخبرت عنه وحكم عليه بشهر من عدة شهرين وشهدت عليه
بالجلسه وحجاج يوسف أوري بان نسيبه كان مقته مع عبد ربة والثاني اخرين على سرقه قطن ولما تركوا عبد ربة ولم يأخذوه معهم صبح خبص واخبر
عليهم
Q.: For what reason does [Ḥaggāg] charge you with that?
A.: There are grudges between me and him.
Q.: What are the grudges?
A.: I saw his relative, Muḥammad Muṣṭafā, the drummer, steal from the cotton of Abū al-ʿAynayn Zayd, the ‘umda’s brother. So, I reported him, and he was sentenced to a month [in prison] two months ago. And I testified against him in the session. – And [here] Ḥaggāg Yūsuf revealed that his relative had agreed with ‘Abd Rabbuh and two others to steal cotton, and [that] when they left ‘Abd Rabbuh and did not take him with them in the morning, he tattled and reported them.

[1899 – HYH+: 7911].

Through both ʿAbd Rabbuh’s justification and Ḥaggāg’s spontaneous intervention, we do not only learn of yet another case involving the main protagonists and their relatives, we also get an invaluable insight into the complexity of the shifting interactions among the peasants; interactions which are made up of volatile associations of interest and recurrent treasons and in which lawsuits, testimonies and sentences are crucial elements.

Overall, the cases of the land cultivation and the house property rights, the rumors around the cattle poisoning and the crop destruction, and eventually the court testimony against the drummer open a window on a world of extremely harsh socio-economic relationships within the village. As the famous gangster Aḥmad Salīm explained to Sir John Scott five years earlier, the most deprived peasants adapt at the time to the colonial-capitalist environment by working, stealing and – I would add – destroying, conceiving of these three activities as complementary means of achieving their ends within the new system.500 Such is the case of Ḥaggāg Yūsuf Ḥabīb, who does not even have a cow to turn the mill, and, to a lesser extent, of ʿAbd Allāh al-Shaʿrāwī, who lives with his wife, the latter’s sister and their children in a house allegedly “lent” by her cousin. As for the more privileged members of the community, such as al-Gūrbāḡī Muḥammad who possesses land with his brothers and employs agricultural workers, they seem to be successful in making use of the new legal mechanisms at their disposal to enrich themselves. Al-Gūrbāḡī has thus found various ways – in his own words – to “put his hand” (“وضع يدي”) on additional property that technically does not belong to him [1899 – HYH+: 7894]. In his endeavors to “appropriate” the cultivation of the field and the rights to the house, the recourse to justice (customary and civil) has proved essential; a fact which underlines both

500 See the conversation that took place in 1894 between Sir Scott, the British Counselor to the Ministry of Justice, and Aḥmad Salīm, the chief of a brigands’ gang; as quoted in el-Kolalī, Essai sur les causes, 100. On the topic of the peasants’ adaptation to colonial capitalism, and for a more detailed exposition of the argument, see also: Clément, “Rethinking ‘peasant consciousness’ in colonial Egypt,” 73-100.
the relative fluidity of the very concept of property at the time and the role played by the courts in either legally sanctioning or circumscribing operations of speculation and spoliation.\textsuperscript{501}

From these five different rumors and lawsuits in which the protagonists of the case are entangled and which undeniably suggest the existence of complex and ambiguous relationships among them, the local prosecutor builds however a rather well-structured and linear story that he presents in the act of indictment. This extremely detailed text extends over five pages. It begins with a long presentation of the facts as first exposed by the family’s women. The latter’s testimony is quoted almost in its entirety and it sheds light on Ḥaggāg’s peculiar behavior inside the mill, or, as Kershaw would have it, “the opportunity [he had] for committing the crime.”\textsuperscript{502} [1899 – HYH+: 7938-7939]. The magistrate then addresses the question of the motive, by citing al-Gūrbaḡī Muḥammad’s statements. The mention both of a conveniently simplified, Manichean version of the land case that opposed Ḥaggāg to al-Gūrbaḡī and of the rumors surrounding the filly poisoning three years earlier allows him to elaborate his storyline on the “revenge” model. In addition, the character of ‘Abd Allāh al-Sha‘rāwī, as the instigator of the crime, is first subtly introduced into the narrative, before being given substance through a rather one-sided summary of the house lawsuit [1899 – HYH+: 7939]. The local prosecutor subsequently brings up the results of the various forensic analyses performed on the victims and the material collected. Regarding ‘Izz, the act of indictment simply states that her viscera contained “a great amount of arsenic compounds,” thus overlooking the fact that there was in fact no certitude about the cause of a death that occurred 13 days after the initial poisoning [1899 – HYH+: 7939]. Finally, the mutual and contradictory accusations of the three accused are quoted at length and considered as “confessions” of their respective roles in the plot, of the existence of “grudges” between them and the head of the victims’ family, and of their judicial antecedents [1899 – HYH+: 7939-7941]. Ḥaggāg’s land case, al-Sha‘rāwī’s house lawsuit, ‘Abd al-Rabbuh’s alleged crop destruction, and the family relationship between the second and the third accused are thus invoked as the ultimate proofs upon which the act of indictment against the three suspects is founded. Let us examine now why such a well-crafted story has nevertheless failed to convince the members of the Ṭanṭā court.

\textsuperscript{501} Nahas, \textit{Situation}, 179-181.
\textsuperscript{502} Kershaw, \textit{Hints on the Conduct}, 124.
3.4.2 The dynamics of cross-examination and the relative value of evidence

When the trial first opens on February 7th, 1900, two of the defendants’ lawyers immediately ask to have the session postponed because they have not had the time to study the file and even less to prepare their pleadings [1899 – HYH+: 7943]. A month later, on March 7th, the three lawyers initially appointed by the court have all sent colleagues to replace them, and one of them solicits again the adjournment of the trial. The prosecutor, ‘Abd Allāh al-Ţūwayr Afandī, “opposes” the demand “with the strongest opposition.” The president, Buṭrus Yūsuf Bey, even suggests that the lawyer examines the file on the spot, and prepares his pleading in the course of the session; an offer which says a lot about the court’s consideration of the defendants’ rights. Upon the latter’s answer that this would be impossible, the trial is nonetheless postponed for a week [1899 – HYH+: 7944].

On March 14th, the accused are eventually questioned about the charges brought against them. Ḥaggāg Yūsuf Ḥabīb fully contradicts his previous depositions, by asserting: “Me, I didn’t kill ‘Izz, nor did I use poison, nor did I go to the mill, nor did I stop by it. ("فت عليها")” [1899 – HYH+: 7946]. As for ‘Abd Allāh al-Sha’rāwī and ‘Abd al-Rabbuh Ḥanṭūr, they merely deny the accusations, and declare that they are “unjustly treated” (“مظلوم”) [1899 – HYH+: 7946]. After the examination of only three witnesses (al-Gūrbagī Muḥammad, his sister-in-law Ginīna, and the ‘umda Ghunaym Zayd), Ḥaggāg and ‘Abd al-Rabbuh are interrogated again very shortly thereafter with the intention of extracting confessions from the former and obtaining supporting evidence from the latter. Both disclaim however having ever confessed one’s crime or accused the other [1899 – HYH+: 7954]. While this patent silencing of the defendants is consistent with the procedure at the trial, it nonetheless seems to have shocked Ḥaggāg who will later claim, in an informal petition to the court of cassation scribbled in the margins of an administrative form by the clerk, that “the Ṭanṭā court has not asked him about anything and has not taken his statements” [1899 – HYH+: 7971].

Al-Gūrbagī Muḥammad’s successive interactions with Buṭrus Yūsuf Bey the president of the session, ‘Abd Allāh al-Ţūwayr Afandī the prosecutor, and the defendants’ lawyers are much richer and more peculiar.
Contrary to the rule, it is the president of the session who mainly conducts the interrogations. Buṭrus Bey is then the vice-president of the Ṭanṭā court. His background remains unknown, and since his name does not reappear in the archives, he does not seem to have pursued a very long career in the judiciary. Regarding his performance as the chairman of Ḥaggāg’s trial, the analysis of the minutes reveals both a profound ignorance of the basic facts of the case and a very low register of language; elements illustrated by his first question to the ‘umda: “what is this case [about]?” [1899 – HYH+: 7952]. Interestingly, al-Gūrbagī Muḥammad seems to become progressively aware of this singularly unequal distribution of knowledge within the courtroom, and to exploit this opportunity to put forward his version of the events.

Their exchange can be divided into three steps. While the president immediately addresses the issue of the “grudges” by inquiring: “Is there enmity (“عداوة”) between you and Ḥaggāg Yūsuf?,” the head of the victims’ family cautiously redirects the discussion towards the facts, merely stating what he personally witnessed when coming back from the field the day of the incident. Subsequently invited by an obviously uninformed president to give further details, al-Gūrbagī subtly points at both Ḥaggāg and ‘Abd Allāh and carefully quotes the former’s own description of his visit to the mill [1899 – HYH+: 7946]. In a second step, when asked again about the motive of the crime, the witness becomes much more assertive. The interrogation reads as follows:

Q.: What is the reason that [would] cause Haggāg to poison you?
A.: ‘Abdīn’s children had half a feddan. He wanted to cultivate it, and put manure in the field. And me, I was the partner of their father, I told them: “I take the half feddan.” So, they prevented him from [accessing] it. And between me and ‘Abd Allāh, there is a dispute because of 100 dhirā’ in a house. As for ‘Abd Rabbuh, he is the son of the aunt of ‘Abd Allāh’s wife.

Q.: Do you know where Haggāg got the poison from?
A.: He got it from ‘Abd Allāh. Haggāg said that.

Q.: Did Haggāg confess that he got the poison from ‘Abd Allāh?
A.: Yes.
Q.: And ‘Abd Allāh said what?
A.: I didn’t hear what he said.
[1899 – HYH+: 7947].

After enumerating the grudges that exist between him and the three defendants, al-Gūrbagī feels empowered enough to falsely declare that Ḥaggāg has confessed having obtained the poison from ‘Abd Allāh.

At this point, the prosecutor steps in. Unlike the usual practice, ‘Abd Allāh al-Ṭūwayr Afandī, the prosecutor at the trial, is not the one who has conducted the preliminary inquiry. He is however the author of the harsh act of indictment issued against the three defendants three months earlier. In the courtroom, he discovers the various protagonists of the case for the first time. Following al-Gūrbagī’s false declarations, the magistrate immediately reorients the interrogation towards the facts: the goat, donkeys, and chickens that died after eating the bran, ‘Izz’s death, and the condition of the children. In the middle of this discussion around the actual poisoning, the prosecutor skillfully and seemingly incidentally asks the witness about ‘Abd Allāh al-Sha‘rāwī’s profession: he is a spice merchant which suggests that he could have easily provided the main accused with the toxic substance. At the end of this questioning, he also leads al-Gūrbagī to mention the rumors regarding Ḥaggāg’s poisoning of his filly three years before [1899 – HYH+: 7947].

Interestingly, the defendants’ lawyers then undertake a short cross-examination of the witness. Aware that the evidence against his client is weak and that al-Gūrbagī’s lies indicate an awkward attempt to compensate for that, ‘Abd Allāh al-Sha‘rāwī’s representative very cleverly returns to the question of the grudges. He addresses the matter through a series of questions that become more and more specific, and he eventually exposes its lack of substance [1899 – HYH+: 7947]. The exchange reads as follows:

س: متقيش زعل بيك ويبين عبيد الله غير مسألة الدار وقضيتها
ج: لأ
س: هو اللي رفع الدعوى ولا انت اللي رفعتها عليه
ج: أنا اللي رفعها وجاب شهود ومحكمة حكمت فيها [sic.]
س: متقيش عداوة سابقة بينك وبين عبد الله الحنطور وعائلته
ج: لأ ما فيش بيني وبين ضافعين
س: والدتك ومن كان معها بكحاله أخبروك أن عبد الله دخل الطاحونة
ج: التعديل هو اللي كان بيسال
س: بعد رفع الدعوى الدينية متيك على مرات عبد الله الشعراوي كنت تتكلموا مع بعض أو زعلانين
ج: أنا ما اتهمش عبد الله ويجوز أنه بيستحك في وشي لكن ما أعرفش الباطن
Q.: There is no anger between you and ‘Abd Allāh, except the issue of the house and its case?
A.: No.
Q.: It’s him who filed the suit, or you who filed it against him?
A.: It’s me who filed it, and got witnesses, and the court ruled in [the case].
Q.: There is no previous enmity between you and ‘Abd al-Rabbuh Ḥanṭūr and his family?
A.: No, there is no grudge between me and him.
Q.: Your mother and those who were with her in the mill, they informed you that ‘Abd Allāh entered the mill?
A.: The ‘umda is the one who was questioning.
Q.: After your filing of the civil lawsuit against ‘Abd Allāh al-Sha’rāwī’s wife, you were talking with each other or [you were] angry [at each other]?
A.: Me, I didn’t accuse ‘Abd Allāh, and maybe he’s laughing in my face, but I don’t know the secret [of the case],
[1899 – HYH+: 7948].

At the time, the fundamental ambiguity of evidence based on grudges is recognized, and in his *Hints on the Conduct of Criminal Investigation* published seven years later, Kershaw dedicates a few pages to the issue. In order to avoid having the case “filed” by the court, he advises the substitut to proceed to a “careful investigation” of the question, and, as the ideal manner in which the magistrate should deal with the invocation of “bad blood” (“ضغائن”) by either victims or defendants, he presents a model of interrogation that resembles very closely that of al-Sha’rāwī’s lawyer.503 In our case, however, al-Gūrbagī is not cornered prior to the trial but before the court, and to such an extent that he partially disclaims his own accusations against the spice merchant. Despite the fact that both Ginīna and the ‘umda subsequently corroborate al-Gūrbagī’s initial lies regarding Ḥaggāg’s alleged confessions [1899 – HYH+: 7951; 7952], the lawyer’s questioning has successfully introduced a doubt about the merchant’s culpability among the court members.

In their pleadings, the three lawyers expand on the issue of the grudges [1899 – HYH+: 7955]. Ḥaggāg’s representative first confirms that his client has never confessed to having poisoned the flour, before emphasizing that the land case is not reason enough to commit such a crime. He also underlines that the victims had initially denied the existence of any grudge between them and Ḥaggāg, and consequently requests a not-guilty verdict. ‘Abd Allāh al-Sha’rāwī’s lawyer demands a similar judgment for his client, arguing that the ruling in the house lawsuit was actually in favor of the spice merchant and not against him, and that consequently it is rather the

“victim” who should hold rancor against the “accused.” In addition, he also dismisses Ḥaggāg’s accusations against his client, stating that “the words of an accused against another accused are not sufficient to establish the charge” [1899 – HYH+: 7955]. Finally, ‘abd al-Rabbuh’s legal counsel also requests the release of his client, on the grounds that nothing proves his culpability. In spite of the prosecutor’s demand for harsh sentences against the three defendants in view of the “odiousness” (فظاعة) of the crime, the court seems to have been sensitive to the lawyers’ perceptions of the grudges as weak elements of proof [1899 – HYH+: 7955].

The verdict issued on the same day, March 14\textsuperscript{th}, 1900, by the president of the session, Buṭrus Yūsuf Bey, thus totally overlooks the question of the quarrels and rancor that might have existed among the various protagonists of the case, and exclusively focuses on the testimonies related to Ḥaggāg’s visit to the mill [1899 – HYH+: 7957-7960]. Following a very sober exposition of the facts as presented by the victims and acknowledged by the main accused himself, the court concludes that Ḥaggāg is the one who placed the poison in the flour. The text of the judgment specifies, however, that, considering “the circumstances of the case,” the judges have decided to “exercise mercy on the accused” and to commute the death penalty into penal servitude for life [1899 – HYH+: 7959]. As for ‘abd Allāh al-Sha’rāwī and ‘abd al-Rabbuh Ḥanṭūr, they are found not guilty of the crime, for the following reasons: none of the witnesses has seen them in the vicinity of the mill; Ḥaggāg’s accusations against them have not been supported by any other evidence; and the investigations conducted in the case have not established any clear link between them and the crime [1899 – HYH+: 7959-7960].

One day later, ‘abd Allāh al-Ṭūwayr Afandī, the prosecutor, appeals the judgment on the grounds first that mercy should not be invoked in this case for a man can protect himself against everything except poison, and second that both Ḥaggāg’s accusations and the various grudges among victims and defendants should lead to the conviction of al-Sha’rāwī and Ḥanṭūr [1899 – HYH+: 7961-7963]. At the appeal trial that subsequently takes place in Cairo on May 24\textsuperscript{th}, 1900, the three accused are present, but completely silenced. The court has appointed a lawyer for Ḥaggāg, and the latter requests a not guilty verdict for his client. But the die is already cast. Even before the end of the pleadings, the vice-president of the appeal court, Walter Bond, requests the opinion of the muftī, and the latter, who is no other than Muḥammad ‘Abduh, promptly consents to the death penalty [1899 – HYH+: 7967]. In the appeal judgment issued on June 7\textsuperscript{th}, 1900, the
court founds its decision on the fact that “the whole [Gūrbagī] family was almost exterminated,” and “the crime [was] horrendous” and committed for “no real reason” [1899 – HYH+: 7968-7970]. Regarding al-Sha‘rāwī and Ḥanṭūr, however, the not guilty rulings of the tribunal of first instance are interestingly confirmed.

The file of Ḥaggāg Yūsuf Ḥabīb is one example that illustrates the various manners in which the enactment of the prosecutor’s well-crafted story can be hindered by the complex dynamics that take place among the various actors present in the courtroom. Al-Gūrbagī’s fine interaction with Buṭrus Yūsuf, the president of the session, shows how the court’s frequent lack of knowledge about the case actually opens up a space for victims, defendants, or witnesses to maneuver, allowing them to offer a very personal version of the events and even to go as far as to misrepresent pieces of evidence collected in the course of the preliminary inquiry. In this instance, the witness’s lies about confessions allegedly given by the main accused initially compel the prosecutor to focus on the facts. Then, they further encourage the lawyers to exploit the double-edged weapon of the “grudges.” The court consequently ignores the latter, and rules merely on the basis of eyewitness testimonies and forensic reports. Interestingly, ‘Abd Allāh al-Ṭūwayr’s final attempt to put forward his narrative at the appeal level meets with mixed success. While the counselors are sensitive to the argument of the “horrendous” nature of poisoning – at a time when the phenomenon is becoming out of control –, they choose to overlook again the issue of the “grudges,” thereby disregarding the harsh and complex socio-economic reality these countless rumors, accusations, testimonies and lawsuits cover.
3.5 From dramatic confessions to narratives of hatred: Theatricality and storytelling

The case of Muḥammad ʿAlī Sālim and Ibrāhīm Ḥasan Salīm, both sentenced to death on January 14th, 1913 for the murder of the former’s brother, provides another example of a major witness disturbing the prosecutor’s public presentation of his story at the trial [1912 – IHS+].

But more importantly, as the indictment narrative initially prepared by the prosecutor is founded on a series of dramatic confrontations among Muḥammad, his mother, his sister, and his accomplices, the analysis of this case also allows me to examine in greater detail the differences in nature existing between the setting of the preliminary interrogations and the stage of the trial. Through a close examination of the entire file, I argue that the inquiry phase is marked by a geographical and temporal proximity to the crime, as well as a social proximity among the various actors, that allows the substitut to perform a real work of “staging” of the interrogations for an “overreading,” concealed audience; thereby compelling the interviewees to act within a theatrical framework of which they are not always fully aware. In contrast, the distance – again, at the same time geographical, temporal and social – introduced at the trial and the legal constraints that govern it lead the different protagonists to engage in more formal activities of storytelling aimed at a very visible audience: the court. While both settings are extremely rigid and oppressive, the study of the material shows that suspects and witnesses still have the capacity to struggle to escape the roles they have been assigned and – sometimes – have their voices heard.

3.5.1 The preliminary inquiry as a hidden theater stage

On November 4th, 1912, Ibrāhīm Ḥasan Salīm from the village of Ṭamalāy (markaz Minūf) informs the ʿumda that he and Muḥammad ʿAlī Sālim have found the corpse of the latter’s younger brother Muḥammad ʿAlī Abū Sayyid who had been missing for two days. The witness explains that the body was discovered in the fields of the Sallām brothers, and that he suspects them to be the murderers [1912 – IHS+: 3814; 3821]. At first, the story seems plausible. As the victim’s mother later confirms, a number of grudges had occurred between the two families over the past few months: mutual accusations of blocking the irrigation canals leading to the fields, some of the Sallāms’ corn accidentally eaten by the young Muḥammad’s cow, and
charges of crop theft and destruction [1912 – IHS+: 3825]. In addition, the mother specifies that there is also a profound personal enmity between ‘Abd al-Ra‘ūf, one of the Sallām’s brothers, and Ibrāhīm Ḥasan Salīm. Ibrāhīm is a close friend of the victim’s brother, and he had been working for the family as an agricultural worker for many years before opening a spice shop. He is also married to ‘Abd al-Ra‘ūf’s sister, but the latter has left the marital home for a year, and her brother refuses to “return her” to her husband [1912 – IHS+: 3826].

Very early on, however, another version of the events emerges from the interrogations conducted by Ḥalīm Barsūm, the local substitut, in the ‘umda’s house. A gallābiyya stained with blood redirects the suspicions towards the victim’s own brother, Muḥammad ‘Alī Sālim (or Muḥammad al-kabīr). The first day of the inquiry, the mayor relates to the substitut that Muḥammad al-kabīr and the victim (Muḥammad al-ṣaghīr) have the same mother, but a different father. More importantly, the ‘umda reveals that, Muḥammad al-ṣaghīr has inherited four feddans from his father, and that Muḥammad al-kabīr is “jealous” of his brother [1912 – IHS+: 3821-3822]. Additional investigation in this direction subsequently leads to the interrogation of one of the victim’s friends, ‘Abd al-Raḥīm Muḥammad Abū Ghanīyya, and eventually to his confession. According to the young ‘Abd al-Raḥīm, the murder was perpetrated before him by Muḥammad al-kabīr and Ibrāhīm Ḥasan Salīm. The witness also explains, that following the crime, he helped the two main protagonists destroy the corn field so as to charge the Sallām brothers [1912 – IHS+: 3836-3841].

Immediately after ‘Abd al-Raḥīm’s testimony, Ḥalīm Barsūm attempts to obtain similar confessions from both Ibrāhīm and Muḥammad al-kabīr. With the former, the magistrate begins with general questions regarding his schedule the night of the murder, before mentioning ‘Abd al-Raḥīm’s charges, and eventually ending with a confrontation between both suspects. In this last step of the interrogation process, the substitut stands in the position of the outside observer, and he is very keen to note every minute detail of the performance that he has staged and that now plays out before him. In the proceedings, he thus indicates: “[Ibrāhīm] was very disturbed and pale, especially during his confrontation with ‘Abd al-Raḥīm. He started to repeat his statement: ‘I was with you, really?’, while shivering.” [1912 – IHS+: 3844].
With the 22 year old Muḥammad al-kabīr, Ḥalīm Barsūm more subtly conducts the entire questioning in the presence of his mother, Salīma bint ‘Abd al-Muṭī, who, from the beginning, had expressed doubts about the role that her son might have played in the crime [1912 – IHS+: 3827; 3844-3849]. The interrogation pattern is very similar to that used for Ibrāhīm, but in this case Muḥammad is first confronted with the contradictions that emerge between his testimony and those of his mother and sister. While he is rather cleverly trying to account for these discrepancies, Salīma abruptly interrupts him in a very dramatic move carefully recorded by Ramaḍān Mukhtār the kātib:

(here his mother said: “Muḥammad! You kill your blood with your hand! What had he done to you?! He brought you back from the villages to have you hit him with your right hand and abuse him?”) So, he did not answer her at all, and he was very hesitant in his statements. [1912 – IHS+: 3845].

While the exchanges between the substitut and the interviewees have been hitherto taken down mainly in fuṣḥā or literary Arabic, the mother’s spontaneous outburst at her son is kept in its original colloquial form and purposely highlighted by brackets. During the remainder of the interrogation, Salīma will interrupt again the dialogue twice in order to deny her son’s claims on two crucial issues: the search for the corpse in the Sallām brothers’ field and the traces of blood found in their house [1912 – IHS+: 3846; 3847].

The magistrate subsequently questions Muḥammad al-kabīr regarding ‘Abd al-Raḥīm’s allegations. The exchange reads as follows:

Q.: Didn’t you meet ‘Abd al-Raḥīm, the night your brother went missing, or Ibrāhīm Salīm?
A.: I didn’t meet them that night.
Q.: ‘Abd al-Raḥīm confessed that you went with him – and the victim was with you and Ibrāhīm Salīm – to the field of Ahmad Muṣṭafā Shāhīn, and you ate corn there. Then, you came back, and so, you went down to the field of ‘Abd al-Ra’ūf. And there, you killed Muḥammad al-Sayyid, and you destroyed part of the culture of corn, so that it is said that ‘Abd al-Ra’ūf is the murderer and that the victim was killed while he was pulling out the corn. So, what do you say about these statements? A.: He says what he says, and me, what can I say? I don’t have anything else to say. Make him swear on the Qur’ān: if he swears, then I’m the murderer.
Here, ‘Abd al-Raḥīm stood up, and he swore the oath, and he swore by the Holy Qur’ān that all the incidents he confessed in the investigation are true. So, the accused said: “my fate is in God’s hands.” [1912 – IHS+: 3847].

As an answer to the substitut’s “crushing” question summarizing ‘Abd al-Raḥīm’s testimony, Muḥammad al-kabīr chooses to refrain from talking. In order to escape an oppressive oral confrontation, he plays the card of the oath, an act supposed to render any further questioning superfluous. At this stage, it is extremely difficult to know if Muḥammad’s suggestion to make his accuser swear by the Qur’ān is a sort of a wager to break the deadlock in which the magistrate’s interrogation has led him, or if it rather constitutes a first step towards his own confession. When subsequently told that it would be in his interest to acknowledge the facts, the suspect further fosters confusion by stating: “maybe [‘Abd al-Raḥīm] said the truth, and maybe it is right [that] we are the ones who killed him, and what am I gonna say?” [1912 – IHS+: 3847].

A last “coup de théâtre” in the play staged by Ḥalīm Barsūm occurs at the end of this first interrogation. When questioned by the substitut about all the charges brought against him, Muḥammad denies them, declaring that he does not have anything else to say. The magistrate then asks him about his social situation within the family, and the suspect explains that “he [was] indeed [working as] a wage agricultural laborer at his brother’s, that he does not possess anything, that all the property belongs to his brother, and that [the latter] is the one who spends on his mother.” [1912 – IHS+: 3848]. Through these last questions that clearly suggest the possible motive for the crime, Ḥalīm Barsūm has succeeded in disturbing Muḥammad to such an extent that he is led to confess the murder, albeit in an indirect and oddly provocative manner. The substitut once again describes the scene with much detail:

=Note=
We requested that the accused sit down, and he hesitated. So we asked him if he wanted to declare something, and he did not answer. Then, he said: “I was going to tell you that ‘Abd al-Raḥīm is the one who always goes with my brother. So, as long as he is the one who goes with him, then he knows the one who killed him. And the one he’s accusing, then, he’s the murderer.” – So, we made [Muḥammad] understand that [‘Abd al-Raḥīm] did not talk about anyone except him and Ibrāhīm Saлим, so he said: “then his word is true.”
When confronted with ‘Abd al-Raḥīm, each one of them insisted on his statements, and the accused said: “As long as I’m the one who killed my brother, I wanna be hung.” And he repeated this expression again and again.

[1912 – IHS+: 3848].

In a final confrontation with his family orchestrated by the substitut, the suspect’s sister is quoted as saying: “your brother was always struggling with you, and you were fighting each other. He was acting like your boss. Would anyone believe that ‘Abd al-Ra‘ūf [Sallām] killed him?” [1912 – IHS+: 3849]. And the magistrate eventually notes: “the accused denied this whole dispute [between him and his brother].” [1912 – IHS+: 3849]

Following this first series of theatrical interrogations and confrontations, Ḥalīm Barsūm orders the arrest of the three suspects. A few minutes later, however, Muḥammad expresses his wish “to say the truth,” and he is examined once more [1912 – IHS+: 3853-3856]. This time, he presents a well-structured narrative aimed at casting the blame on Ibrāhīm, but through a succession of sharp questions regarding the potential motive of the crime, the substitut corners the suspect. Confronted again with ‘Abd al-Raḥīm’s accusations, Muḥammad keeps denying them. Finally asked about the blood on his gallābiyya, he invokes the pressure of the village rumor against him, and in yet another dramatic act, he declares: “and in the end, I wanna be hung! And I don’t come back to the village again while they are saying ‘he killed his brother!’ And maybe my clothes got stained when I held my brother.” (و الغاية أنا عاوز أتشنق ولا آجي البلد ثاني ‘) [1912 – IHS+: 3856].

In the act of indictment established a week later on the basis of the preliminary inquiry, Muḥammad, Ibrāhīm, and ‘Abd al-Raḥīm are officially charged with the voluntary and premeditated homicide of Muḥammad al-ṣaghīr; the destruction, by night, of two qīrāt of corn belonging to the Sallām brothers; and the theft of corn from another field, also performed at night while carrying weapons [1912 – IHS+: 3885-3886]. The indictment is particularly harsh since it includes not only the boy’s murder but also the charges of crop theft and destruction which committed with aggravating circumstances (by night and with arms) are then also considered crimes. More importantly, the list of the witnesses prepared by Ḥalīm Barsūm reveals how the substitut has placed the emphasis on the testimonies of Muḥammad’s mother and the ‘umda; and how the storyline that emerges from this extremely succinct summary of the inquiry focuses on both the personal aspect of the relationship between Muḥammad al-ka

The text is a historical account of a legal proceeding involving three individuals: 'Abd al-Raḥīm, his brother Ibrāhīm, and another suspect named Muḥammad al-ṣaghīr. The narrative describes how each suspect insisted on their own statements, and the ultimate outcome was a finalized indictment charging all three with various crimes, including voluntary and premeditated homicide, destruction of corn by night, and theft of corn at night while carrying weapons. Notably, the list of witnesses prepared by Ḥalīm Barsūm emphasized the testimonies of the mother of Muḥammad and the 'umda, highlighting the personal aspect of the relationship between the suspects and their family members. The legal proceedings were marked by dramatic acts, such as the first suspect's assertion of a desire to be hung and the second suspect's attempt to shift blame. The indictment was harsh, encompassing the murder of the boy, as well as charges of crop theft and destruction under aggravating circumstances.
and Muhammad \textit{al-saghir} and the existence of a prior agreement among Muḥammad and Ibrāhīm [1912 – IHS+: 3887-3889].

To sum up, the file of Muhammad \textit{al-kabīr} is particularly interesting insofar as it vividly illustrates the crucial dimension of “mise en scène” of the substitut’s work in the course of the preliminary inquiry. In this instance, the magistrate expertly plays on the complex relationships between the main suspect, his accomplices, his mother, and his sister; psychologically pressing them through multiple confrontations and recording every detail of the performance he has staged, to eventually develop a narrative emphasizing the personal, almost emotional elements of the case. Concomitantly, the material also sheds an invaluable light on the creative ways in which Muḥammad attempts to resist this oppressive oral setting. It shows especially how the suspect tries to escape the role created for him by the substitut, successively choosing to remain silent, requesting his accuser to swear by the Qur’ān, and eventually engaging in a series of confusing and provocative confessions and denials.

3.5.2 De-contextualization and re-contextualization at the trial: “ḥiqd” (hatred) vs. “social crime”

In the courtroom of the Ṭanṭā criminal tribunal where the case is tried on January 11th, 1913, Muḥammad, Ibrāhīm, and ‘Abd al-Raḥīm face three characters we have already encountered in this chapter: ‘Abd al-‘Azīz Kaḥīl Bey, who serves as the president of the session, “Mister” Caloyanni, the Greek magistrate who sits in his capacity as counselor to the native court of appeal, and Ibrāhīm Afandī Mumtāz, the prosecutor who will be dismissed for corruption two years later [1912 – IHS+: 3898-3903]. In addition, the three defendants are represented by three different lawyers: Maḥmūd Afandī Ṭal‘at, Muḥammad Afandī Muṣṭafā, and Muḥammad Afandī ‘Abd al-Ḥamīd Darrāz. When questioned about the charges brought against them, the accused all deny the facts, and Muḥammad specifies that “the victim is his brother and [that] he was searching for him” [1912 – IHS+: 3898]. The three defendants had already adopted this common strategy of denial, while being interrogated by Alexander John Wickman Long, the transfer judge, a month earlier. Then, they had all disowned the statements they had previously made before the inquirer – despite these being read aloud to them – and ‘Abd al-Raḥīm had even claimed that he had been beaten by the ‘umda and forced to falsely accuse the two others [1912 – IHS+: 3892-3893].
Following the initial “interpellation” of the accused, the president proceeds to the extremely swift examination of the eight witnesses present in the courtroom, by asking the same open questions over and over again: “what happened?” ("ايه اللي حصل؟") and “what do you know?” ("ايه اللي تعرفه؟"). The first witness to testify is Muḥammad’s 50 year old mother, Salīma. Whereas her previous interventions before the inquirer were characterized by both an emphasis on the details of the murder night and direct dramatic accusations against her own son, her declarations before the court depict, in a much sober manner, the broader picture. In a well-crafted account, she sheds light on important elements of context. She thus relates that Muḥammad al-kabīr and Muḥammad al-ṣaghīr are from two different fathers, that the defendant’s father divorced her and kept the child for many years, and that the father of the victim died bequeathing to his son a bit more than three feddans. Then, she further explains that when Muḥammad al-kabīr grew up without any resources, he asked his underaged brother to hire him as a laborer in his fields. In addition, she carefully avoids mentioning the struggles that occasionally erupted between her two sons, and which she has alluded to in the course of the preliminary inquiry. Similarly, the sister of both the main accused and the victim, 'Umm Muḥammad, answers the president’s only question in a very restrained manner, without referring at all to the rivalry between her brothers [1912 – IHS+: 3899].

In what seems to have been indeed ‘Abd al-‘Azīz Kaḥīl’s characteristically “express” way of conducting the interrogations, the remaining of the witnesses are silenced rather than questioned. In the absence of the ‘umda, the shaykh al-ghafar interestingly asserts however that while the victim was “a poor guy” ("غلبان", his brother is “arrogant” ("شايف نفسه") [1912 – IHS+: 3900]. Through this comment, the ghafir keeps in line with the narrative developed by the ‘umda himself early on in the inquiry, a story that focused on Muḥammad al-kabīr’s lack of love for his younger brother and his feelings of “rivalry,” “anger,” and “jealousy” [1912 – IHS+: 3821-3823]. It is on the basis of these same elements that Ibrāhīm Afandī Mumtāz, the prosecutor at the trial, eventually decides to request sentences even more severe than those he had demanded at the opening of the session. His pleading is summarized in the proceedings as follows:

حضرة وكيل النيابة شرح الدعوى وقال أن محمد علي سالم لما وجد أخوه ممتاز عنه أطيان وحنية والدته فصار يحقد عليه إبراهيم سبق طرده بمعرفة القتيل (...) وانفقوا معًا على قتل المجني عليه ووجدوا معهم عبد الرحمان والتهمة ثابتة من وجود دم (...) محمد علي سالم ومن (...) وعليه يطلب التشديد بسابقة طلباته
His Excellency the deputy prosecutor explained the case, and said that, when Muḥammad ‘Aḥṣārī Sālim found that his brother was outdoing him [both in terms of] land and in his mother’s affection, he began to harbor feelings of hatred against him. [As for] Ibrāhīm, [he] had previously been expelled by the deceased (…) and, together, they agreed to kill the victim, and they brought ‘Abd al-Raḥīm with them. The charge is proven by the presence of blood (…) Muḥammad ‘Aḥṣārī Sālim and by (…), and for him, [the prosecutor] requests the harshening of his previous demands. [1912 – IHS+: 3902]

While Mumtāz essentially tells a story of jealousy and hatred, Muḥammad al-kabīr’s lawyer, Muḥammad Afandī Muṣṭafā, plays on the emotional dimension of the case from a radically different point of view. He argues that his client’s partial and confusing confessions have been obtained while Muḥammad was “under the powerful influence first of his arrest and second of his mother’s declarations to the extent that he said: ‘if all the people of the village are convinced that I am the murderer of my brother, then it’s better if I go get hung!’” [1912 - IHS+: 3903]. As such, the lawyer continues, the confession cannot be considered as evidence (“قرينة”). As for “the anger that is said to have happened between the accused and his brother,” Muḥammad Afandī Muṣṭafā sees it as “trivial” and “not deserving [a] murder.” In addition, he points out that “the accused does not inherit from the deceased so that he kills [him].” On the basis of all these reasons, the lawyer eventually requests a not-guilty verdict.

Interestingly, while Ibrāhīm’s legal representative also demands a not-guilty verdict on the grounds that all the material and testimonial evidence suggest Muḥammad’s culpability, ‘Abd al-Raḥīm’s lawyer merely asks for the court’s mercy, underlining that his client is a witness rather than an accused in the case [1912 – IHS+: 3902-3903]. In spite of all these requests, the tribunal orders the case to be sent to the muftī of the Gharbiyya province, thereby indicating that death penalties would ensue. And indeed, on January 14th, 1913, following a positive answer surprisingly provided by a magistrate of the Ṭanṭā Islamic court of first instance, both Muḥammad and Ibrāhīm are sentenced to capital punishment, while ‘Abd al-Raḥīm is condemned to five years in prison [1912 – IHS+: 3904; 3905-3906].

In the judgment issued that same day, two elements deserve to be emphasized. First, contrary to most of the rulings presented in the second chapter, the text does not merely take up the prosecutor’s decontextualized story of the envious and spiteful son, but it rather presents a detailed and detached picture of the complex socio-economic relationships linking the main protagonists of the case: Muḥammad al-ṣagḥīr, the underaged owner of the land and boss;
Muḥammad al-kabīr, the brother wage laborer; Ibrāhīm, the latter’s predecessor who has been raised in the same house as the former; and the mother Salīma, who helps her son make his land prosper. By quoting facts that were only reported before the court by Salīma, the judgment also reveals that, in spite of its brevity, the mother’s testimony has been fully taken into account. More importantly, by focusing on the broader picture, the ruling suggests that the court has seen Muḥammad al-kabīr’s and Ibrāhīm’s destitution (“عصر”) rather than envy, as the real motive of the crime [1912 – IHS+: 3907-3909]. The second element that should be underlined in this judgment is the relatively lenient sentence pronounced against ‘Abd al-Raḥīm. Here again, the broader social circumstances of the case have been carefully considered, and more specifically the fact that the boy, who was a friend of the victim, “had not completed his 17th year” [1912 – IHS+: 3909]. The court’s decision to show mercy ("رَأْفَة") towards ‘Abd al-Raḥīm might well have been due to the personal influence of Megalos Caloyanni, whose special interest in the prevention – rather than the repression – of juvenile delinquency would materialize a year later through a participation in the first international congress for child protection and the publication of La protection de l’enfance en égypte.504

To conclude, the analysis of Muḥammad’s courtroom proceedings sheds a very interesting light on the fact that the legal constraints at the trial lead most of the actors to engage in different kinds of storytelling. Given that they are not offered the opportunity to express themselves any further, the three accused simply deny the charges brought against them. This initial denial is characteristic of the overwhelming majority of the cases I have analyzed, as are the “formulae” that accompany it: “I never said that [before the inquirer]” and “I was beaten by the ‘umda, and he forced me to accuse the others.” The defense strategy of the lawyers, who are most often appointed by the court for penniless clients and not very well acquainted with the file, is similarly very predictable. As in this instance, it usually focuses on three points: doubts regarding the manner in which confessions were extracted from the accused; the fact that, since these statements were not reiterated before the court, they do not constitute evidence; and the idea that the motive of the crime invoked by the prosecution is “trivial” and as such unconvincing. Formulae are also frequently used in this framework, especially the expression “لا

504 Megalos Caloyanni, La protection de l’enfance en égypte. (Le Caire: s.n., 1913).
“it is inconceivable that…” Last but not least, the prosecutor appears as the most powerful storyteller on the stage, as he often depicts the case to the court through a decontextualized and Manichean narrative of good and evil, and presents his pleading as a way to re-establish the moral of the story. As Muḥammad’s trial illustrates however, the witnesses also have the ability to disturb the picture, by rejecting the formulaic and moralistic nature of the genre, and providing the judges with elements of context that restore to the murder part of its complexity. Thereby, they can sometimes lead the court to both reinterpret the case in a much subtler manner, and reconsider the place that should be granted to the social context in the legal decision-making process.
3.6 Conclusion

This third chapter dedicated to the key moment of the first-instance trial has allowed me to refine the picture of the mahākim ahliyya outlined in the first two chapters of this dissertation. The approach to the sources through the lens of performance has led me in particular to focus on both the “mise en scène” and the “misfires,” and to emphasize both the highly repressive character of the system and the limited spaces of resistance in it.

From this perspective, the diverse material presented here has shown that, while the judicial authorities conceived of the staging of the trial as a crucial element to uphold the “majesty of the law” and the “dignity” of its administrators, the court users were conscious of the performative dimension of the event and of the fact that the magistrates were actually entangled in a variety of socio-political networks.

In addition, by focusing on courtroom procedure, this chapter has not only shed light on how the fundamentally colonial nature of the system considerably restricted the rights of defendants while empowering the prosecutor, but it has also revealed how the public telling of the latter’s story could sometimes be hindered by the complex dynamics of cross-examination.

More specifically, the two cases analyzed in greater detail have demonstrated that, even within such a repressive setting, both the defendants’ lawyers and their families could attempt to recontextualize the case. Thereby, they would occasionally lead the court to reject the prosecutor’s simplistic narrative and acknowledge – though to a limited extent – both the ambiguity and complexity of the socio-economic relationships within the village. While in the first case, this acknowledgment caused the magistrates to completely disregard the multiple grudges that linked the various protagonists, in the second case, it encouraged them to somehow consider the social context of the murder as mitigating circumstances for some of its perpetrators.

Furthermore, a close comparison of the dynamics of preliminary interrogations and trials has revealed how the truly theatrical nature of the questionings and confrontations personally staged by the substitut during the preliminary inquiry differed from the storytelling character of the activities that took place in the courtroom. It has also shown that in this latter case the witnesses
still retained the capacity to refuse to abide to the rules of the genre with the aim to once again try to recontextualize the crime.

Finally, by exploring the magistrates’ relationships with the locals outside of the tribunal, their interactions with suspects and witnesses inside it, and their career paths, this chapter has also pointed at the more political dimension of the judicial system. As such, it constitutes a perfect transition to the fourth and last part of this work, mainly dedicated to the last stage of the legal process and the defendants’ and witnesses’ attempt to appeal to the authorities through petitions.
4 Appeal and Cassation: Petitions, Deliberations, Executions, and the Question of the Definition of Justice

4.1 Introduction

This fourth and final chapter explores the ultimate silencing of the peasants during the last stage of the judicial process, and the latter’s attempts to resist mainly through petition writing and performance on the gallows. By placing this struggle within the colonial politics of the time, both at the local and the national levels, this text sheds light more specifically on the very different manners in which the native courts were considered as a political institution by the various protagonists of the appeal and cassation trials.

The chapter opens with an examination of the “complete fiasco” of the colonial management of the countryside resulting from two British initiated laws, passed in 1895 and 1898, that deprived peasants of their right to elect their village headmen, while considerably extending the latter’s legal prerogatives and hence social and political power. The colonial authorities’ preference for submissiveness over competency and integrity in their recruitment of the ‘umad and their increasing reliance on the village headmen to rein in the “unruly” countryside translated into growing power abuse reluctantly acknowledged in British reports and virulently denounced in peasant petitions.

Within this context, the close analysis of appeal petitions evoking intricate histories of quarrels and lawsuits that developed over years between the defendants and their ‘umad allows me to show how, by recontextualizing the cases for which they were tried, the peasants sought to bring the native courts into their local struggles. In addition, this study reveals that, contrary to the administrative petitions, the legal documents submitted by the fallāḥīn did not appeal to the just ruler’s benevolence, but rather laid claims to fundamental rights by investing principles of “traditional” justice with new connotations. In the meantime, the petitions suggest that such a stand on the part of the peasants did not preclude the development of an awareness of the

505 De Chamberet, Enquête sur la condition, 41.
eminently political nature of the judicial system (subpart 4.1 “Appeal petitions against ‘umad: Colonial politics, ‘modern’ law, and ‘traditional’ justice”). While in the course of the appeal and cassation process, the petitioners learned to express their grievances according to the rules of the genre, the examples of Sayyida and Khaḍra underline that female peasants also found ways to experiment, with the help of public writers, more personal strategies. In spite of the prejudices of the magistrates of that time, both their creative narratives and bold courtroom performances attest to an undeniable capacity of autonomy and agency (subpart 4.2 “Petition writing, women, and the law”).

Peasants’ petitions and related depositions were, however, quasi systematically overlooked by judges who generally conceived of their role as maintaining “order;” a conception that, in practice, translated into preserving the power status quo at the local level and protecting the British occupation at the national level. To be sure, a few magistrates such as Aḥmad Luṭfī al-Sayyid and Muḥammad Farīd did rise against the colonial authorities as early as the first decade of the century. But one would find them in the Bar rather than on the Bench, and their influence on the judicial system would be extremely limited. Furthermore, when it came to the peasant question, even these lawyers’ discourse remained within the boundaries of stereotypes, the appeal and cassation trials becoming mere arenas of discussion among the various actors over whether the ignorant/evil peasant deserved the court’s mercy (subpart 4.3 “Politics & the stupid/savage fallāḥ narrative”). Such a disregard for the broader socio-economic and political context of the crime was facilitated by a procedure that not only silenced the defendants but that would soon, with the creation of the assizes courts, do away even with their presence and that of their lawyers in the courtroom. At the end of this “journey to silence,” the peasants sentenced to death by the native courts nonetheless found again an ability to express themselves on the gallows. On this point, I thus show first how Mikhīmar al-Qāḍī proved able to reinterpret the “spectacle” of his hanging put on by the colonial authorities by subversively reappropriating the figure of the savage fallāḥ, and how Muḥammad Balīla chose to dramatically deprive the

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magistrates of the very possibility of putting him on display by committing suicide in prison (subpart 4.4 “Performance and agency on the gallows”).
4.2 Appeal petitions against ‘umad: Colonial politics, “modern” law, and “traditional” justice

Est-ce pour le seul prestige, ou reste-t-il discrètement quelque chose des abus de pouvoir et des sources de profit auxquels elle donna lieu jadis, toujours est-il que l’omdeh se trouve très souvent en butte à toutes espèces d’intrigues de la part de ses ennemis, et que de bons esprits ont vu là une des causes principales du développement de la criminalité au cours de ces dernières années.
(Raoul de Chamberet, Enquête sur la condition du fellah égyptien)

Whether he is the informant on which the substitut will found the whole investigation, the object of plot and torture accusations on the part of the defendants, or himself the victim of the crime, the ‘umda is the omnipresent key figure of all the cases I have analyzed. While the position seems to have been introduced in the mid-19th century by the descendants of Mehmet ‘Ali, the socio-economic standing and political power of these local state representatives were significantly altered in the period considered through the adoption of a series of laws aimed at deepening British control over the countryside in 1895 and 1898.

A first decree passed in March 1895 at the initiative of Eldon Gorst, the British Adviser for the Ministry of Interior, determined new conditions for the selection of the village headmen.

Whereas from 1871 onwards, ‘umad and mashāyikh had been elected by the villagers, the text established that they would henceforth be chosen by a regional commission chaired by the local governor and composed of a representative of the Ministry of Interior, a representative of the Ministry of Justice (“un substitut du parquet”), and four notables or representatives of the province ‘umad already on duty. Then, the nominations proposed by the commission would also have to be sanctioned by the Ministry of Interior. In addition, the candidates would have to fulfill the following requirements: “be older than 25 years of age, own at least ten feddans, and

have never been convicted by the new courts for crime or misdemeanor related to [their] honorability or [their] honesty.”

Interestingly, the decree also specifies that “among several candidates of equal merit to serve as ‘umda or shaykh, preference will be given to those who know how to read and write.”

While the advent of the British occupation had deprived the village headmen of their functions as tax assessors/collectors and recruiters for corvée works and military service, the 1895 and 1898 laws considerably expanded their legal prerogatives. The ‘umad were thus appointed as “officer[s] of the judicial police in charge of all questions related to public security” and became responsible for “ensuring the strict observance, within the limits of [their] village[s], of the laws and regulations in force.” Within this same realm of duty, they also retained their authority over the ghufarā’ whom they were responsible for appointing and supervising. They consequently played a major role in the preliminary investigation of crimes, notifying the police and judicial authorities through a report (بلاغ), helping search for material evidence and witnesses, and being themselves considered as key sources of information about the case.

More importantly, the ‘umad also enjoyed legal powers of their own. As early as 1895, they could thus “condemn[] someone to 15 piasters as a fine and twenty-four hours in prison at a maximum for acts of violence against people not involving stabs or wounds; the same penalties [being] applied in cases when someone refused or neglected to do the tasks required by [them] in accordance with the laws and rules.” From 1898 onwards, they were progressively given the authority to rule in civil suits relating to personal issues and movable assets involving claims that did not exceed 100 piasters. In order to adjudicate these cases, they were to “draw on the principles of the native codes and the rules of equity.” They could summon witnesses, issue judgments, and supervise their implementation through, for instance, the seizure and auction of

510 Ibid., 497.
511 Ibid.
512 Cromer, Modern Egypt, 190.
513 Brunton, Lois usuelles, 499.
514 Kershaw, Hints on the Conduct, 6-7.
515 Tollefson, Policing Islam, 98; Brunton, Lois usuelles, 499-500.
516 Brunton, Lois usuelles, 501.
items to repay a debtor.\footnote{Ibid.} In case of a breach of duty, the village headmen could be subjected to disciplinary penalties ranging from a warning and fine to temporary suspension and permanent revocation. On the other hand, they enjoyed a few crucial benefits linked to the position: an exemption from military service for themselves and their children, the reimbursement of travel expenses, and a tax exoneration on properties up to five feddans.\footnote{Ibid., 500. Yūnān Labīb Rizq also mentions the existence of some form of judicial immunity according to which “village headmen could not be prosecuted on criminal offences while in office, and (...) the Ministry of Justice officials would have to be notified of any prosecutable offence and would have to seek the approval of the Ministry of Interior before initiating proceedings.” Unfortunately, I have not been able to confirm this element. See: Yunan Labib Rizk, “Village choice.”}

The extension of the ‘umad’s legal prerogatives constituted a very controversial issue from the onset. Egyptian political elites believed, not without reason, that the village headmen would become the local agents of the British in the countryside. On this theme, it is significant that, as early as June 1895, the provincial commissions dismissed 714 ‘umad (i.e. around 20 per cent of the entire corps) and 1,947 mashāyikh officially “for reasons of dishonesty, incompetence, or ineligibility,” and seem to have replaced them with “more politically submissive” candidates.\footnote{Ibid., 102. On this question, Yūnān Labīb Rizq also writes: “Public opinion was not deceived as to the designs of the occupation authorities. After the new law went into effect, Al-Ahram remarked, ‘the British appoint only those persons whom they can be confident of their loyal service. It is as though they believe that in order to take over the country they have to kill all semblance of life in it. Thus, the selection of mayors in many districts went against the wishes of the people in those districts causing dismay among the inhabitants.’” Yunan Labib Rizk, “Village choice.”}

In addition, Egyptian legal and intellectual circles also worried that conferring part of the summary judges’ authority on a corps that contained numerous suspicious elements and that was mainly illiterate would only lead to more power abuse. Regarding this issue, the Council of Ministers had originally been able to impose a modification of Gorst’s initial project in the form of a slight limitation of the ‘umad’s judicial prerogatives.\footnote{Tollefson, Policing Islam, 98} Criticisms of the 1898 decree were continuously expressed in the subsequent years, but the colonial authorities proceeded with its implementation. In 1914, requests for the abolition of the village headmen’s legal authority were even addressed to the Legislative Assembly by peasants and merchants, but it would not
be before 1930 (that is to say after Egypt’s nominal independence) that these powers would be actually eliminated by law.\textsuperscript{521}

In spite of the longevity of the system, colonial discourse on the ‘\textit{umad}’s power was itself ambiguous. In his annual report for 1900, the British Judicial Adviser, Malcolm McIlwraith, would thus both acknowledge the extent of the opposition to the performance of judicial functions by the village headmen, and cite a highly self-congratulatory assessment of the first results of the experiment by Johnson Pasha, the Inspector-General of the Criminal Investigation Department at the Ministry of Interior. To substantiate his claim that the implementation of the law should, in spite of the fears, be further expanded, McIlwraith interestingly invokes the argument that no complaints regarding the ‘\textit{umad}’s legal work have ever been addressed to the ministry. His line of reasoning runs as follows:

I am glad to quote the testimony of Johnson Pasha in favour of the Omdehs as village magistrates, because this is a matter on which there appears to be considerable divergence of views among those best qualified by their experience and knowledge of the country to form an opinion. Johnson Pasha is quite right in saying that “there has been a tendency to depreciate the village authorities and the probable value of their work.” The opinion is undoubtedly strongly held in many quarters that this experiment has not been very successful so far, and that the time has not come for extending its operation in any way. The allegation is that justice, as administered by the Omdehs, is not always of an impartial character. It is difficult to get at the truth of the matter, and personally I regard the question as still open to discussion. But the complete absence of complaints at this Ministry certainly appears to me to be material evidence in favour of the Omdehs. The people are well aware nowadays that it is always open to them, when they consider themselves oppressed, to petition the head of the department concerned, and that their petitions are attentively considered and carefully enquired into. And so far as the tribunals are concerned, I have not observed any reluctance on the part of the disappointed suitors or convicted persons to come forward with petitions and complaints. Indeed a considerable portion of the ordinary work of the Committee of Surveillance consists in the sifting, classification and examination of these petitions and the allegations they contain. Up to the time of writing the Ministry of Justice has not received a single petition relating to the decision of an Omdeh in his judicial capacity, though the system has now been working for several years. This may not be conclusive but it is certainly significant.\textsuperscript{522}

Two years later, however, McIlwraith would have to concede, commenting on yet another satisfied report:

Johnson Pasha is, perhaps, a little optimistic about the Omdehs, and certainly appears to take a lenient view of the very large proportion of administrative punishments during 1902. In the meantime, however,

\textsuperscript{521} Baer, \textit{Studies in the Social History}, 43-44.
\textsuperscript{522} Report for the Year 1900 (Presented by the Judicial Adviser) (Cairo: National Printing Department, 1901), 15.
as I said last year, I agree with him that it ought to be possible before very long to make a cautious extension of theirs powers provided there be efficient supervision and selection.\textsuperscript{523}

Ironically, most of these disciplinary penalties were imposed as a result of peasants’ petitions sent to the provincial governors and the Ministry of Interior to denounce the village headmen’s power abuse and incompetence.

This is at least what the French diplomat Raoul de Chamberet suggests in his analysis of the situation of the Egyptian countryside at the turn of the century; a situation he qualifies as “a complete fiasco” resulting from an unlikely “compromise between the old autonomous system” in which the ‘\textit{umad}’ were elected, and “the necessities of an organized modern [and, I would add, colonial] state.”\textsuperscript{524} De Chamberet thus cites the number of 898 ‘\textit{umad}’ (out of 3,500 in the entire country) “accused of various transgressions” through countless petitions in 1903.\textsuperscript{525} While he does not shy away from criticizing “the state of disorder and insecurity”\textsuperscript{526} that has reigned in the countryside since the implementation of the new system of local administration, the French secretary nonetheless takes up most of the arguments put forward by the colonial authorities to account for this situation. To be sure, he evokes \textit{en passant} the possibility of village dissensions and “intrigues” around the headmen being fuelled by the latter’s abuse of power and illegal accumulation of wealth.\textsuperscript{527} But he mainly relies on Cromer’s own justification of the failure of his policy: most of the ‘\textit{umad}’ recruited by the British are too poor, weak, ignorant, and inexperienced to carry out all the new functions that have been granted to them by the 1895 and 1898 laws; they consequently need more time to be “brought up to the task.”\textsuperscript{528}

Cromer’s complete line of reasoning further emphasized that the village headmen’s power had been purposefully reduced by the British, as one of the first and most crucial measures taken to fulfill their “mission” to liberate the peasantry.\textsuperscript{529} By abolishing the system of the \textit{corvée}\textsuperscript{530} and

\begin{itemize}
\item \textsuperscript{523} Egypt, Egyptian National Archives, Majlis al-wuzarā’ - nizzārat al-ḥaqqāniyya, [0075-040098], \textit{Report for the Year 1902} (Cairo: National Printing Department, 1903), 24.
\item \textsuperscript{524} De Chamberet, \textit{Enquête sur la condition}, 41.
\item \textsuperscript{525} Ibid., 43.
\item \textsuperscript{526} Ibid., 41.
\item \textsuperscript{527} Ibid., 43.
\item \textsuperscript{528} Ibid., 41-43.
\item \textsuperscript{529} Baer, \textit{Studies in the Social History}, 58; Cromer, \textit{Modern Egypt}, 189-192.
\end{itemize}
forbidding the use of the *kurbaż*, by eliminating the “opportunities for illicit gain” and codifying their responsibilities, the colonial administrators had allegedly been able to place these “petty tyrants” back under state control and to considerably weaken their authority.

As the Consul-General claimed in 1907, referring once again to the colonial argument *par excellence*, the undermining of the ‘*umad*’s power and the state of insecurity that purportedly resulted from it were an “inevitable” step “in [a] period of transition from an arbitrary form of government to the rule of law.” All that was needed then was more time for the British to attract the best candidates for the position and progressively educate the headmen in order to raise their “moral and intellectual standard.”

I argue that this rhetoric conveniently allowed the colonial authorities to conceal two major elements: first the fact that much of the agitation surrounding the ‘*umad* actually stemmed from the British having privileged submissiveness over competency and integrity in their recruitment and having concomitantly deprived the villagers of their say in the matter; second, the fact that the integration of the village headmen into the new system of the native courts – through both their appointment as “officers of the judicial police” and their being granted some of the legal functions of summary judges – was meant to strengthen rather than weaken their power in that it would give a sort of legal sanction, generally, to their mostly illegitimate positions in the villages, and, sometimes, to outright illegal behaviors.

This argument is supported by the

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531 Ibid., 190.
534 On this issue, my work significantly undermines – if not totally invalidates – Gabriel Baer’s thesis that both the socio-economic standing and the political power of ‘*umad* and *mashāyikh* were considerably reduced by the British occupation. Surprisingly, Baer seems to have mainly taken up the colonial narrative described above (especially Cromer’s reports and memoirs on which he extensively relies); arguing that the integration of the village headmen into the newly created judicial system was a “restriction” of their “adjudicative authority” rather than an extension of their prerogatives with far-reaching consequences at both the socio-economic and political levels. Contrary to him, I argue that ‘umad and mashāyikh did not wait the weakening of the central state during the WWI to strengthen their
manner in which the colonial authorities progressively increased the ‘umad’s prerogatives throughout the period, relying on them – in spite of growing denunciations of abuse – to rein in the “unruly” countryside. More significantly, this claim is also substantiated by an analysis of the multiple petitions of my archival corpus involving histories of disputes between the defendants and the village headmen.

Regarding the colonial power’s increasing reliance on the ‘umad to confront the escalating problem of rural criminality, I have already evoked the “Law imposing police surveillance upon particular individuals” or law of “bad reputation.” With the adoption of this new legislation in early 1909, the village headmen became the key members of administrative-judicial committees in charge of drawing up lists of “suspects.” Until the law was abandoned in 1912, ‘umad were thus given the ultimate authority to discriminate between “good” and “bad characters,” and to initiate the procedure that would either place the latter under police supervision or send them to the penal colony of Kharga. Contemporary analysts denounced the fact that the village authorities made use of these new prerogatives to eliminate their political opponents simply through the testimonies of a few well-chosen witnesses. In 1912, the ‘umad’s position was further strengthened by the removal of prison sentences from the range of disciplinary penalties to which they could be subjected. At the same time, a few colonial officials, such as the British judge John Edwin Marshall, were pleading for further control of the village headmen. In a memorandum to Lord Kitchener, he thus explained:

The villages are hives of intrigue, and those who have grasped the reins of power use that power to their own advantage, whenever occasion arises. There is a continual struggle as to who shall be top dog, and this leads to the perpetration of no inconsiderable amount of crime. (…) The office of Omda should not be held for more than one year. This would give every eligible person a chance of holding that office, and would put an end to many of the feuds which arise under the present Omda system. At the same time it would prevent Omdas from acquiring the arbitrary power which many of them now undoubtedly possess.

positions, but rather constituted key elements of the colonial “management” of the countryside as early as the turn of the century. See especially: Baer, Studies in the Social History, 36, 42, 58-61.

535 Tollefson, Policing Islam, 145-146.
536 el-Kolaly, Essai sur les causes, 115.
537 Tollefson, Policing Islam, 167.
But Marshall’s recommendations would not be heard, and at the outbreak of World War I, the magistrate would witness once again in the courts the widespread abuse in which the village headmen engaged in their capacities as recruiters for the Labour and Camel Transport Corps, officials in charge of the requisition of animals and cereals, and fundraisers for the Red Cross.\(^{539}\)

This portrayal of ‘umad and mashāyikh using and abusing their prerogatives – including the legal ones – to strengthen their political and socio-economic power to the detriment of their opponents and the most vulnerable members of their community is further corroborated by the appeal petitions of my archival corpus in which the defendants invoke intricate histories of quarrels and lawsuits that developed over years between them and their village headmen. But more significantly, the analysis of these documents reveals a much finer and more complex image of these local “intrigues,” of the different ways in which the various actors brought the native courts into their struggles, and ultimately of the shifting conceptions of the judicial institution that these strategies reflect.

The first case I have chosen to present is that of Aḥmad ‘Abd al-Ḥaqq Yūnis, a 65 year old peasant from Damlik (markaz Minuf) who in 1898, after a long legal battle against the ‘umda to regain a piece of land the headman had illegally appropriated with the help of his brother, finds himself accused of murdering the latter’s wife and son [1898 – A‘AY]. The first petition addressed by Aḥmad to the judges sheds a new light on the so-called litigiousness of the Egyptian peasant, by showing how, in a increasingly exploitative social context in which villagers had additionally been deprived of their say in local politics, fallāhīn did appeal to the law, sometimes successfully, to protect and enforce the respect of their inheritance and property rights. Furthermore, it also illustrates how, within the “modern” framework of the native courts, the “traditional” conception of justice as ensuring that one receives “one’s due share” was reinvested with new meaning. Ahmad’s second petition, however, also demonstrates that the ‘umad’s integration into the new legal system combined with their administrative – if not

\(^{539}\) Ibid., 195-199.
judicial – impunity, concomitantly set up the native courts as a political institution in the peasants’ eyes.

The second case analyzed in this subsection is that of Sayyid Ahmad Basyuni al-Haynî, a 28 year old peasant/weaver from Mashla (markaz Talâ) who, in 1910, claims that the ‘umda unjustly accuses him of murder because of a series of “official disputes” between them, including a petition that had previously led to the fining of the village headman and his suspension from office for six months [1910 – SAB]. Far from being a mere strategy, the omnipresence of the “‘umda’s plot” in appeal petitions demonstrates on the part of the peasants an attempt to re-contextualize the crimes for which they were tried within the socio-political framework of the village “intrigues,” and, thereby, to bring the judicial authorities into their struggle against corrupt, oppressive or incompetent village headmen. In this example, the examination of the long list of “official disputes” mentioned by Sayyid also illustrates how both lawsuits and petitions to “the government” were seen by fallâhîn as complementary political weapons to be used in the absence of election mechanisms. The petition sent by Sayyid to the appeal court reveals, however, that while the purely administrative procedures were still considered the “old” way of informing the “just ruler” of abuse committed by his representatives and calling on his magnanimity to remedy the situation, those initiated within the legal system rather reflected the assertion of “new” legally codified rights.

4.2.1 Inheritance, dispossession, and violence: On the recognition of one’s property rights and the protection of the weak against oppression

On October 30th, 1898, Ahmad ‘Abd al-Ḥaqq Yûnis is sentenced by the Tantâ tribunal of first instance to hard labor for life for the premeditated murder of the wife and son of his brother, Muḥammad. Following this first judgment, both the accused, who has never ceased to protest his innocence, and the prosecutor, who demands a harsher sentence, appeal the verdict. Almost two months later, on December 22nd, Ahmad eventually appears before the Cairo court of appeal. As in the overwhelming majority of the cases I have examined, the lawyer assigned by the tribunal to defend him, has sent a colleague totally unacquainted with the file to replace him, and unsurprisingly the latter requests that the hearing be postponed for a week in order to allow him to study the case [1898 – A‘AY: 5689]. In the meantime, however, Ahmad ‘Abd al-Ḥaqq
Yūnis decides to hire another legal representative by himself, a certain ‘Abd al-Wahhāb Afandī Muḥammad al-Muhāmī. The session resumes on December 29th, but once again the lawyer demands additional time, and the case is adjourned for yet another week. Consequently, it is probably on the advice of this last counselor that Aḥmad sends a petition to the court of appeal on December 31st [1898 – A‘AY: 5709-5711] (Appendix 25). The three page long document first presents in great detail the history of the highly acrimonious relationships that have developed for two years between him on the one hand, and his brother and the village ‘umda on the other, when the latter illegally purchased a piece of land Aḥmad had inherited from his father [1898 – A‘AY: 5709-5710]. The text then puts forward a series of “haythiyyāt” aimed at demonstrating that the murder charges brought against him actually rely on a plot designed by the ‘umda and his brother with the help of the local police [1898 – A‘AY: 5710-5711].

While the petition undoubtedly results from a collaboration between the peasant and his lawyer (or most probably the latter’s clerk), several aspects suggest that, in spite of his illiteracy, Aḥmad has contributed to the creation of the piece much more than the clerk, and that, therefore, he can be considered as its “first author.” To be sure, the letter is framed as a formal legal document and interspersed with a few official formulae (Appendix 25: elements in green [introduction – conclusion – “haythiyyāt” – بمقتضى ذلك – بناء على – ]). The first part of the body text, however, is characterized by fundamental marks of orality and techniques of storytelling (Appendix 25: elements in orange). The history of the disputes among the narrator, his brother, and the ‘umda is thus exposed in a non-linear manner, with flashbacks (the fights around the sibāgh and the irrigation of the land), repetitions (the judgment through which he recovered his six qarārīṭ and the visit of the bailiff who measured the land), and a circular construction that begins and ends with a summarized version of the “grudge(s)” (الضغينة - الضغاين). As for the second part, it is presented as a much more structured list of “haythiyyāt,” but the level of detail of the various episodes recounted, the mix of direct and indirect speech, and the reiteration of the idea that the case circumstances as described by the plaintiffs are incredible point again to an essential and personal participation of the defendant in drawing-up the petition (Appendix 25: elements in red). Finally, like Zemon Davis’s pardon seekers,

Aḥmad was most certainly aware that, by submitting the document to the judicial authorities at that point of the procedure, he could be further interrogated on these issues at the appeal trial, and that, therefore, it would have been extremely risky for him to include in his request elements – whether true or fictional – solely emanating from his lawyer and with which he would not have been perfectly acquainted.541

More importantly, both Aḥmad’s arguments and the manner in which they are exposed reveal a fine understanding and a strategic use of the rules and standards in effect in the native courts. First of all, the petitioner insists that the “grudges” and “quarrel” (مشاحنة) between him and the ‘umda are not based on mere rumors, but that both the central issue of the illegal land purchase and the related episodes of assault have been duly reported and recorded, and that they therefore constitute strong evidence that can be examined by the judges (سُجّل جنحة المبايعة – "اقترر على (...) الورق واختير موعدًا لمحاكمة مالك (...) وشعبه يثبت إنه [...]"). By doing so, Aḥmad ‘Abd al-Ḥaqq Yūnis also emphatically situates himself on the side of legality, suggesting that, contrary to his detractors, he has never resorted to unlawful means to settle the dispute. At every step of the struggle, he has rather chosen to compliantly appeal to the judicial system, submitting complaint after complaint (فتوجهت محكمة منوف ورفعت قضية – "قدمت في حقه (...) شكوى" – "فتحت المحكمة واعرضت في حقه (...)"). To add even more legitimacy to his position, he explains that it is in this context that he was encouraged by the “government” (الحكومة) to eventually file a case against his brother and sister in order to obtain the redistribution of his father’s land, and thereby the invalidation of the initial sale of his property to the ‘umda ("فالحكومة عرفتني انني ارفع قضية قسمة على اخواتي مسعدة ومحمد اخيها البائعين للاعدة"). Finally, he insists that, throughout this ongoing legal battle, his entitlement to the land has been fully recognized ("انا لي استحقاقي (...) قمة استحاقتي" - "حكمت عليه المحكمة بمخالفة" - "حكم عليه مخالفات" - "حكمت عليه المحكمة بمخالفته"). More precisely, Aḥmad contrasts his property rights over what he has legally inherited from his father ("انا لي استحقاق فيهم مما يخصني (بالمراث الشرعي) بالدماء الشامي") with the ‘umda’s attempt to illegally appropriate that same land ("اراد انه يوضع يده على ملك الأراضي"). And to further substantiate his statements, the petitioner describes with great

detail the visit of the bailiff, a certain ʿAlī Afandī Ḥamdī from Ṭanṭā, who measured and gave him back his six qarārit.

At the juncture between both parts of the document, Aḥmad summarizes his main argument: since the files of the various cases (الأوراق) have attested to the reality of the grudges, his accusers’ wrongdoings, his own rights, and his lack of antecedents, the fallāḥ requests that their testimonies against him be dismissed. In the second half of his petition, he provides additional elements on key aspects of the case meant to undermine the charges and thereby support his demand: the fact that the testimonies of the prosecution witnesses have been obtained through “fear” and “humiliation” (الخوف - الاهانة); the inconceivable nature of the official version of the events ("هذا امر لا يتصور"); and the idea that no material evidence against him has been found (لم يثبت على شيء مطلقًا). On the basis of these various points, that are all perfectly valid from a legal perspective, Aḥmad eventually reiterates his request: an investigation into the charges of “injustice” (ظلم), “deceit” (غدر), and “enmity” (عدوان) he has brought against his detractors.

More interestingly, the manner in which the petitioner both presents himself and addresses the legal authorities offers an invaluable insight into his conception of justice. While the judiciary is clearly seen in this text as an integral part of the “government” (الحكومة), the document significantly differs from complaints sent to ministers or the Khedive himself in that its preamble is extremely sober and very similar to the administrative style used by the justice professionals themselves in their correspondence. The president of the appeal court, to whom the letter is directed, is thus simply referred to first by his official title and then repeatedly by the expression “your Excellency” (سعدتكم), rather than through some hyperbolic figures of speech. To be sure, the text ends with a more elaborate phrase: “and with all this, I call God’s benediction upon Your Excellency for your mission to continue well and with hopes” (ومع كل ذلك ندعي لسعادتكم بدءام دعاكم بالخير والامال). It is nevertheless true that Aḥmad’s petition does not fall into the category of supplications or pleas for the “just ruler’s” mercy, but rather constitutes the

542 For another example of the terms "المحكمة" and "الحكومة" being used interchangeably, see: [1899 – HYH+: 7893].
543 Chalcraft, Engaging the State, 309-310.
544 In this regard, this archival material also contrasts with the type of petitions Tawfīq al-Ḥakīm claims having received when working as a substitut in the Delta around 1940. See El Hakim, Un substitut, 142.
claim of a fundamental right (both the right to appeal the court’s verdict and the right to have his statements investigated) submitted in a regular institutional framework.

If we examine now how the petitioner recounts the successful legal struggle he has fought against the ‘umda on the land issue, we see that it revolves around one specific word repeated three times: استحقاق or the recognition of one’s due. In addition, the emphasis placed by the author on the episode of the bailiff who came to “measure the land and divide it” (قاس الأرض وقسمها), implies that the peasant conceives of the judiciary’s duty as ensuring that one receives and retains one’s “due share.” Even if the redistribution of the inheritance (قضية قسمة) has probably been tried and performed by a shari’a court, Aḥmad’s presentation of his recurrent resorting to the native tribunal of Minūf still suggests that he regards the latter’s role as protecting the property rights that have been granted to him by the Islamic law. While such a conception of justice could be interpreted as being “traditional,” it is essential to underline here its renewed relevance and the particular shade of meaning added to it at the time, through an emphasis on the recognition and upholding of inheritance and property rights, in a colonial context marked by massive land spoliations often carried out by or through village ‘umad.545

Furthermore, the analysis of the second part of the document reveals that Aḥmad assigns another, more socio-political, function to the judicial system, that of protecting the productive and weak elements of society against the humiliation and oppression of local administrators. At the beginning of the text, he has already described himself as a weak fallāḥ who was beaten by the ‘umda as he was going to irrigate land that “was dying of thirst” (طفي شراقي) but who was eventually given justice by the court. Now, the idea is further evoked through the detailed


On this crucial issue of land spoliation on the part of ‘umad and the recognition of peasants’ inheritance and property rights, Gabriel Baer explains that, while during the first half of the 19th century, the instances of village headmen appropriating the land of fallāḥīn sent to the corvée or to the army seem to have been rather common, the introduction of a series of law, and foremost among these the 1858 land law, under Saʿīd did contribute to significantly curb the phenomenon. Article 28 of the land law even provided “for measures to be taken against any shaykh al-balad or ‘umda who failed to report to the authorities cases of landowning villagers dying without heirs and who took over their lands or allowed others to do so.” (Baer, Studies in the Social History, 49). Under Ismā’īl however, the issue took on a new dimension with ‘umad lending money to peasants “in increasingly greater need of cash” and seizing the latter’s lands when they could not repay the debts. Finally, Baer notes that cases of land spoliation by village ‘umad were still recorded as late as 1889 (Ibid., 50).
account of the humiliation allegedly suffered by the prosecution witnesses and among the latter, more specifically, his spouse and children. The petitioner thus describes how the police “completely undressed” (قلعوها ملط) his wife at the station ordering her to charge her husband with the murder, and how she obeyed them in exchange for their putting an end to her ordeal and “covering her with clothes” (السترة بالهدوم). He then asserts that his son was similarly humiliated “with the highest degree of humiliation” (اهانوه شدة الايالة) – and the expression is repeated twice – to the extent that he, too, testified against his father. Finally, Aḥmad recounts how the ‘umda’s son and the local police officer scared his six year old daughter with a “butcher’s knife” (دبح المطوة) and asked her to accuse him as well. Through the vivid depiction of these various episodes, the peasant calls not only on the centralized “government” to prevent the abuse of power perpetrated by his local agents, but also and perhaps more importantly on the patriarchal state to intervene and protect his powerless and obedient children. Finally, the petitioner’s understanding of justice as both a general sense of fairness and a safeguard against oppression is expressed in his repeated invocation of the judge’s “عدالة” (which means at the same time impartiality, honesty and proper conduct), and the close association of this term with “the suppression of tyranny” (مضيطة الظلم). Once again, I would argue that, while such a conception undoubtedly echoes older notions of justice, it definitely takes on a new connotation in a period characterized by an increased vulnerability of the peasant families’ heads vis-à-vis the often overlapping categories of local speculators, money-lenders and officials.

This analysis of Aḥmad’s definition of justice is further substantiated by the second petition that he sends to the cassation court on February 4th, 1899. A week earlier, the court of appeal decided indeed not only to ignore the defendant’s request to examine his accusations against the ‘umda, but also to harshen the ruling of first instance [1898 – A’AY: 5691]. Although both the accused and his lawyer had, in the course of the appeal trial, tirelessly denounced a plot designed by the ‘umda and presented evidence of “the use of oppression, beating, and torture” (استعمال القسوة والضرب والتعذيب) to extract false testimonies from the witnesses [1898 – A’AY: 5690], the court – composed of, among others, Mister Wilmore, ‘Alī Dhū al-Faṣqār Bey, and the Shaykh Muḥammad ‘Abduh – dismissed the claims without much consideration and eventually sentenced Aḥmad to the death penalty [1898 – A’AY: 5689-5691; 5694-5695]. On January 28th, 1899, two days after the issuing of the judgment, the accused requested a revision of the verdict by the court of cassation ("محكمة النقض والابرام"). A clerk filled out the required form for him, and
in the margins of the document, he conscientiously wrote down a short summary of the peasant’s declarations: “[the defendant] says that [there are] official grudges (ضغابين رسمية) between him and the ‘umda, that his brother and his wife falsely accused him of this case, that he is unjustly treated (مظلوم), and that his brother, [the latter’s] deceased wife, and her son [were] servants on the part of the ‘umda.” [1898 – A’AY: 5696]. The scribe even specified that, given that Aḥmad did not know how to write and did not possess a seal, he signed the document for him.

A few days later the accused, who is back in the Cairo prison, decides to substantiate his statements with a new petition [1898 – A’AY: 5697-5698]. The style of this second document is slightly different from the previous one. First of all, the text is shorter, more focused, and better written. More importantly, the tone has changed from a respectful general request based on lengthy justifications to more specific demands associated with open threats. Incidentally, it is this more virulent petition that has been kept by the archivists of the National Center for Judicial Studies in the body of the file, while the first document detailing the various judgments rendered against the ‘umda has been relegated to the appendices.

As early as the preamble of the “report” (تقرير) addressed to the “cassation judge,” the petitioner eloquently introduces the main theme: the injustice he has suffered, no longer directly at the hands of the ‘umda, but rather in the course of the judicial process itself. He thus evokes “[his] wound [inflicted by] inequity and oppression” ("اصابتي في الجور والظلم"). After a short presentation of the case, the author then proceeds to list two essential reasons on which his request for revision is founded. The first argument interestingly lies in the fact that the appeal court which sentenced the defendant to death has not heard any of the witnesses, but has merely based its judgment on “what appeared to it in the file” (الموضح لها بالوراق) although “what is written in the file of the case” (الذي محرر باوراق القضية) are false testimonies resulting from beating and humiliation. While in his first appeal, Aḥmad had emphasized that the official recording of his grudges with the ‘umda by the tribunal of Minūf somehow guaranteed their veracity and consequently substantiated his accusations of plot, he now asserts that the judicial file of the murder case for which he was sentenced is deceptive. This idea that “the pages” can lie, either because false statements have actually been extracted under torture, or because the various clerks involved in the judicial process have altered what has been stated before them, is
often invoked in peasants’ petitions. Here, it conveniently allows the author to indirectly denounce again the corruption of the local ‘umda and police officers, while still expressing some degree of respect for the authority of the judicial institution. The appeal court has made a mistake that the cassation court now has an opportunity to correct.

The petitioner then briefly returns to the theme of the witnesses in order to support his claim that their testimonies are fabricated. His main point on this issue is that the ‘umda was able to force them to lie because they are simple peasants. At the beginning of the text, Aḥmad’s allusion to his accusers as being either from among the “instigators” (مغرى) or the “oppressed” (مجبور) had already suggested such a line of reasoning. But here, he expands on the idea, by explaining that the village headman compelled them to “swear by the divorce” before they testified in court, and given that “each one of them is a peasant” (كل واحد فلاح) they then had to obey.

Lastly, the defendant asks the court to revise the case and to summon and interrogate the plaintiff, his brother Muḥammad. This time, the request is no longer directed to the judges’ mere sense of “fairness” (عدالة عزتكم) as in the first petition. Since it is now a question of life or death, the demand is founded on the judiciary’s “obligation” to honesty, and so that “the magistrates’ conscience [can] be cleared” (تبرااءت زمت القضا مني). The petitioner’s assertiveness eventually turns into aggressiveness, when in a final paragraph Aḥmad warns the court members as follows:

وإن حصل من [المحكمة] غض النظر في عدم حضور اخي المذكور وتنذخ عليا هذا الحكم الذي أصدر عليا ظلما وعدوانا فاكون حافظ
احترق في بنده كل واحد يكون حاضر جلسني فاكون أنا معه يوم الموتى العظيم"

If the tribunal disregards the absence of my brother, and passes against me this judgment that has been issued against me unjustly and in a spirit of enmity, then I will retain my rights in the conscience of each person who was present at my session, and I will be with him on the day of the final judgment. [1898 – A‘AY: 5698].

And the text ends with a Qur’ānic verse reasserting that God stands with those who are unjustly treated. Like all the petitions of my archival corpus, Aḥmad’s appeal fails however to affect the judges. The court of cassation being designed to examine merely the procedural dimension of the case and not its content, the magistrates systematically dismiss these texts on the grounds that they do not contain “any legal aspect [that would justify] the quashing of the judgment of appeal.” [1898 – A‘AY: 5700]. After a parody of a trial that neither the defendant nor his
lawyer attends, the death penalty pronounced against Aḥmad is consequently confirmed on March 18th, 1899 and he is eventually hung in the vicinity of Ṭanṭā on April 12th at 7 a.m. [1898 – A‘AY: 5703-5704].

While general references to divine justice are commonly found in peasants’ petitions especially at the end of the judicial process, it is interesting to note here how Aḥmad ‘Abd al-Ḥaqq Yūnis appeals first to the judges’ professional responsibility, before calling on their personal conscience and religious sentiment. Throughout the process, it is also worth noting how the defendant conceives of the judiciary both as a governmental institution theoretically responsible for the guarantee of one’s property rights and the protection of the weak against oppression, and as an association of magistrates who at a personal level might be sensitive to arguments of another nature. In this context, I would argue that his invocation of the “wound” that has been inflicted on him by the court of appeal and above all his threatening allusions to the day of judgment reveal a painful realization that, in spite of the ‘umda’s multiple convictions, the judges still favor the latter’s words against his. It is, in another terms, a painful realization of the eminently political nature of the judicial system.

4.2.2 “Official disputes” (خصومات رسمية): Court cases, peasant’s petitions, and lists of “bad characters”

The second case I have chosen to illustrate the phenomenon of the appeal petitions in which a history of judicial cases between the defendant and the ‘umda is invoked is that of Sayyid Aḥmad Basyūnī al-Haynī, a 28 year old peasant/weaver from Mashla (markaz Talā) who is accused of having poisoned Muḥammad Muḥammad Barakāt, a fellow villager, on January 4th, 1910 [1910 – SAB].

Interrogated by the police before dying, the victim explains that, on their way to buy a donkey at the market, Sayyid Aḥmad offered him a piece of bread that made him sick. He denies however any kind of enmity between them, as do the eight other witnesses subsequently examined [1910 – SAB: 18950-18962]. When questioned in turn by Kāmil Ibrāhīm the local substitut, and confronted with the fact that leftovers of the poisoned bread have been found in his cupboard, the suspect immediately brings up the many grudges existing among him, the ‘umda, and various other people of the village, suggesting that the case is a “plot” (مكيدة) and
that the incriminating material evidence has been malevolently placed in his house by the village headman’s son in his capacity as shaykh al-balad. He also mentions that his brother was killed ten days before, and asserts that some relatives of the people he has accused of that murder – among whom a certain ‘Āmir Ibrāhīm Yusuf – associated themselves with the ‘umda for revenge [1910 – SAB: 18964-18967; 18990-18993]. Following the victim’s death, Āmna, the latter’s wife, suddenly evokes a story of “adultery” (أمر بطال - فحشاء) according to which Sayyid Aḥmad would have repeatedly offered her to have sexual relations, and would have poisoned her husband with the intention of marrying her and taking advantage of her possessions, 15 qarārīṭ and a house [1910 – SAB: 18968-18969]. As for the ‘umda himself, Mitwallī Ḥasab Allāh al-‘Aṭṭār, he fully endorses the adultery narrative, emphasizing that the accused is “from the people who are not straight and registered among those who should be deported” (من الناس الغير مستقيمين ومكتوب من ضمن المطلوب ابعادهم) [1910 – SAB: 18990]. In addition, the village headman explains that Sayyid Aḥmad possessed two qīrāṭ that he lost, and that he still has another 12 qarārīṭ of barren land that no one in the village has agreed to either buy or rent [1910 – SAB: 18990-18993].

When questioned again by the substitut and later on by the transfer judge, the defendant further details the nature of the “official disputes” (خصومات رسمية) that have accumulated between him and the ‘umda [1910 – SAB: 19018]. Sayyid Aḥmad thus describes how the latter falsely accused him of cattle theft, how he himself sent a complaint to the governor of the province to denounce the village headman’s fabrication of cattle poisoning charges against ‘Abd al-‘Azīz al-Haynī, and how Mitwallī al-‘Aṭṭār was eventually convicted of perjury, suspended from his office for six months and fined 500 piasters [1910 – SAB: 18990-18993; 19018-19019]. Even more interestingly, the accused reveals that he was among the signatories of a petition blaming the ‘umda for being “unfit for service” (غير لائق للخدمة) [1910 – SAB: 18992]. Finally, Sayyid Aḥmad adds that he also testified against Mitwallī al-‘Aṭṭār in a case of insult for which the latter was fined an additional 300 piasters.

What is striking in this long list of accusations and counter-accusations is the creativity with which peasants such as Sayyid Aḥmad made use of the whole range of possibilities offered to them by the modern bureaucratic state – from official complaints to the governors or ministers to public testimonies before the magistrates and the filing of full lawsuits in the tribunals – to
try to curb the absolute power of the ‘umad in the absence of elections. While administrative petitions and court cases seem to have been used with a similar purpose, I would argue that the peasants’ approach to these two forms of resistance was slightly different. Complaints sent to the authorities were meant to inform the “just ruler” of the misbehavior and power abuse of his local agents, and to call on his magnanimity to interfere in order to protect his weak but loyal subjects from oppression. To be sure, the courts were also seen as part of the “government,” but the suits and petitions filed in the tribunals did not appeal to the prince’s goodwill, but rather represented the assertion and claim of rights, the right to have one’s entitlement over one’s property recognized, the right to defend oneself against false accusations, or the right to have one’s assailant or robber convicted even if he is the ‘umda’s son. Such an approach to the courts did not preclude an acute awareness of the political nature of the judicial institution. As the “official disputes” between Sayyid Aḥmad and Mitwallī al-‘Aṭṭār illustrate, the peasants were certainly conscious that the ‘umda could get involved in such a legal and political struggle with them, use the “weapon” of the courts against them, be discredited, and even convicted, without permanently losing his position. The relationship was obviously fundamentally unequal, and they knew that in the battle between their petitions and the ‘umad’s lists of “bad characters” to be exiled, the latter would always prevail.

When the assizes trial opens on April 9th, 1910, under the presidency of Aḥmad Ziwār Bey, the defendant denies once again the charges brought against him, and reiterates that these were “fabricated” (ملفقة) by the ‘umda out of revenge for being suspended and fined following his complaint [1910 – SAB: 19021]. The court however totally overlooks the issue, and this all the more so that the village headman himself – previously sentenced for perjury – cannot be interrogated, and that the prosecutor renounces the questioning of his son [1910 – SAB: 19027]. Similarly, the lawyer hired by Sayyid Aḥmad evokes the question of the ‘umda’s possible involvement in the case only very briefly, suggesting that the leftovers of the poisoned bread might have been placed in his client’s house by the ‘umda’s son and that the village headman himself might have incited the victim to accuse the defendant. The legal counsel Interestingly prefers to focus his pleading on the “unbelievable character” of the adultery narrative. On this question, he takes up the arguments already put forward by his client in the course of the inquiry, but goes much further by declaring that the victim might well have been poisoned by his own wife [1910 – SAB: 19028]. The sex-and-money story nonetheless appears more
convincing to the court, and on April 12th, 1910, the accused is sentenced to the death penalty by hanging [1910 – SAB: 19031-19032].

The very next day, Sayyid Aḥmad appeals the verdict from the Ṭanṭā penitentiary institution in which he is held, and with the help of the prison scribe draws up a “report on aspects [justifying] the reversal [of the sentence]” ( concede en اوجه قض ) [1910 – SAB: 19034-19035] (Appendix 26). The document is very administrative in its style, and is not encumbered with any kind of official or praise formulae. It is not addressed to any particular magistrate either. In addition, the text is divided into two sections of approximately the same length.

The first part is a detailed account of what happened the day of the murder, according to the accused. The text is mainly constituted of words allegedly uttered at the time and reported in direct speech and in ‘āmmiyya under the form “he said: ‘…’ – and I told him: ‘…’” ( قال لي ... فقلت له ... ). Through this storytelling technique, the petitioner subtly underlines four main elements: the fact that, on that day, he went to the market alone and that three people witnessed it; the fact that his brother had been killed shortly before, with the possible intention of suggesting here a link between the two cases; the fact that he ignored why he had been arrested; and the fact that both the police officer and the ‘umda’s son forced the victim’s wife to tell the adultery narrative (Appendix 26: elements in blue). In addition to these points, Sayyid Aḥmad also puts forward two more elaborate arguments (Appendix 26: elements in green). First, he asserts that the police officer refused to grant his request to be confronted with Muḥammad Barakāt before he died. Second, he explains that, had he been really interested in his wife, Āmna, he could have married her in the two year period in which she remained “unmarried” ( بدون زواج ). Through this narrative, the accused attempts to undermine the testimonies that have been given against him, while introducing the malevolent role purportedly played by the police officer and the ‘umda’s son.

The second part of the document focuses first on the circumstances in which the material evidence has been found in the defendant’s house (Appendix 26: elements in orange), and then on the “official disputes” between the latter and the ‘umda which eventually come to substantiate the idea of the plot (Appendix 26: elements in red). The style of this section slightly differs from that of the previous one, in that it no longer relies on directly reported speech but
rather on a combination of description and analysis. With regard to the narrative techniques used, three points deserve mention. Firstly, the account differentiates very clearly between, on the one hand, “His Excellency the local prosecutor” ("حضرة النائب"), who does not allow Sayyid Aḥmad to attend the search of his house but nonetheless represents the authority of the law that the accused recognizes and by which he abides; and, on the other hand, the police officer and the ‘umda’s son who defy the magistrate by acting “without [his] order” ("بدون أمر من النائب") and whose contradictory statements in the inquiry report reveal the dishonesty. Secondly, the expression "..." (""Then, he suddenly or unexpectedly…") is also employed to emphasize the defendant’s powerlessness vis-à-vis the corrupt police ("فما كان من ملاحظ البوليس الا..."), in a way very similar to that in which the expression "..." ("before I even realized it…" - "all of a sudden...") has already been used in the first part of the document to describe the arrest ("ما اشعر الا و ملاحظ البوليس حضر لي بالسوق"). Thirdly, the repetition of the phrase "..." ("It is unbelievable that...") plays here the same function as the more formal and inescapable "..." ("It is unconceivable that...") of the lawyers’ pleadings: it is meant to undermine the validity of the official version of the events by measuring it against supposed standards of “normality” and logics.

As for the meticulous presentation of the whole history of “official disputes” that have accumulated between Sayyid Aḥmad and the ‘umda, it deserves to be dealt with separately (Appendix 26: elements in red). First, it is interesting to note that the main element put forward to substantiate the accusation of plot is the petition ("عريضة") that was sent by the accused to both the Ministry of Interior and the governorate in 1909 and that led to the village headman being fined and suspended from office for six months. Here, the official sanction of the government is seen as indirectly adding credibility to the defendant’s allegations. Then, the court testimonies given against the ‘umda in two cases ("قضايا") in which he was also fined are used as supporting evidence. Sayyid Aḥmad subsequently mentions his signing of the petition denouncing the village headman’s unsuitability for the position ("عدم لياقته لعمودية البلد"), a significant collective action but that does not seem to have yielded any results and that as such might have been considered by the accused a somewhat weaker argument in his case. Finally, the defendant lists two last court cases: one in which he testified against the ‘umda’s son and obtained his conviction for theft, and another in which he assaulted the police officer who performed the house search and for which he himself was fined. And it is on the basis of these
elements that the accused eventually requests the revision, by the cassation court, of the death sentence pronounced against him.

Two weeks later, Sayyid Ahmad’s new lawyer prepares another document similarly presenting “aspects of revision” ("دعاوى نقض") [1910 – SAB: 19036-19038]. The reasoning put forward in this text greatly differs, however, from the defendant’s initial petition. Consistent with the mission of the cassation court – in this post-1905 system in which the level of appeal has been eliminated –, all the points raised by the legal counsel are of a procedural nature. The lawyer thus objects that the accused’s place of birth has not been mentioned in the text of the judgment; that the element of premeditation has not been stated either (as it should have been to justify the death penalty); that the first instance court issued its ruling without having heard the defendant’s concluding statements; and that the same court did not hear all the prosecution witnesses. Although most of these arguments (and especially the second one) are legally well-founded, the cassation court refuses to quash the judgment, and in another “express” session that is held on May 28th, 1910 and that Sayyid Aḥmad does not even attend, it confirms the death penalty [1910 – SAB: 19039-19040].

Regardless of the veracity or the falsity of the allegations, the plot set up by the ‘umda constitutes throughout the period studied an inescapable theme, almost some kind of compulsory literary figure of the judicial petitions presented by peasants on trial. Far from being a mere strategy of defense, I argue that the lists of the “official disputes” between the accused and the village headman established in these documents represent an attempt on the part of the incriminated fallāḥīn to render the extremely harsh and complex conditions of village life and politics, and thereby to re-contextualize the crimes for which they are being tried. Furthermore, I would add that the various discursive strategies employed in the presentation of these “histories” of cases and complaints are meant to bring the judicial authorities into the struggle, by underlining the defendants’ submission to the law while denouncing the corruption of the police and local officials. The peasants thereby demonstrate an undeniable awareness of the eminently political dimension of the magistrates’ work, and subtly remind them of their duty to remain impartial and coherent in their judgments. For the historian, these appeal petitions patently reveal the extent and intensity of the contradictions of the colonial management of the countryside; a system in which the investigation of crimes and the establishment of delinquents’
registers are kept in the hands of officials who have themselves been convicted by the courts and virulently denounced as totally unfit for the position by their constituents, but whose presence is necessary to guarantee the perpetuation of the occupation.
4.3 Petition writing, women, and the law

The people are well aware nowadays that it is always open to them, when they consider themselves oppressed, to petition the head of the department concerned, and that their petitions are attentively considered and carefully enquired into. And so far as the tribunals are concerned, I have not observed any reluctance on the part of the disappointed suitors or convicted persons to come forward with petitions and complaints. Indeed a considerable portion of the ordinary work of the Committee of Surveillance consists in the sifting, classification and examination of these petitions and the allegations they contain.

(Malcolm McIlwraith, *Report for the Year 1900*)

22 October

(…) How I hate these complaints! They are more numerous than the armies of bugs which creep over the damp, tumbledown wall of our office. And they only seem to come pouring down on me on market-days. It would appear that the ordinary peasant goes off to the market every Thursday to sell his jar of maize, buy a little tea and sugar and fill his bottle with oil – and then hires one of the public letter-writers to draw up a ‘statement’ or ‘petition’ against the village squire or umdah or the assistant to the chief ghafir. It seems to be a permanent item in the budget of every peasant who goes to the market. I cannot think why it is. Can it really be a sense of grievance, or is it just that the infection of complaint has been lodged in the fellahin’s hearts throughout all the generations of oppression? In any case, I hardly deserved to absorb all the frivolity of these papers.

(…) I really have great sympathy for a certain Legal Officer in Upper Egypt who is said to have crossed the Nile in a boat in order to reach his headquarters. He was carrying a load of those complaints and did not know what to do; so he made a sign to the boatman, who turned the craft over on its side and sent the ‘complaints’ into the water!

(…) I had a reputation amongst my colleagues for being an efficient worker – especially in dealing rapidly with formal complaints. Many of my fellow Legal Officers had adopted my method in reading these petitions; they used to say that I read a complaint from the end to the beginning, which is quite true. I’m not so stupid as to read those papers from the beginning like ordinary sane people; if I did that, I would never finish reading. What I do is to glance at the preamble with all its fine phrases such as ‘Oh, Refuge of Justice, Champion of the Right, Destroyer of the Rule of Oppression, etc, etc.’ I then look at the last line, which usually contains the heart of the matter; even this essence is not entirely essential, and my pen runs through it, writing the words ‘file for reference,’ with a rapid zeal and audacity which excite the envy of my colleagues, as they flounder helplessly in oceans of nonsense.

(Tawfiq al-Hakim, *Maze of Justice: Diary of a Country Prosecutor*)

Another fascinating case involving an ‘umda, but this time as the victim, is that of Ḥasan ‘Alī al-Ma‘addāwī, the headman of Masjid al-Khiḍr, markaz Quwaysnā, who dies in rather obscure circumstances on June 1st, 1904 [1905 – KMG+]. Kīlānī al-Gindī and ‘Abd al-‘Azīz al-Maḥallāwī, two peasants from the village between 25 and 30 years old, are soon accused of premeditated murder, and on March 14th, 1905 they are found guilty by the Țanță court of first
instance.\textsuperscript{546} Kīlānī is sentenced to the death penalty, ‘Abd al-‘Azīz to hard labor for life, and both have to pay the staggering sum of 200 Egyptian Pounds as compensation to the plaintiff in the case, the victim’s wife [1905 – KMG+: ]. The next day, the defendants, who are both jailed at the Ṭanṭā prison, appeal the verdict [1905 – KMG+: 6191].

Now what makes this case invaluable as a historical source is first that, between the issuing of this first ruling and the first session of the appeal court, Kīlānī’s wife (al-Sayyida) and ‘Abd al-‘Azīz’s ex-wife (Khaḍra) send no less than seven different petitions to the judicial authorities, denouncing a plot designed by the victim’s own brother – who has incidentally succeeded him as ’umda – and requesting the reinvestigation of the case and the release of the accused [1905 – KMG+: 6225-6226; 6228; 6229; 6230; 6238-6239; 6241; 6250-6251]. In addition, this file is particularly interesting in that, after having received these petitions and after having briefly heard the first statements of the prosecutor, the lawyers of both parties, and the accused, the court of appeal decides, in a rather exceptional move, to retry the case in a special delocalized sitting at the “palace” ("سرّاء") of the Ṭanṭā tribunal [1905 – KMG+: 6192-6194].\textsuperscript{547} As a result of this new hearing held on May 18\textsuperscript{th}, 1905, the first judgment is nonetheless confirmed, and is validated once again a month later by the cassation court [1905 – KMG+: 6192-6194].

The analysis of the petitions sheds light first on how, through the drawing up of seven different documents with the help of three different public writers over six weeks, al-Sayyida and Khaḍra experiment various defense strategies, from a conventional and rather administrative presentation of the grudges and court cases that undermines the witnesses’ testimonies, to a more personal gendered narrative that focuses on power relations – be they alleged or real – both within the village and inside the house. As for the proceedings of the special appeal trial, they reveal, through the court president’s obsessive search for the man behind the petitions, both the magistrates’ assumptions about peasant women’s dependency and helplessness and the

\textsuperscript{546} Although the law creating the courts of assizes was passed on January 12\textsuperscript{th} of that same year, the system does not seem to have yet been implemented when Kīlānī’s and ‘Abd al-‘Azīz’s lawsuit is heard. This explains both why the accused appear before the Ṭanṭā court of first instance rather than the Ṭanṭā court of assizes, and why the case is then successively examined by the Cairo court of appeal and the Cairo court of cassation.

\textsuperscript{547} As such, this special appeal trial “delocalized” in Ṭanṭā resembles very much the new procedure of the courts of assizes.
latter’s actual awareness, assertiveness, and ability to reinsert within the judicial process, and in their own ways, the intricacy of village politics.

4.3.1 Conventional history of lawsuits vs. the story of the “poor widow:”
In search of the best strategy through seven petitions and three writers

The seven petitions individually presented to the judicial authorities by Kīlānī’s wife, al-Sayyida, and ‘Abd al-‘Azīz’s ex-wife, Khaḍra, can be divided into two groups that correspond to two key moments of the procedure. The first four documents were drawn up between March 25th and April 4th, 1905, i.e. after the issuing of the first ruling but before the main accused is appointed a lawyer for the appeal [1905 – KMG+: 6225-6226; 6228; 6229; 6230], whereas the last three requests are written on May 7th and 8th, i.e. between the first and second sessions of the appeal trial but before the court decides to rehear the case in Ṭanṭā [1905 – KMG+: 6238-6239; 6241; 6250-6251].

Let us examine the first group. At that point, the death and hard labor sentences against Kīlānī and ‘Abd al-‘Azīz have been pronounced, and both al-Sayyida’s and Khaḍra’s testimonies were instrumental in establishing the defendants’ guilt. In the course of the first trial, the prosecution relied more specifically on Khaḍra’s statements according to which she, as the closest neighbor, had witnessed the accused strangling the victim [1905 – KMG+: 6193]. Now, both women support their (ex)-husbands. While al-Sayyida and Khaḍra initially choose two different defense strategies and two different scribes – suggesting that the petitions might have been the result of two parallel initiatives –, a few elements reveal that they soon combine their efforts.

The first document signed – or rather sealed – by al-Sayyida is addressed to “the Honorable Public Prosecutor for all the Native Courts” (جناب النائب العمومي لدى عموم المحاكم الأهلية” [1905 – KMG+: 6225-6226] (Appendix 27: elements in blue underlined). While “the Honorable” (جناب) is a rather emphatic form of protocol that is used for the Khedive himself in the expression “The most magnificent Honorable” (or less literally “His Highness”) (الجناب الافخم”), the prosecutor is subsequently referred to more simply as “your Excellency” (سعادتكم”) (Appendix 27: elements in blue). Concomitantly, al-Sayyida presents herself as “being
honored” to submit her request to the magistrate, in a manner that is slightly above the usual standard of politeness.

Kīlānī’s wife then proceeds to expose the main topic of the document: she and her husband are virtuous people who “[were] following the righteous path in all [their] actions” ( بالنسبة لكوننا “متبعين خطة الأصول في جميع إجرائنا”) and who had never been convicted before, when “the people of [their] village (…) suddenly directed false accusations at [them]” (Appendix 27: elements in green). As in the texts previously analyzed, the expression "فما كان منهم الا ان..." ("Then, they suddenly or unexpectedly…") is used here to emphasize both the contrast between the petitioners’ righteousness and the grave accusation they have been subjected to, and their relative helplessness in the face of these attacks. More importantly, this first passage frames the spouses as being organically linked and equally affected by the false accusations. Subsequently, the petitioner abandons this initial “we” to differentiate rather precisely throughout the text between herself and her husband ("زوجي"). Thus, al-Sayyida is the one who took back, from one the witnesses who has testified against her spouse, land she had inherited from her father. But Kīlānī is the one who ceased to pay the 70 piasters she owed Maḥmūd al-Ghūl. One short paragraph, however, does not fit the pattern, and raises suspicions that, from behind the scenes, Kīlānī might actually have been the “first author” of the text. The item in question is the seventh reason presented as evidence that the charges are fabricated. It states that “I” was asked by a certain ‘Abd al-Raḥmān al-Gindī to bail him out in a case of cotton theft, and that, because “I” refused, the latter falsely testified against “me.” This minor mistake in the play of pronouns betrays, I argue, a participation of the husband in the drafting of the piece much greater than what the rest of the document alone would have suggested. In the context of a patriarchal state, Kīlānī might have thought that her wife’s petition would have more chances to be taken into account than his own word.

Immediately following the short introduction, al-Sayyida substantiates her claim that Kīlānī is an honest man by clarifying the story of a buffalo theft in which he had been implicated. She explains that the court had then not only found her husband not guilty, but had also established a charge of false accusation against Ḥusayn Sālim who incidentally has also testified for the prosecution in the affair of the ‘umda’s death. In her list of “proofs” that, in this present case, all the witnesses are lying, legally-inspired arguments appear prominently: previous instances of
attested false testimony are brought up against another witness (2<sup>nd</sup> point), the existence of judicial antecedents are mentioned for two other people (6<sup>th</sup> point), and, finally, accusations of cotton theft are evoked both against members of the ‘umda’s family and against the witness Kīlānī refused to bail out (7<sup>th</sup> point) (Appendix 27: elements in purple). In addition to these court-related issues, al-Sayyida refers to more trivial “grudges” ("ضغاين"), tellingly differentiating and prioritizing among land-, money-, and women-related matters (Appendix 27: elements in orange). Regarding the first ones, the three instances cited are all disputes linked to inheritance procedures, confirming that these were still the source of much contention at the time (third, fourth, and fifth points). As for the grudges toward women ("ضغاين حريم"), they are supported by the fact that they all ended up with a divorce.

Through this long list of suits and quarrels, the petitioner argues that 11 of the 23 witnesses who were called to the stand had a personal motive to falsely testify against Kīlānī. More importantly, she reasserts at the end of the text that:

And whereas the incidents of all these cases were registered by the police station of Quwaysnā and by the prosecutor’s office at the court of Shibīn al-Kūm, and this is proved officially by the files available at the prosecutor’s office of Shibīn al-Kūm and the court, I would like these [documents] to be examined, and [since] it is proven in [them] that my statements are true, there will no objection to the complete rejection of [the witnesses’] testimony due to this evidence. [1905 – KMG+: 6226].

Following the conventional pattern, al-Sayyida’s petition is thus built around the idea that all the claims contained in it are based on a documented history of court cases, and that it is therefore the judicial authorities’ duty to reexamine these archives. Consistent with this line of reasoning, she eventually expresses the wish that her “complaint” ("تظلم") lead to the release of her husband and the trial of the false witnesses (Appendix 27: elements in red). Upon receiving the document, a court clerk has quickly scribbled a summary of the demand in the margins: “she petitions for the release of her husband, unjustly accused on the basis of the testimony of people who falsely testified because of grudges between them;” requesting it to be classified among the petitions ("العرائض") (Appendix 27: elements in brown) [1905 – KMG+: 6226].

Two days after this first petition was sent to the Public Prosecutor, Khaḍra, the ex-wife of ‘Abd al-‘Azīz al-Maḥallāwī, the second accused in the case, chooses a different writer to help her draw up a second document [1905 – KMG+: 6228] (Appendix 28). This time, the text is sent more specifically to the prosecutor to the native court of appeal who is, very conventionally,
simply addressed as “your Excellency” (Appendix 28: elements in blue). Khaḍra then recounts how she was led to give a false testimony against Kīlānī, even though she did not actually witness anything (Appendix 28: elements in orange). She first explains that Ahmad Riḍwān, her brother, and Muhammad ‘Afīfī incited her to do so, before mentioning direct threats from the Ma‘addāwīs, the ‘umda’s brothers. The last sentence of this paragraph reads as follows:

Muḥammad al-Ma‘addāwī and Muṣṭafā, his brother, had sworn against me by the divorce three times (3) [that] if I don’t testify in this case that I was with [the accused] in one [and the same] house, they either kill me or accuse me. And out of my fear of them, I testified and they gave me 5 pounds afrankī […] and I spent [them] on my kids. [1905 – KMG+: 6228]

Although the initial reference to having been “incited” to lie before the court had already hinted in this direction, Khaḍra tellingly keeps the question of the money she has received in exchange for her obedience at the very end of her narrative, mentioning it en passant and immediately emphasizing that she has put it to good use. In addition, her specifying that she has spent this money on her children allows her not only to justify the fact that she accepted it, but also to portray herself as a good mother. As for what she presents as the essential motive for the perjury, the “fear,” she underlines it once again at the very end of the petition, asserting that she falsely testified twice because they had “scared” her. The last significant element of Khaḍra’s narrative is the explanation she provides for her belated confession:

And whereas I am now in the world, in the vast space, and after it, my time [will] come to an end, and I [will] find myself in the grave, narrow, I see that my first statement is contrary to the truth. [1905 – KMG+: 6228]

While the expression chosen very visually suggests the idea of death, no clear reference to either a sense of guilt or the fear of some divine judgment is made. And the petitioner simply concludes her letter by reiterating again and again the “truth” ("الحقيقة"), that is that “[she] did not see anything and that the prisoners are being unjustly treated” (Appendix 28: elements in red).

About a week later, on April 3rd, Khaḍra sends a second petition to the public prosecutor of the native court of Cairo, and a comparison of the handwriting of her two letters reveals that she has resorted to the same scribe [1905 – KMG+: 6229]. The style is also similar, but the content is
slightly different. She thus brings up again in greater detail both the issue of the money and the grain she accepted because she is “a widow and a poor woman” ("حرمته أرملة و فقيرة") and the threats to implicate her in the case uttered by the ‘umda’s brother. However, she goes much further in her denunciation of the latter, asserting that the village headman had died of natural causes while he was praying in the mosque, and that his family had then issued a first statement to the police in this sense, before sending a second document incriminating Kīlānī. In addition, she also mentions that Muḥammad al-Ma’addāwī used female peer pressure to convince her to falsely testify, having her spend the night with his wife who would “keep entertaining her with the [same] words” as her husband ("تفضل حريمه تقريني في هذا القول"). Khaḍra also reveals that the two people who initially incited her to lie have very personal reasons to stand on the side of the ‘umda’s family insofar as one, Muḥammad ‘Affī is the latter’s nephew, and the other, Aḥmad Riḍwān is not only her own brother but also the husband of the headman’s niece. Finally, as a motive for eventually saying “the truth,” she now invokes her “desire to clear her conscience before God” ("و أنا مرغوبي ان أخلص زمتي من الله").

With her two successive petitions, Khaḍra seems to have taken the lead in the women’s “campaign” for the defense of their (ex-)husbands. At this point, she even appears to have convinced al-Sayyida to use the services of “her” scribe, since on that same day, April 3rd, 1905, the latter puts down in writing yet another petition to the public prosecutor sealed by Kīlānī’s wife [1905 – KMG+: 6230]. The document is much clearer and more focused than the first one drawn up by al-Sayyida. It is, nonetheless, strangely divided into two independent texts, which might be the sign of some hesitation on the part of the petitioner. In this piece, Kīlānī’s wife mostly reiterates her main arguments aimed at undermining the credibility of the prosecution’s witnesses (points 1 to 7 from Appendix 27). This time, however, the money- and women-related grudges, possibly deemed weak by the scribe, have disappeared.

This first series of documents sheds a very interesting light on what seems to be two different approaches to petitioning. On the one hand, al-Sayyida’s texts reveal that she plays according to the rules of the game, very conventionally invoking a history of suits and grudges that developed between Kīlānī and his various accusers and that the judicial authorities ought to investigate. Moreover, by submitting her “complaint” on behalf of her couple in a strong “we” and by somehow adding “her” enemies to those of Kīlānī, al-Sayyida also appears as someone
effacing herself behind a husband who, as we have seen, might have played a role in drawing-up the piece. When compared to the other petitions of my corpus of archives, the only unusual elements are the money- and women-related issues that are eventually removed in the last version of her “complaint.”

On the other hand, Khaḍra’s petitions are based on a much more personal narrative. To be sure, the situation of both women are different: while al-Sayyida merely attempts to discredit those who charged her husband with the crime, Khaḍra confesses an instance of perjury for which she could be sentenced, and therefore needs to provide a convincing justification. To do so, she successively presents herself as the caring mother and the poor widow. Then, in addition to the “fear” caused by the ‘umda’s brothers’ threats, ‘Abd al-‘Azīz’s ex-wife subtly evokes the strategy of female peer pressure that was allegedly used by Muḥammad al-Ma’addāwī and that, regardless of its veracity, perfectly fits with the gendered narrative she develops. In a similar way, Khaḍra, contrary to al-Sayyida, expands on the intricacies of the village “intrigues” and the family links between the various actors that are supposed to account for their stances. With regard to the more general explanation she gives for her delayed confession, it is interesting to note that it evolves from a rather vague reference to death to a much more precise invocation of the desire to present herself before God with a clear conscience. Finally, and more importantly, Khaḍra appears in this whole process of petition-writing as more independent and assertive than al-Sayyida, assuming the lead in what hitherto takes the shape of a campaign to prevent Kīlānī’s execution.

A month after this first series of petitions is sent to the prosecutor, Khaḍra initiates the writing of yet another petition [1905 – KMG+: 6238-6239] (Appendix 29). The document is dated May 7th, 1905, one day after the first session of the appeal trial was held in Cairo. Nothing much has happened yet, since the session was immediately postponed for two days, but the women might have met with their (ex-)husbands’ lawyer, Muḥammad Tawfīq Afandī or his assistant [1905 – KMG+: 6192]. The text is written by a third public writer who uses a much higher register of language. Whereas all the previous petitions were addressed to the prosecutor, this one is submitted to Yaḥya Bey Ibrāhīm, the president of the appeal court, or rather to “the justice and mercy of his Honor” (مقدمة لعدل ورحمة عزتكم”). In a similar emphatic style, Khaḍra asserts, by the hand of the kātib: “And now, your Excellency the Judge, I have statements to declare, for
your Excellency to hear so that the court be enlightened and rule with justice“ (Appendix 29: elements in blue).

While the document is presented and sealed by ‘Abd al-‘Aziz’s ex-wife, it combines both her revelation/confession (Appendix 29: elements in green) and al-Sayyida’s arguments (Appendix 29: elements in orange). In addition to the latter’s references to the multiple grudges and previous instances of false testimonies, Khaḍra more importantly discloses new details regarding the bribes that the various witnesses against Kīlānī allegedly received in this case, following their testimony at the Ġanā court of first instance (Appendix 29: elements in purple). She had already alluded to this idea in her petition dated April 3rd by mentioning that one of the witnesses, ‘Abd al-‘Āl Abū Layla, was given two pounds afrankī and an irdab (i.e. a unit of measurement) of corn [1905 – KMG+: 6229]. But the charge is now more precise and brought up against three other witnesses who obtained either three pounds or “half a feddan from the ‘umda’s land.” All these various claims are very nicely interwoven into the fabric of the text. They effectively set up a broader context in which Khaḍra’s final confession that she too was awarded grain and money in exchange for a “false” and “slanderous” testimony appears, in comparison, all the more understandable and forgivable. In addition, her own emphasis on the fact that she is “a widow” and that she was somehow “entitled” to or “deserving” of ("مستحقة") this payment serves the same purpose. Apart from the issue of the bribes, the more direct denunciations of the ‘umda’s family having sent two different reports on the death of their relative have disappeared, and the petition as a whole is rather cautiously built around the conventional request for an “investigation” ("البحث") into the cases mentioned that are all “officially established” ("مثبوت رسميا") “in the registers and dossiers of the lawsuit[s] that are preserved in the archives of the tribunal” ("في دفاتر ودossiers of the lawsuit[s] that are preserved in the archives of the tribunal"). This time, however, the petitioner’s demands include as well that the case be sent back to the Ġanā tribunal and that a new inquiry be conducted “so that the truth of what happened appears to the sacred court and [because] justice is the foundation of power” (Appendix 29: elements in red). While Khaḍra has so far invoked extremely few religiously connoted expressions and only to refer to her own “desire to clear her conscience before God,” she now reminds the judge Yaḥya Bey Ibrāhīm, through this last kātib, of the “sacred” dimension of his mission, at the same time as she reasserts her profound respect
of the system. In addition, this religious allusion is intrinsically linked to a stronger political claim, meant to remind the civil servant, and through him maybe the Khedive, that justice is the ultimate source of political legitimacy.

On that same day, May 7th, 1905, the new public writer chosen by Khaḍra also puts down into writing a second text sealed by al-Sayyida [1905 – KMG+: 6250-6251]. While the handwriting and the style are similar to the previous one, this petition – the third sent by Kīlānī’s wife since the issuing of the first judgment – is nominally addressed to the Public Prosecutor to the Native Courts. It is somehow conceived as a supporting document to Khaḍra’s main piece, and it revolves around one principal argument: Kīlānī was sentenced to death solely on the basis of depositions all built on the statements of one woman, Khaḍra, who herself confessed having been “hired” by the victim’s family to falsely testify against the defendants (“كانت تأجرت على تادية (شهادتها) من أهل المقتول”). Relying upon this claim, al-Sayyida requests, for justice to prevail and to avoid “the unjust loss of a soul,” a reexamination of the case involving a new inquiry and the re-interrogation of the witnesses on the issue of Khaḍra’s confessions.

On May 8th, the trial resumes, and the court briefly hears the pleadings of the prosecutor and the lawyers of both parties [1905 – KMG+: 6192-6194]. The prosecutor demands the confirmation of the judgment on the basis of the testimonies of the victim’s wife and brother, and explains that “the motive for the crime is that the accused are brigands ("أشقياء") and that the ‘umda had been complaining a lot about them” [1905 – KMG+: 6193]. The lawyer of the plaintiffs requests a validation of the first sentences as well, but builds his indictment around Khaḍra’s initial testimony. The defendants’ legal counsel then takes this as an opportunity to reveal that ‘Abd al-‘Azīz’s ex-wife has submitted a petition to the Office of the Public Prosecutor asserting that she has lied and that the case is fabricated, whereupon he demands a not-guilty verdict. The two accused are subsequently questioned very briefly, and they both reiterate that they have been unjustly incriminated in the ‘umda’s death.

Following this first real session, and while the court has decided to issue its ruling a week later, Khaḍra takes the initiative to send a last petition to the prosecutor of the appeal court [1905 – KMG+: 6241]. This is the seventh document submitted in this case by the defendants’ (ex-)wives, and the fourth on which Khaḍra affixes her seal. Now, what is interesting in this last
piece is that ‘Abd al-‘Azīz’s ex-wife returns to seek the help of the first kātib she had hired and who had drawn up her first two petitions more than a month earlier [1905 – KMG+: 6228-6229]. Far from the emphatic style of the second writer through whom she addressed “the justice and the mercy of [Yaḥya Bey Ibrāhīm]’s Honor” and reminded him that “justice is the foundation of power” in a very conventional manner [1905 – KMG+: 6238-6239], Khaḍra chooses again, through this first writer, a much more personal strategy. Not only does she reiterate in detail how the ‘umda’s brother bought her and the other witnesses’ false testimonies, but she also reveals how, following her confession, the local police officer – who allegedly also took part in the plot – publicly read a fake notification from the muftī indicating that the people who would be convicted of perjury in this case would have to pay very high fines. She then mentions again how the pressures and threats she was subjected to led to her initial lies, while insisting on the fact that Kīlānī is innocent. In a last flashback, she describes again, how, scared that she would modify her statements, the ‘umda’s brother would take her to his house every night and have his wife repeat to her what they wanted her to declare before the court. At the end of the document, she simply requests the elucidation of the truth.

Of course, it is impossible to know which of Khaḍra’s texts incited the court, a week later, to very exceptionally retry Kīlānī’s case: the convoluted appeal to its president’s mercy or the more realistic description of the pressures purportedly inflicted upon her by both the ‘umda’s brother and his wife. As we shall see, elements from the proceedings of the subsequent trial tend to suggest that Yaḥya Bey Ibrāhīm might have been sensitive to the petition that was directly addressed to him. It is nonetheless significant that while this document does not bear any particular marks, the very last letter has sufficiently drawn the attention of one of the court clerks or magistrates to prompt him to summarize it in the margins, emphasize that the defendant has been sentenced to the death penalty (an element that is not mentioned in the text), and, for the first time, link it with two of Khaḍra’s previous petitions. Thereby, this anonymous legal professional might also have called the institution’s attention to the fact that something in this case was worth reinvestigating.
4.3.2 “Who told you [to] send [them]? (من قال لك ابتعتي؟) The judges’ search for the man behind the female petitioner

When the trial resumes at the Palace of the Ṭanṭā court on May 18th, 1905, the particularly blurry and intricate nature of the case is progressively revealed [1905 – KMG+: 6195-6210]. It first appears that the notification of the ‘umda’s passing remained extremely vague on the actual causes of the death, and that the family tried to bury the victim before the forensic examination was performed. Then, although the ‘umda is said to have placed both Kīlānī and ‘Abd al-'Azīz under surveillance, the three men seem to have had a close relationship, meeting regularly at each other’s place as good neighbors and friends. When questioned on this surprising companionship, Muṣṭafā al-Ma’addāwī, the ‘umda’s second brother, laconically answers: “I am [just] a peasant, I go [directly] from the field to the house” (أنا رجل فلاح أخرج من الغيط على البيت), with the idea that he did not ask any questions [1905 – KMG+: 6209]. Without hesitation, the witness nonetheless charges Kīlānī with the murder, an accusation to which the latter answers by declaring: “this man is not allowed to take the oath, because his son is a bastard and this is registered with the qāḍī (i.e. sharī’a judge)” (الرجل ده لا يجوز له يمين فأن ابنه ابن حرام ومثبت عند القاضي الشرعي) [1905 – KMG+: 6210]. By this last objection, the main defendant incidentally demonstrates some knowledge of the strict rules of evidence of sharī’a law, according to which only men of good reputation are allowed to testify before the court. Throughout the session, he has similarly interrupted the depositions of most of the preceding witnesses to inform the court about all the grudges that his wife had mentioned in her three successive petitions, thereby abiding by the norms of the native judicial system.

It is at this point in the unfolding of the proceedings that Khaḍra is cross-examined by Yahyā Ibrāhīm Bey, the court’s president, Yūsuf Sulaymān Bey, the prosecutor, Ahmad Tawfīq Bey, the plaintiffs’ legal representative, and eventually ‘Abd al-Karīm Fahīm Afandī, the defendants’ lawyer. When presenting herself, Khaḍra mentions that she is 25 years old and “single” (عازبة) [1905 – KMG+: 6210]. This description of her marital status, which contrasts with her self-portrayal as a good mother and “poor widow” in the petitions, might have been a way to assert her independence and undermine the links she has with both ‘Abd al-‘Azīz, who is her ex-husband, and Kīlānī, who is not only her neighbor and her cousin but also the father of her son, ‘Aṭwā. To be sure, when interrogated about what the latter might have witnessed, she does not
shy away from referring to him as “Kīlānī’s son” [1905 – KMG+: 6210]. But when asked by the court’s president if she is related to ‘Abd al-‘Azīz, she is keen to declare: “no, and I don’t want him” [1905 – KMG+: 6211].

To Yaḥyā Ibrāhīm’s first open question as to what she knows in this case, Khaḍra answers with a narrative that closely resembles the text of her second petition. All the elements are there, slightly modified: the successive death notifications, the villagers’ deal to accuse Kīlānī, the idea of the bribes suggested by the local police officer, her false testimony out of fear, and her desire to now “clear her conscience before God.” More than in the written version however, the story is worded in a way that minimizes her own active participation in the plot. Her testimony as recorded by the court clerk reads as follows:

A.: The ‘umda, they brought him dead from the mosque, and the first notification, they wrote in it that he died from God’s knowledge. And in the second notification, it is confirmed. [In] the third notification, they said that al-Kīlānī killed him. And the witnesses gathered one another, and they agreed to say that al-Kīlānī killed him. And me, they put me with them. The ma’mūr was saying to the ‘umda’s brother […] with money. So my brother forced me, and I testified out of my fear. And my initial testimony is false, and I clear my conscience before God: I didn’t see anything. [1905 – KMG+: 6211, emphasis added]

When, shortly after, the president returns to the issue of the land that people have obtained from the ‘umda and that she had mentioned in her petition, Khaḍra voluntarily confesses, nonetheless, that she too got corn and money [1905 – KMG+: 6211].

Apart from this one question on the bribes, Yahyā Ibrāhīm Bey is not very interested in the content of the witness’s petitions, as demonstrated by his interrogation focusing almost entirely on the manner in which the latter were written and sent by Khaḍra to the judicial authorities. In this regard, their exchange is extremely telling, and deserves to be extensively quoted:

Q.: You presented petitions by telegraph?
A.: One in Cairo and one in Banhā.

Q.: To who [sic] did you send the telegraph?
A.: To the great judge, and I attached the petition to it.
Q.: To who [sic] did you send [it] as well?
A.: I wrote four petitions that I sent to the judge.

Q.: Who told you [to] send [them]?
A.: Me, by myself.

Q.: You sent [them] to who [sic] and who [sic]?
A.: I sent it to the judge and also to […].

Q.: Who wrote [the] petition for you?
A.: One [man] from Banhā, his name is Muṣṭafā, a petition-writer.

Q.: And the one in Cairo, who wrote it?
A.: The [man] who sits outside, next to the tribunal.

Q.: Who is the one who wrote the name of the great judge.
A.: Someone.

Q.: You don’t know to who [sic] you sent it?
A.: Oh! {expression of exasperation} I was sending it!

Q.: Did you go with him [i.e. the petition-writer] alone?
A.: Yes.

Q.: Nobody asked […], why?
A.: Because I clear my conscience before God.

[Questions from] the prosecution:
Q.: Did you send a telegraph and how much did you pay?
A.: I paid nine ṣāgh and the price of the petitions [that] costs between three piasters and four […].

Q.: His Excellency the President showed her the letter that was sent to him in the mail.
A.: Yes, this is the one, and I’m the one who put it in the mail, and it is […].

Q.: To who [sic] then did you send the […] of the letter?
A.: I sent it to the public judge, and he told me: “I got a telegram in the morning, so get out, it’s none of your business.”

[1905 – KMG+: 6211-6212] (See Appendix 30 for the Arabic version).

Throughout this intense interrogation, the court’s president, imitated by the prosecutor, pressures Khadrā to give details about the “logistics” of the petition writing in order to demonstrate that she could not have done it herself. He knows that his witness is illiterate, but he also assumes that she could not have taken the initiative to resort to a public writer, could not have made him send the letter by telegraph, and could not have paid for it. The judge’s underlying conviction is that there is necessarily a man behind Khadrā’s petitions, one who “told” her to send them, accompanied her to the scribe and probably provided the money for the service. Through a series of very specific queries about the writer and the telegraph, the magistrate obviously tries to “stick” her. But his question regarding the recipients of the letters,
repeated with insistence four times, also reveals an intention to ridicule the witness, by showing that she is not “even” aware of the fact that one of the petitions has been nominally sent to him, Yahya Ibrâhîm Bey. Thereby, this confrontation also represents an opportunity for the “great judge” ("القاضي الكبير"), as she calls him, to further display his power.

Khaḍra’s answers, however, prove that, in this game, she is far from being helpless. She is able to explain with precision where she found the “‘ardahâlgiyya,” the petition-writers, and how much she paid for the whole transaction. When questioned about the recipients, she underlines that she actually sent four different documents. She also seems to differentiate between the “great judge” (القاضي الكبير) and the “public judge” (القاضي العمومي), who might very well correspond to the two main magistrates to whom her letters were addressed: the President of the Appeal Court and the Public Prosecutor to the Native Courts. More importantly, she does not only assert very clearly that she sent the petitions herself, recognizing the piece that is presented to her, but she also boldly expresses her exasperation at Yaḥya Ibrâhîm’s fourth humiliating question about the recipients of the documents. Finally, to put an end to this oppressive exchange with the judge and justify the fact that she alone decided to confess her perjury, she effectively mobilizes again her conclusive argument: she wants to “clear [her] conscience before God.” If this indeed concludes Khaḍra’s interrogation by the court’s president, it does not halt, however, his search of the man behind the petitions; a search which continues through the examination of Muḥammad ‘Afiī and Aḥmad Riḍwān, the first two people who, according to her confession, incited her to lie.

Muḥammad ‘Afiī, the ghafīr, begins by explaining to the court that he is a relative of both Kīlānī, ‘Abd al-‘Azīz, and the ‘umda. In addition, he declares that he is also Khaḍra’s cousin. When questioned about his knowledge of the case, the ghafīr asserts that the two defendants have killed the ‘umda, and that he was “informed” of this by Khaḍra who saw them strangling him in the barn [1905 – KMG+: 6213-6214]. While the witness cautiously insists that “Khaḍra is the one who told [him]” all he knows ("خضرة هي اللي قالت لي"), the judge simply asks him very superficially: “Is what you are saying true?” ("هل الكلام ده صحيح؟") [1905 – KMG+: 6214]. Easily contented with a laconic “yes,” Yahya Ibrâhîm Bey then proceeds to inquire about what made Khaḍra modify her testimony. The exchange reads as follows:
Q.: Why did she change her testimony today?
A.: When al-Kīlānī’s wife showed up, they made an agreement.

Q.: Who wrote the petitions for her?
A.: I don’t know.

Q.: From where did she pay the money?
A.: She and al-Sayyida, they have money.

[1905 – KMG+: 6214].

While the magistrate is still looking for the man who asked her to reverse her statements, who wrote the petitions and paid for them, he is told once again that the campaign for the defendants seems to have been an exclusively female initiative and that both women could also financially afford it. Following this exchange, the president briefly interrogates the witness as to the ‘umda’s reputation, only to get a confirmation that about two months before his death, the village headman became Kīlānī’s close friend [1905 – KMG+: 6214].

Finally, Yaḥya Ibrāhīm Bey undertakes the questioning of Aḥmad Riḍwān, Khāḍra’s brother [1905 – KMG+: 6215]. Regarding his situation vis-à-vis the various parties, the latter explains that he is Kīlānī’s cousin, but fails to mention that he is also the husband of the ‘umda’s niece. His initial narrative on his knowledge of the case perfectly matches what Muḥammad ‘Affī previously presented, with the same cautious repetition of the fact that Khāḍra is “the one who told [him] all that, while [he was] following his cattle” ([1905 – KMG+: 6215]. The brother nonetheless adds that when she asked him what he was going to do about it, he threw at her a “Shut up! Bitch!” [1905 – KMG+: 6215]. The judge subsequently asks him a series of questions aimed at discovering who “manipulates” his sister:
Q.: From where does she live?
A.: She eats from her honor.

Q.: Is she married to ‘Abd al-‘Azīz?
A.: He divorced her.

Q.: Why does she deny [it] now?
A.: I don’t know. She told me all this [i.e. her initial statements] when I was in the field.

[...]

Q.: Why does Khaḍra deny [it] now?
A.: For 15 days, she has been saying that [i.e. her new statements], and al-Sayyida swallowed her brain. And before the incident, [they were] fighting [each other].

[1905 – KMG+: 6215].

Once again, Yaḥya Ibrāhīm Bey directs his interrogation towards the hypothetical man “behind” Khaḍra’s petitions. To his inquiry regarding her sources of revenue, Aḥmad Riḍwān gives an answer which, although probably aimed at discrediting his sister (a “bitch”), suggests that Khaḍra might be surrounded by many men but does not appear to be dependent on – and hence dominated by – any of them in particular. Like Muḥammad ‘Afīfī, Aḥmad Riḍwān’s interpretation of her reversal before the court also confirms that even if it might be the result of – as they would put it – al-Sayyida’s “brain-washing” or some “female fickleness,” it is nonetheless seen by all as Khaḍra’s own initiative. When eventually confronted with her brother’s statements, she cleverly employs the same weapon he had used to harm her reputation by asserting: “What is he saying?! This guy has no religion!” [1905 – KMG+: 6215].

Shortly after Aḥmad Riḍwān’s interrogation, the court’s president puts an abrupt end to the cross-examination of the witnesses, and proceeds to the pleadings [1905 – KMG+: 6218-6219]. The prosecutor requests the confirmation of the verdict of first instance on the grounds that,
although Khaḍra changed her statements, the charges against the accused are well established. The plaintiffs’ legal representative supports this demand, and, in addition, asks that Khaḍra be sentenced for false testimony. As for the defendants’ lawyer, he insists that “the evidence [gathered] during the preliminary investigations is all fabricated,” that “the 'umda is among the greatest thieves and [that] the brigands would meet at his place” (العمدة رجل من أكبر اللصوص) [1905 – KMG+: 6219]. In accordance with the procedure, the president leaves the last word to Kīlānī who declares in a rather solemn tone: “If you convict me on the basis of the witnesses’ statements, then you’ll do me an injustice, since the witnesses are my opponents and they’ve been hired to accuse me” (إن حكمتم عليَّ بمقتضى أقوال الشهود فستظلموني بالشهود) [1905 – KMG+: 6219]. The judges, however, prove as insensitive to Kīlānī’s last statements, as they have been to al-Sayyida’s and Khaḍra’s seven successive petitions. On May 18th, 1905, the court of appeal confirms Kīlānī’s death penalty, ‘Abd al-‘Azīz’s hard labor for life, and the payment of 200 E.P. to the plaintiffs. On June 24th, 1905, this decision is validated by the court of cassation, and a century later, the women’s pleas are once again dismissed, relegated to the appendices of Kīlānī’s file by the archivists of the National Center for Judicial Studies.

Even disconnected from the petitions, the trial proceedings nonetheless reveal much about both Khaḍra’s assertiveness before the court and Yaḥya Ibrāhīm Bey’s obsession with the male “mastermind” behind the women’s appeals. On the first issue, the archives show how Khaḍra’s presentation evolves from the good mother and the “poor widow” of the petitions, to the independent, confident “single” woman of the trial. They also demonstrate that she is not only able to present a clear oral version of one of the first written documents she has sealed, but also to provide detailed information about the public-writers she has hired and the various magistrates to whom the letters were addressed. Finally, when verbally attacked by a court president convinced that she could not have done it herself, she clearly expresses her frustration, and effectively puts an end to the exchange.

As for Yaḥya Ibrāhīm Bey, although he agrees to retry the case, his lack of consideration for the actual content of the petitions and his obsession with the man behind the written documents tell a lot about his preconceptions of peasant women. In spite of Khaḍra’s relatives’ attempts to present her as fickle and without honor, the judge’s successive interrogations confirm however
the image of a strong woman who has money and who decides to combine her efforts with those of al-Sayyida to launch a real campaign to prevent Kīlānī’s death. As in the case of Ḥasan Jalābī presented in the first chapter of this dissertation [1892 – M‘AQ], the petitioners are illiterate, and in addition to the public writers, other actors such as the lawyers or even Kīlānī himself, might have participated in more or less direct ways in the drawing up of the documents. It is nonetheless true that, by affixing their seals to seven petitions over six weeks, resorting to three scribes, and having shown a predilection for the simpler, more personal style of the local writer from Bahlā, Khaḍra and al-Sayyida have proved that they, too, could take part in the judicial process and, through their voices, contribute to render a little bit of the intricacy and the ambiguity of a case marked yet again by obscure relationships between ‘umad and “brigands.”
4.4 Politics and the stupid/savage fallāḥ narrative

While the procedure of appeal and cassation was often turned by the fallāḥīn into an opportunity to disclose and denounce the village “intrigues” and to try to bring the judicial institution into their struggle with the local authorities, the examples presented above have shown that the justice professionals almost always dismissed the arguments put forward by the peasants in their petitions, thereby contributing to the preservation of the status quo in the countryside. At this level of jurisdiction, the counselors to the courts of appeal and cassation – both foreigners and Egyptians – were more interested in national politics than in local affairs.

As has already been described in the preceding chapter, the Egyptian magistrates all belonged to the social elites of the country – be they from Turco-Circassian extraction, members of prominent urban families or sons of prosperous rural notables –, and many of them conceived of their work in the judiciary as a springboard to a political career. The sensitivities of the counselors then spread over the entire political spectrum, from the anti-British stance of Muḥammad Saʿīd to the much more compliant posture of Muḥammad Tawfīq Nasīm, with the more complex intellectual positions of Qāsim Amīn or Muḥammad ‘Abduh somewhere in-between. To be sure, most of these judges, such as Saʿd Zaghlūl or Yaḥyā Ibrāhīm, would not gain fame as political leaders before the end of World War I, and during the period studied, they still cautiously and skillfully navigated the troubled waters between the British and the Khedive to ensure their continued promotion. As early as 1906-1911, however, three high-profile trials in which a few of these counselors were involved – the cases of the Dinshawāy peasants, al-Wardānī and ‘Abd al-‘Azīz Jāwīsh – revealed both the role the exceptional and regular judicial institutions played in the preservation of the British occupation and at the same time the crucial political stage that they constituted for the lawyers of the defendants.

While judges and lawyers then progressively began to adopt polarized positions on the national question, they nonetheless all seemed to agree on the analysis of the peasant question. As the fallāḥīn were, at this stage of the procedure, totally silenced, their trials of appeal and cassation became the loci of debate over the stereotyped figure of the stupid/savage peasant, and whether these “essential” qualities could justify or rather preclude the exercise of the court’s mercy. In the decade preceding the Dinshawāy trial, the myth of the ignorant/evil fallāḥ – that would
suddenly become the topic of widespread political and societal discussion after 1906 – was already shaped by prosecutors, counselors and lawyers in the Cairo court of appeal. As the issue invaded the public sphere, however, it concomitantly withdrew from the courtroom; the creation of the Assizes left the cassation court with merely dry procedural issues to decide upon most often in the absence of the defendant and his legal counsel.

4.4.1 Appeal judges, lawyers, and the national question: Professional advancement vs. political commitment

In 1899, the native court of appeal ("محكمة الاستئناف") was “composed of 20 members, of whom ten [were] European, and ten [were] Egyptian lawyers." These same 20 magistrates also provided the members for the court of cassation ("محكمة النقض والإبرام"), and they would sit in one or the other capacity according to the case considered. From 1895 onwards, five counselors were required for both appeal and cassation trials, but in 1905, a law was passed that limited this number to three when the court ruled as an appeal court. That same year, the possibility of appeal in penal matters was eliminated from the system altogether, and the judges who staffed the appeal court henceforth sat, also by three, in the newly created assize courts periodically set up on the premises of the first instance tribunals. As for the cassation court, it retained, throughout the period, its competency to quash judgments on purely procedural and legal grounds. As such, and as Grandmoulin rightly underlines, it never constituted “a third level of jurisdiction,” and hence never replaced the institution of the majlis al-ḥākām ("Council of Rulings") that existed in the preceding system.

Between January 1899 and October 1916, the court, that was located in the Cairene neighborhood of Bāb al-Khalq, was dominated by the powerful and infamous figure of Walter Bond. Bond was only the vice-president, his efforts to become the head of the court having been thwarted in the wake of the 1906 Dinshawāy trial of which he conducted the proceedings. But this was not really an issue, as the British judicial adviser had been careful, throughout the

549 Brunton, Lois usuelles, 720.
period, to choose feeble presidents who, according to Judge Marshall, could quite easily be controlled: first Ṣāliḥ Thābit, from 1899 to 1907, and then Yaḥyā Ibrāhīm, from 1907 to 1919. In his *Egyptian Enigma*, Marshall describes Bond as follows:

The late Kasem [Amin] Bey said that Bond had ‘*un esprit bien meublé,*’ and it was quite true. He was a well-read and well-informed man. But he was a man of varying mood. He was a strong, but somewhat autocratic Vice-President of the Court of Appeal, of which he was in reality the *de facto* President. The character and temperament of Yehia Ibrahim Pasha, the titular head, made him always yield to Bond’s dominant personality.⁵⁵²

Regarding more specifically Walter Bond’s failed attempt at the presidency and Yaḥyā Ibrāhīm’s subsequent nomination, Marshall reveals:

The winter following the Denshawai trial saw the President of the Court of Appeal [i.e. Ṣāliḥ Thābit] retire; Bond, as Vice-President, fully expected to be made President. But there was a great outcry, and the line of least resistance was followed, with the result that Yehia Ibrahim Pasha became President. He was not the senior Judge amongst the natives, but he was a man of weak character and was likely to be subservient to Bond. The senior man had a will of his own, and would not have allowed Bond to dominate him. He also had some self-respect, which must have been sadly lacking in Yehia’s make-up.⁵⁵³

In spite of this rather harsh portrayal, Yaḥyā Ibrāhīm was promised a relatively successful political career that began with a portfolio as education minister in 1919-1920 and again in 1922-1923. On March 23rd, 1923, following the unilateral declaration of independence and the proclamation of Fu’ād as the first King of Egypt, he became Prime Minister in a climate of intense struggle around the drafting of the constitution, and after the holding of the first parliamentary elections of January 1924, he eventually left his seat to his former colleague at the court of appeal, Sa’d Zaghlūl. In 1925, he became the leader of the *Ittiḥād* (Union) Party created to both weaken Zaghlūl’s popular *Wafd* and support the Palace’s ambitions, and briefly returned to power in 1925-1926 as finance minister in the government of Aḥmad Zīwar,⁵⁵⁴ yet another former colleague from the court of appeal.⁵⁵⁵

Among these senior magistrates who were to assume the highest positions in the state administration and become political leaders of their own after World War I, one could also cite

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⁵⁵² Marshall, *The Egyptian Enigma*, 82.
⁵⁵³ Ibid., 84.
⁵⁵⁴ On Aḥmad Zīwar, see: chapter 3 – subpart 3.1.1: “Professional backgrounds: language proficiency, legal training, politics, and career advancement.”
⁵⁵⁵ For further details about Yahya Ibrāhīm’s political career, see: Goldschmidt, *Biographical Dictionary*, 87; Marshall, *The Egyptian Enigma*, 270-271, 273, 277.
Muḥammad Saʿīd and Muḥammad Tawfīq Nasīm. Although both were of Turkish descent, educated at the Khedivial Law School, and very close to the Palace, they held slightly different views towards both their work and the British occupation. Tawfīq Nasīm was first appointed Prime Minister by the Khedive in May 1920 in the midst of protests, riots and political violence against the British and their local allies. On this nomination, Marshall recounts:

On the 19th May the Prime Minister, Youssef Pasha Wahba, resigned, and Tewfik Pasha Nessim became Premier, and by way of welcome a bomb was thrown at him on the 12th June. He was at one time one of my junior colleagues in the Court of Appeal, where he appeared to take no interest in politics. He apparently went straight from his house to the Court, and after his work was finished he returned to his house. He is a Turk from Laz and has no Egyptian blood. As a Judge he was painstaking and hardworking, but he always wrote his judgments before he heard the case, and when he was right they were wearisomely long. As Prime Minister he was not popular, and after his resignation about ten months later he was really in danger of his life. His house was surrounded, stones were thrown at the windows, and a small donkey was put in front of the house with some berseem (clover) before it, and the mob shouted, ‘Tewfik Nessim akl al-berseem’ (Tewfik Nessim ate berseem). Not very complimentary! But in Egypt there are always ways of arranging things, and he is now [i.e. around 1928] head of the King’s private Cabinet, and His Majesty is reported to have said of him that he was the only person who ever told him the truth.556

While Muḥammad Tawfīq Naṣīm did not seem to have been very interested in politics when working as a judge, Muḥammad Saʿīd was using his position to both advance his career within various ministries and cultivate a local support base especially around Alexandria.557 And while Tawfīq Naṣīm is said to have been “courting both the King and the British,”558 Saʿīd appears as having been much more anti-British or at least more ready to reap the fruits of the nationalist fervor by “serv[ing] as education and justice minister in Saʿd Zaghlūl’s cabinets.”559

Now, what matters for our purposes is that, although these counselors to the appeal court had various conceptions of their judicial career and although they would eventually find themselves at different ends of the political spectrum, they still held, during the period of our study, very ambiguous and fluid positions allowing them to evolve and get promoted in an environment governed not only by the complex dynamics between the British Consul-General and the Khedive, but also by the shifting relations between multiple intermediaries on both sides.

558 Goldschmidt, Biographical Dictionary, 153.
559 Ibid., 178.
Thus, Muḥammad Saʿīd, whose anti-British reputation seems to have first been an obstacle to his advancement in the judiciary, did succeed – probably thanks to his personal connections to the Khedive – in being nominated counselor to the court of appeal, and eventually “managed to get on the right side of Bond.” As was already mentioned in the preceding chapter, Saʿīd was also able to capitalize on a surprising coalition of interests to thwart the ambition of his colleague Wilmore to become the president of an assize court. The British magistrate enjoyed the support of the Ministry but not that of the powerful Mr. Bond. In these circumstances, Saʿīd proved astute enough to report Wilmore’s lack of productivity to his hierarchy, in a move that would at the same time put an end to the latter’s career in the native courts and ensure him Bond’s gratitude. On the other hand, Muḥammad Saʿīd would use his subsequent position as minister and Prime Minister to try in vain to help Marshall – at least according to Marshall’s own account – get promoted first as “Director-General of the Alexandrian Municipality” and then as “Adviser to the Ministry of the Interior.”

As for Sa’d Zaghlūl, to take another example, he was nominated counselor to the court of appeal in 1892 thanks to his personal connection to the very pro-British Prime Minister Muṣṭafā Fahmī Pasha, and three years later, he married Ṣafiyya, the latter’s daughter. To be sure, he had participated in the ‘Urābī revolt in 1879-1882 and still kept low-profile journalistic and political activities afterwards, but in the three decades between 1882 and 1912 the one who would later be named the “Father of the Egyptian Nation” was rather focusing on his own social and professional promotion. When advised by the British Judicial Adviser, Sir John Scott, to put an end to his extra-judicial activities, he seems to have cautiously reduced them or at least to have toned them down. And when a few years later, he and Qāsim Amīn – along with many European appeal judges – refused to sit in the newly created courts of assizes, they were

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561 Ibid., 57-58.
564 On Muṣṭafā Fahmī Pasha’s very close relationship to the British, see: Ibid., 66-71.
565 Ibid., 174.
566 Ibid.
“brought into the fold (…) on the insistence of Mustafa Pasha Fehmy, Zaghlul’s father-in-law.”567 In 1906, his brother, ʿAḥmad Faṭḥī, became infamous for serving, in his capacity of president of the Cairo native court of first instance, as a member of the Special Tribunal that tried the Dinshawāy peasants. Reflecting on the trial twenty years later, Marshall analyzed:

He [i.e. Saad Zaghlul’s brother] it was who drew the judgment, which was one of the feeblest, in the way of making premises fit the conclusion, that I ever read. He was undoubtedly actuated by a desire, quite mistaken, to please the English and obtain advancement. He was President of the Cairo Court of First Instance, and had been passed over for the Court of Appeal chiefly because Bond would not have him there. After Denshawai he became Under-Secretary of State for Justice (…).568

In the wake of the trial, while ʿAḥmad Faṭḥī got promoted within the Ministry of Justice, Saʿd was appointed Minister of Education in order to implement the project of the Egyptian university for which he and Qāsim Amīn had been advocating.569 Saʿd Zaghlūl was also close to both his mentor, Muḥammad ʿAbduh, and ʿAḥmad Luṭfī al-Sayyid, and he is said to have clashed with the British Education Adviser over the choice of Arabic as the language of instruction in elementary schools. He remained however compliant enough to the colonial administration to be cited by Cromer in his farewell speech in 1907, and to be nominated Minister of Justice three years later. The Prime Minister, Buṭrus Ghālī, had then just been assassinated, and a new government had been formed by Zaghlūl’s ex-colleague at the court of appeal, Muḥammad Saʿīd. As the head of the Ministry of Justice between 1910 and 1912, he unquestioningly oversaw two nationalist trials, that in which al-Wardānī was condemned to death for the murder of Buṭrus Ghālī,570 and that in which ʿAbd al-ʿAzīz Jāwīsh and Muḥammad Farīd were sentenced to three and six months in prison respectively for having written forewords for ʿAlī al-Ghāyātī’s collection of poems, Waṭaniyyatī (My Patriotism).571 He resigned in 1912 following a conflict with ʿAbbās Ḥilmī II, and it is only in the subsequent year that, after having been elected as the Vice-President of the Legislative Assembly, he became more forthright and outspoken in his criticisms of both the Khedive and the occupying power.572

567 Ibid., 87.
568 Ibid., 84.
569 Ibid., 92.
571 Ibid., 6, 79-80.
572 Ibid., 175-176.
The trials of the Dinshawāy peasants, al-Wardānī and ‘Abd al-‘Azīz Jāwīsh, in which appeal counselors had taken part, though all very different, undeniably shed light on the role both special and ordinary courts played in the protection of the British occupation and the repression of the nascent nationalist movement. They did not really affect the judiciary, however, and if they did contribute to the deepening of a divide, it was not so much among the judges as between the Bench and the Bar (and more precisely within the Bar the lawyers who began specializing in the defense of nationalist activists). Among the latter were Aḥmad Luṭfī al-Sayyid and Muḥammad Farīd who became, president of Ḥizb al-'umma (the Nation’s Party) and president of al-Ḥizb al-Waṭanī (the National Party) respectively in 1907 and 1908.

After graduating from the Khedivial Law School in 1894, Aḥmad Luṭfī al-Sayyid had worked as a local prosecutor in the provinces, but he left public service in 1905 “because of his growing alienation from the British.”573 He subsequently became a lawyer, and the following year, he was among the legal representatives of the Dinshawāy peasants at their trial.574 As for Muḥammad Farīd, he had initially worked as both a lawyer and a local prosecutor, but had been dismissed as early as 1896 “because of his support for Shaykh ‘Alī Yūsuf, who was accused of publishing secret telegrams taken from the Defense Ministry.”575 Like Luṭfī al-Sayyid, he then opened a private law firm, and it is one of his former business partners, Maḥmūd Abū al-Naṣr, who in 1910 would defend al-Wardānī in court.576 Finally, a much more controversial figure – but which nonetheless belongs to this group of lawyers who between 1906 and 1911 were led by the circumstances to take rather strong political stands – is Ibrāhīm al-Hilbāwī. Educated at al-Azhar, al-Hilbāwī had no formal legal training. His early career resembled very closely that of Sa’d Zaghlūl: he had participated in the ‘Urābī revolt but was not prosecuted for it. He had also worked as co-editor of al-Waqā‘i’ī al-Misriyya (the official state journal) before beginning a career as a lawyer in 1893. At the Dinshawāy trial, he served as the “prosecuting counsel,

573 Goldschmidt, Biographical Dictionary, 183.
574 Correspondence Respecting the Attack on British Officers, 67, 74-75.
575 Goldschmidt, Biographical Dictionary, 53.
576 Badrawī, Political Violence in Egypt, 34, 40.
delegated by the police, “and, in his pleading, he emphasized the “advantages of the Occupation,” praised the British officers for not having shot the villagers dead on the spot, and requested “the most severe penalty” against the accused. To wash away the shame, he volunteered in 1910 to be among the legal representatives of al-Wardānī, and went as far as “apologiz[ing] for reducing him to the level of ordinary criminals.” He was elected as the President of the Egyptian Lawyers’ Syndicate in 1912. In 1919–1920, he was a member of Sa’d Zaghlūl’s Wafd party, but the two men soon became estranged when al-Hilbāwī took part in the creation of the Constitutional Liberal Party in 1922.

4.4.2 Appeal judges, lawyers, and the peasant question: No mercy for evilness and ignorance

While the Bench and part of the Bar progressively adopted very different – if not diametrically opposed – positions on the national question, both judges and lawyers did nonetheless find common ground on the peasant question. In this regard, the 1906 Dinshawāy trial revealed the pervasive belief in the myth of the stupid/savage fallāḥ, but, as the sources suggest, this narrative had in fact already been developed and enacted over the preceding decade through the debates that had taken place in the Cairo court of appeal. Since, at this stage of the procedure, the peasants were almost completely silenced, their appeal and cassation trials became avenues of negotiation among prosecutors, counselors and lawyers over the stereotyped figure of the ignorant/evil peasant, and whether as such he deserved the court’s mercy. I will briefly review here two cases of poisoning that were tried around 1900 and in which one and the other of these allegedly “essential” qualities of the fallāhīn were invoked to substantiate the magistrates’ various narratives.

Contrary to the exceptional case of Kīlānī al-Gindī in which the court of appeal decided to rehear the accused and the witnesses in a special delocalized sitting in Ṭanṭā [1905 – KMG+], the overwhelming majority of the appeal and cassation trials of my archival corpus are characterized

577 Correspondence Respecting the Attack on British Officers, 66.
578 Ibid., 67, 69, 73.
579 Badrawi, Political Violence in Egypt, 40; Ziadeh, Lawyers, 68-69.
580 Ziadeh, Lawyers, 46.
581 Goldschmidt, Biographical Dictionary, 78.
by a complete stifling of peasant voices. Thus, at the appeal hearing of Ḥaggāg Yūsuf Ḥabīb, sentenced with two others for having poisoned the flour of the Gūrbāgī family in 1899, the three defendants are present but they are kept silent; and at the cassation hearing, neither the main accused who has requested the revision of his case nor his lawyer attends the sitting [1899 – HYH+: 7965-7966, 7972]. While Ḥaggāg had lodged an appeal because he considered that the Ṭanṭā tribunal had not heard him, he is further muted by the Cairo court [1905 – KMG+: 7971].

In addition, while the former had shown him mercy by “only” sentencing him to forced labor for life, the latter decides to increase the penalty and condemns him to death [1905 – KMG+: 7957-7960, 7968-7969, 7973-7975]. In order to justify its ruling, the Ṭanṭā tribunal of first instance had laconically referred to “the circumstances of the case,” but one might venture to suggest that the judges had then considered that there had only been one death in the case, 13 days after the initial poisoning, and that, according to the forensic doctors, it merely “might” have been caused by the arsenic. On the other hand, the Cairo court of appeal clearly substantiates its verdict by emphasizing that “the whole [Gūrbāgī] family was almost exterminated,” (العائلة بجميعها كاد أن يقضي عليها) that “the crime is odious” (الجناية فظيعة) and that it has been committed for “a trivial reason” (سببها واد) [1899 – HYH+: 7969]. Thereby, the text of the judgment collectively issued by an appeal court composed that day of “His Excellency” (الجنايب) Mr. Bond, Mr. Dilberoglu, Yahyā Ibrāhīm Bey, Ahmad Zīwar Bey, and ‘Alī Dhū al-Faqqār Bey, closely echoes the successive pleadings of ‘Abd Allāh al-Ṭūwayr Afandī, the local prosecutor. At the hearing of the Ṭanṭā tribunal, the magistrate had already invoked the “odiousness of [the] deed” (فظاعة (...) العمل) and “the impossibility for a person to protect himself from it” (عدم إمكان الإنسان ان يحتاط منه) to request that clemency not be shown in this case (يطلب عدم استعمال الرأفة) [1899 – HYH+: 7955]. Following the moderate verdict of the court, al-Ṭūwayr reiterates his arguments in a lengthy document that he sends to the court of appeal [1899 – HYH+: 7962-7963]. He explains more specifically that although one can almost always try to protect oneself from the bad intentions of an enemy by for example “avoiding going out at night” or by carrying “a defense tool,” one cannot take any precautionary measures against an opponent “armed with poison to take his revenge” (من يتسلل بالسم ليتقم) [1899 – HYH+: 7962].

For both the prosecutor and the appeal judges, the idea of the “odiousness” or “heinousness” (فظاعة) of the crime, thus not only encompasses the extent of the evil inflicted, but also and
more importantly both the gratuitous nature of the violence committed for “no valid reason” and the cowardice of its perpetrator who chooses an indirect and almost invisible arm “against which it is impossible to guard.” Such an interpretation actually reflects the official legal conception of poisoning at the time. As Grandmoulin underlines in his law textbook, the penal code is then extremely repressive in that it considers poisoning a crime punishable by death whatever the results of the action, thereby conflating attempted poisoning, failed poisoning, and actual homicide by poisoning.\(^{582}\) As a justification for this severity, the French law professor invokes first “the betrayal that accompanies [poisoning], since it is often committed by people close to the victim,” then “the ease of execution,” “the difficulty of proving [it] and the resulting chances of impunity,” and finally “the premeditation.”\(^{583}\) While the justice professionals are then perfectly aware that poisoning is one of the “weapons of the weak,” as Piot Bey would put it a decade later,\(^{584}\) they seem to consider that the peasants’ evilness, cowardice and duplicity that this crime incarnates for them should be punished all the more severely and that hence no mercy should be shown.\(^{585}\)

But while the fallāḥ is intrinsically cruel and deceitful in the eyes of the appeal magistrates, he is equally ignorant, and this latter element is often mobilized by lawyers to try to obtain a reduction of sentence from the judges. It is in particular the strategy chosen by the legal counsel of ‘Abd al-Ghaffār Muḥammad Qandīl, tried in 1902 along with his wife Muntahā, for having poisoned his brother and a neighbor with a loaf of bread baked with arsenic. ‘Abd al-Ghaffār, a 26 year old peasant from Qaṣr Baghādād (markaz Talā) had initially been sentenced to death by the Ṭanṭā tribunal of first instance on October 29\(^{th}\), and he had appealed the verdict the following day [1902 – ‘AMQ+: 3599]. After a series of usual postponements, the appeal trial eventually begins on February 5\(^{th}\), 1903. The court is then composed of Şāliḥ Thābit Pasha, Mr. Dilberoglu, Mr. Satow, Alī Dhū al-Faqār Bey, and Yūsuf Shawqī Bey. The prosecutor is Yūsuf Sulaymān Bey,

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\(^{582}\) Grandmoulin, *Le droit pénal*, vol. 2, 328-329. Grandmoulin specifies that these initial provisions of the penal code were drawn from the French model, and that they were subsequently modified in 1904 to introduce the crucial distinction between attempted poisoning and homicide by poisoning, following in that the Belgian code.

\(^{583}\) Ibid., 329.

\(^{584}\) Piot Bey, *Une plaie de l’égypte actuelle*, 2.

\(^{585}\) It is exactly from this perspective that Piot Bey advocates a return to corporal punishment to fight against cattle poisoning. Ibid., 6.
and the defendant is represented by Naṣr al-Dīn Zaghlūl Afandī who has been appointed for him by the institution. Following a short interrogation of the accused, Yūsuf Sulaymān launches into a plea built around a portrayal of ‘Abd al-Ghaffār as a “disreputable” brother. The prosecutor thus asserts that after having “[taken] from his father’s inheritance and wasted it in entertainment (بدّده في الملاهي"), the main defendant “came back to his brother, the victim, [who] generously provided him with a dwelling” [1902 – ‘AMQ+: 3603]. The magistrate further claims that in spite of that, ‘Abd al-Ghaffār went to seek arsenic, ordered his wife to bake a loaf of bread with it, and to bring it to his brother in the field; all this with the intention of getting his hands on his sibling’s share of the bequest. Relying on both retracted confessions made by the accused in the course of the preliminary inquiry and the conclusions of the forensic report, Yūsuf Sulaymān eventually requests the confirmation of the first ruling [1902 – ‘AMQ+: 3604].

Acknowledging the existence of initial confessions, ‘Abd al-Ghaffār’s legal representative concedes that he cannot demand a not-guilty verdict. He considers, however, that the first judgment was “very harsh” (قاسٍ جدا"), and appeals to the mercy of the court [1902 – ‘AMQ+: 3604]. His subtle line of argument reads as follows:

الفعلة التي حصلت فظيعة حقيقة ويمكن الإنسان الذي لا يرى المتهم الأول يحكم بان وحش ولكن مع النظره الى المتهم يحكم

The act that occurred is truly odious, and maybe someone who does not see the first accused could rule that he is a savage. But, after looking into the accused, it can be judged that there is a weakness in [his] mental capacity, since he was indifferent to what he committed. [1902 – ‘AMQ+: 3604].

Here, the lawyer himself tellingly begins by giving in to the “odiousness-of-the-crime” narrative ("فظاعة الجريمة"), going as far as alluding to the “savage” character of the perpetrator that the description of the facts evokes. Then, however, he very astutely brings in what then constitutes the heart of the colonial rhetoric in favor of the creation of the assizes: the crucial importance of the defendants’ appearance before the court and more specifically the absolute necessity to take into account their looks.586 This strategy allows Naṣr al-Dīn Zaghlūl to introduce another dimension of the elites’ stereotypical conception of the peasantry, its fundamental idiocy and its related lack of awareness, two features on which he founds his request for clemency. His

586 On this issue, see: chapter 1 – subpart 1.2.3: “The ‘anthropological’ focus on peasants’ ‘appearances’ and the lowering of evidence standards.”
demonstration nonetheless proves unconvincing, and the judgment is eventually validated on the basis of the “disreputable brother” story both by the court of appeal on February 5th, 1903, and the court of cassation on April 4th, 1903 [1902 – ‘AMQ+: 3605-3607; 3608-3609].

Three years after ‘Abd al-Ghaffār’s trial and seven years after Ḥaggāg’s, the Dinshawāy peasants are brought before a Special Court set up in the provincial Palace of Shibīn. To be sure, the circumstances of the three cases are extremely different. There is no question of poison this time, but the issue similarly revolves around a struggle over resources. In this case, the point of contention is neither the neighbor’s land, nor the brother’s share of the inheritance, but rather the coveted pigeons. In addition, as was already mentioned, a number of the regular appeal magistrates also take part in the Dinshawāy trial, and they all mobilize, in one way or another, the narrative of the stupid/savage fallāḥ.

Thus, after “stating the advantages of the Occupation, which ought to be accepted with gratitude,” Ibrāhīm Bey al-Hilbāwī, the prosecutor, founds his request for “the most severe penalty” against the peasants on the particular cruelty with which they have perpetrated their “crime.” Following a very vivid and dramatized presentation of the events underlining how “[the natives] threaten[ed] to kill [the officers] by cutting their throats and burning them,” al-Hilbāwī proceeds to a review of the latter’s wounds reported in the proceedings as follows:

587 Correspondence Respecting the Attack on British Officers, 67, 69-73.
588 Ibid., 69.
589 Ibid., 70.
590 Ibid.
the aggression,” and a couple of whom are thought to be “professional thieves.” He eventually concludes his pleading by demanding the death penalty for the main accused and “the punishment immediately inferior to it” for the others, adding that such a verdict would be justified in German, British and even Islamic law. The same Ibrāhīm al-Hilbāwī who, six years earlier, was defending Mahmūd Muḥammad Maʿrūf in the Cairo court of appeal by emphasizing that the peasant accused of killing his younger brother was “weak in intelligence and education” and acted “stupidly,” has now been convinced to invoke the other side of the elites’ stereotypical narrative on the fallāḥīn and to rather shed the light on their purported savagery [1900 – MMM: 11370-11371].

The image of the stupid peasant is, however, subsequently taken up by the Dinshawāy fallāḥīn’s legal counsel. Muḥammad Bey Yūsuf, one of the lawyers of the appeal court, thus begins his pleading by “express[ing] his sorrow that such an act should have been committed against the Army of Occupation, which has caused the unanimous indignation of all Egyptians,” but concomitantly asserting that “what lessened its gravity was that it happened in a poor village, and was caused by ignorant people.” And on the grounds that the evidence collected is not sufficient to establish the charges, he requests “the acquittal of all the accused, or whatever the Court sees to be suitable.” In a very similar manner, Aḥmad Luṭfī al-Sayyid demands the requalification of the charges as violent theft, and concludes his defense by “some general remarks regarding all the accused to the effect that, as responsibility is relative to duty, and [as] these persons were living in a ‘milieu’ which had influenced their actions, he asked the Court to be merciful in punishing them, ‘Clemency above equity.’” As for the fallāḥīn, they all deny the charges, some of them invoking false accusations motivated by local quarrels and a few pointing at the deceitful role played by the local authorities and notables in the case.

It goes without saying that their allegations were dismissed without further inquiry, the mobilization of the savage/stupid fallāḥ narrative allowing the judicial authorities, as was so
often the case, to totally overlook the broader socio-economic and political context of the crime, and more specifically the tremendously disrupting impact of the “colonial situation” on the peasants’ living and working conditions at the local level. While the elites’ narrative about peasants and peasants’ “criminality” subsequently began to be questioned – to some extent – in the public sphere, it would concomitantly desert the appeal courtroom with the creation of the assizes that left the cassation court with merely dry procedural issues to decide, usually in the absence of the defendant and his legal counsel.
4.5 Performance and agency on the gallows

At the very end of a judicial process that took the form of a “journey to silence” for the defendant, stood the gallows. The latter truly constituted a pillar of the system of the native courts as shaped by the British authorities. Considering that capital punishment should necessarily be promoted “in a country new to justice,” the Judicial Adviser, Sir John Scott, had, as early as 1897, pushed for the elimination of the strict rules of evidence in cases of the death penalty that had been inherited from Islamic law and intentionally preserved by the Egyptian legislator in the initial codes. With the adoption of the decree dated December 23rd, 1897, the article 32 of the penal code requiring either a public confession of the accused or the testimonies of two eyewitnesses of the crime was abolished, and the death sentences were henceforth merely founded on the judge’s “intimate conviction.” Thereby, the reform opened the way to a steep increase of executions most often sanctioned by the local muftī, who still had to be consulted but whose opinion was still not binding, and ultimately approved by the Khedive who seldom exerted his mercy. While between 1884 and 1898, 27 death sentences had been pronounced (i.e. an average of 2 per year), their number rose to 7 in 1904, 20 in 1905, 16 in 1906 (including 3 in Minūfiyya), and 21 in 1907.

The rationale behind the promotion of capital punishment was “to intimidate the most dangerous criminals and ensure the security of persons and the defense [of society],” in a country where prison sentences were deemed insufficient. Consequently, the executions had

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599 Both Scott and Grandmoulin mention how the Egyptian legal circles strongly opposed the reform, and how the British invoked the example of Ottoman law to substantiate the idea that it did not contradict the shari’a.
601 Egypt, Egyptian National Archives, Majlis al-wuzarā’- nizzārat al-ḥaqqāniyya, [0075-040100], *Rapport pour l’année 1906* (Cairo: National Printing Department, 1907), Appendice III (Tableaux statistiques), Tableau No. IX.
602 Grandmoulin, *Le droit*, vol. 1, 137.
603 Ibid., 136-137.
to be held in public, the “spectacle” of the death penalty being meant to play the role of
deterrent. While the procedural instructions emphasized the importance of legality, order and
sobriety in the “staging” of the hangings,\textsuperscript{604} it was nonetheless their barbarity that seems to have
struck the spectators. Following a campaign launched both “in the native and European press”
as early as 1903, the authorities were forced to acknowledge the counterproductive effect
resulting from the public nature of the execution, and to progressively implement between 1904
and 1908 a new system where the hangings would be carried out within the jails but still before
some civil servants and journalists.\textsuperscript{605}

The explanations for the negative impact of public capital punishment provided by officials
never questioned the very legitimacy of the sentence, but rather blamed the locals for
misinterpreting and misusing the performance. In his textbook published in 1908, the French
law professor Grandmoulin thus explains that “[the] executions (…) constituted in Cairo and
Alexandria a show and an entertainment for elements recruited in the lowest classes of the
population, and [their] effect, far from being exemplary and beneficial, was rather de-
moralizing.”\textsuperscript{606} He further mentions in a footnote the rumor according to which “they also
offered (…) a special attraction for the female element since, as per a superstitious belief,
passing under the scaffold or touching the woods of justice would be considered as a specific
remedy against sterility.”\textsuperscript{607}

While the executions, be they public or private, were thus allegedly “distorted” by the
spectators, they were also creatively (“mis-”) used by those sentenced themselves in an ultimate
attempt – at the end of a judicial process in which they had progressively been silenced – not
only to utter a few sentences, but also to resist the oppression of the system. Through the
remarkable examples of Mikhīmar ‘Abd al-Nabī al-Qāḍī [1892 – M‘AQ] and Muḥammad
Ibrāhīm Balīla [1902 – MIB], we will thus see how the former defiantly took an active part in
the staged performance in which he had been placed by proudly – and almost poetically –
claiming his responsibility for the crime, and how, on the contrary, the latter chose to

\textsuperscript{604} Ibid., 140.
\textsuperscript{605} Ibid., 141.
\textsuperscript{606} Ibid.
\textsuperscript{607} Ibid.
dramatically deprive the authorities of the very possibility of putting him on display by committing suicide in prison a few days after the final confirmation of his sentence.

4.5.1 The “spectacle” of the death penalty

While the last stages of the judicial process are held in Cairo, the execution of the condemned is carried out in the province, in the vicinity either of Ṭanṭā or of the place where the crime was perpetrated. In addition, the implementation of the sentence is supervised by the local prosecutor – the one who initially conducted the preliminary inquiry – as the representative of the General Prosecutor (Procureur Général) for the Native Courts. In the case of Aḥmad ʿAbd al-Ḥaqq Yūnis – sentenced to death in 1899 for the murder of his brother’s wife and son, in spite of two petitions denouncing a plot from the ‘umda\textsuperscript{608} – it is Aḥmad Ṭalʿat, the Chief Prosecutor of the Ṭanṭā tribunal of first instance, who is responsible for organizing the hanging.

In the report on the implementation of the death sentence he writes, the magistrate first details the various procedural steps he has carefully followed to arrange for the logistics and the publicizing of the event, before proceeding to a meticulous description of the execution [1898 – A‘AY: 5703-5704]. We thus learn that, in accordance with the penal code and the code of criminal procedure, Aḥmad ʿAbd al-Ḥaqq’s hanging has been advertised in 10 different places from the courts of Ṭanṭā and Minūf to the doors of both the ‘umda’s and the sentenced man’s house in the small village of Damlīg [1898 – A‘AY: 5722-5723]. As for the execution itself, it has been decided that it would be carried out in Ṭanṭā, in the square of the train station, on April 12\textsuperscript{th}, 1899.

At 6 a.m. on that day, Aḥmad ʿAbd al-Ḥaqq is brought to the gallows by a group of police officers and the chief of the court ushers. He is asked if he has a last wish, and he requests to see his daughter and drink some water. Aḥmad then declares that money has been granted to him in cases judged by the tribunal of Minūf, and he demands that the sums be given to his heirs. The prosecutor subsequently orders the court clerk to read a shortened version of the judgment that, following the official instructions, leaves the reasons (ḥaythiyyāt) for the verdict aside [1898 –

\textsuperscript{608} On this case, see: chapter 4 – subpart 4.1.1: “Inheritance, dispossession, and violence: on the recognition of one’s property rights & the protection of the weak against oppression.”
A‘AY: 5716]. At 7 a.m., Aḥmad Ṭal‘at instructs the executioner officially “appointed by the administration” to raise the condemned to the gallows, place the rope around his neck, and eventually “carry out the implementation [of the sentence]” [1898 – A‘AY: 5703]. In his own account of the execution, the prosecutor meticulously mentions that Aḥmad ‘Abd al-Ḥaqq remained hanging for four minutes before dying, and that his death was confirmed by a medical doctor from the provincial health inspection office. Finally, at 7:30, the condemned’s corpse is sent to the Ṭanṭā hospital for unusual “required procedure” ("لاجراء اللازم") before being released to his family to be buried. Regarding this last point, the text of the report specifies that, according to the penal code, the funeral should be held without celebration and under police supervision. As Grandmoulin explains in his textbook, “the burial has to be carried out without any ostentation that could bring about disorders and take the form of a demonstration against the sentence.”

The two page long report on the execution of Aḥmad ‘Abd al-Ḥaqq is remarkable because of the emphasis placed by the local prosecutor on the legality of a highly contested process, from his initial insistence that all the official instructions regarding the preparation of the event have been followed to the letter, to his final reference to the executioner officially “appointed by the administration.” In addition, Aḥmad Ṭal‘at’s description of the scene is put in a meticulous administrative style aimed at underlining both the fairness of the law that grants those sentenced to death their last wishes, and the social order and security it allegedly guarantees, while hiding the barbarity of the hanging behind the euphemism of “the implementation of the sentence.”

Within this framework, the horror of Aḥmad ‘Abd al-Ḥaqq’s ordeal transpires however in the precise timing of the various steps of the “procedure” and the gruesome detail, reported with a purportedly neutral scientific accuracy, that he suffered for four long minutes before succumbing. Finally, while the prosecutor’s dry account indicates that the event has been widely publicized, it patently fails to mention the presence of the “spectators” – to the notable exception of the condemned’s daughter, wife and sister –, thereby concealing the dimension of “staging” the scene, and the fact that what is presented so soberly as the natural order of justice

609 The regular measures of body identification taken after the execution are usually carried out on the spot.

610 Grandmoulin, *Le droit*, vol. 1, 140.
is in reality the constructed display of an illegitimate power. In such a context, one understands the authorities’ profound fear that the spectacle they have created be re-appropriated by its audience and subversively turned into a celebration leading to “disorders” and other forms of resistance against an essentially colonial justice.

Aḥmad Ṭalʿat’s detailed report contrasts with the laconic note scribbled by the superintendent ("مأمور") of the Ṭanṭā prison ten years later, to inform the General Prosecutor of the execution of ‘Āmir Muḥammad Badawī, the “disreputable son” sentenced to death for having suffocated his mother [1908 - ‘AMB+: 16784]. In this extremely concise document dated January 18th, 1909, ‘Āmir is mainly identified by the prisoner number 2431, and the entire text is written in a very impersonal style. The condemned is described as declaring that he is “unjustly treated” ("مظلوم"), before being “executed by hanging” at 7:40 a.m. After he passes away, his corpse is immediately put into the hands of the prison doctor and the agent of the provincial health inspection office who immediately require examination. While ‘Āmir has waited for five months in various jails following his sentence to capital punishment by the Ṭanṭā court of assizes on August 5th, 1908, he is put to death in less than five minutes in a form of express justice praised by Grandmoulin in his textbook.611 According to the new regulations of the time, the hanging of the indecent, unproductive and greedy young peasant is thus carried out in a “modern,” swift and impersonal manner, in the privacy of the prison. The presence of “a few writers of the newspapers” at the execution still ensures, however, that the symbol be immortalized and that the “right” message be sent to the Egyptian society at large [1908 - ‘AMB+: 16784].

4.5.2 The last “speech”-acts of resistance

Whereas ‘Āmir has chosen, as is often the case, to simply claim his innocence a last time and emphasize the “injustice” he is being subjected to, two others sentenced to death from my corpus make use of their executions to challenge more radically the judicial system. In 1893, Mikhīmar thus takes advantage of the “stage” provided by the gallows to proudly assert his responsibility for the crime for which he was convicted and to subversively qualify his hanging

611 Grandmoulin also seems to appreciate that the man sentenced to death is kept in the ignorance of the date and time of his ordeal until the very last moment. Ibid., 141.
as a “celebration” of his misdeed [1892 – M‘AQ]. Less than a decade later, Muḥammad prefers to express himself without words through a suicide committed in prison and that dramatically prevents the judicial authorities from putting him on display [1902 – MIB].

Throughout the inquiry and his trial for the murder of Muḥammad Jalabī, beaten to death on his way back from the fields on March 16th, 1892, the 23 year old Mikhīmar ‘Abd al-Nabī al-Qādī has firmly denied the accusations brought against him.612 As early as the preliminary investigation, he showed a confidence bordering on arrogance, reiterating over and over again, when faced with incriminating testimonies, that the latter could not be taken against him since the witnesses were members of the victim’s family. On the first day of the trial, April 2nd, 1892, he boldly asked to postpone the session until the arrival of the legal counsel “someone” had hired for his defense, the renowned member of the Bar Aḥmad Afandī al-Ḥusaynī. And in spite of the fact that his lawyer’s eloquent and compelling pleadings failed to save him, Mikhīmar has lost nothing of his assertiveness when he is led to the gallows a year later, on April 22nd, 1893 [1892 – M‘AQ: 200-201].

This time, the execution is organized exactly where the crime was perpetrated in the village of Kafr al-‘Ulwiyya, under the supervision of Muḥammad Ṣafwat, the Chief Prosecutor of the Ṭanṭā tribunal of first instance, and in the presence of the court clerk and usher, and various civil servants from the administration of the province, the local police, health services, and public works. At 5:30 a.m. Mikhīmar is brought to the scaffold. Then, the court clerk reads aloud a summary of the judgments of first instance, appeal, and cassation, as well as the Khedive’s confirmation of the death sentence. The condemned is subsequently asked if he has anything to say before dying. At this point, the young peasant rebelliously declares: “I struck him [i.e. the victim, Muḥammad Jalabī] out with my hand and he went like [a] dog” (أنا شطبته بيدتي وراح زي الكلب) before adding “and [they] made for me this celebration” (وأنا عمل لي هذا الاحتفال) [1892 – M‘AQ: 201]. Both expressions are consciously recorded by the Chief Prosecutor in his report, the first one in ‘āmmiyya and between brackets, and the second, in fushā and in the body of the text. The magistrate then proceeds to describe “the implementation

612 For more details on this case, see: chapter 1 – subpart 1.3: “Quotations between brackets: The apparent bureaucratic and judicial logic at the heart of the file” and subpart 1.4: “Petitions in appendices: ‘Jumble,’ acculturation and agency at the margins of the file.”
of the sentence” itself: Mikhīmar is raised to the gallows by an agent of the secret police, the rope is placed around his neck, the aperture of the scaffold is opened, and he dies after seven minutes, as attested by the forensic doctor. His corpse is then released to his family and eventually buried at 8 a.m. “without any celebration” and under the strict surveillance of all the officials present.

Within the highly contentious social context of the village – suggested by al-Ḥusaynī’s convincing claim that the crime is in fact a proxy murder ordered by influential members of the community –, Mikhīmar’s last words are undoubtedly addressed to the local audience that has come to attend his hanging. The one who was once described by the victim’s brother as a young peasant beaten and insulted by his father so as to force him to commit the murder, now fully takes on the role that has been assigned to him by others. If he shall die for it, then let it be with the glory attached to the courageous son who has proudly accomplished his mission and the recognition of those who initiated the crime. But, Mikhīmar’s defiant declarations also constitute a sort of ironic challenge to a judicial system that has sentenced him to death for taking “his family’s justice” into his own hands, but has failed to prosecute the instigators of the murder; and all this in spite of the insistent requests from his lawyer and the victim’s brother to investigate more carefully “what lay behind the case,” and the repeated attempts by the local and the General Prosecutor to save his life on the basis of the “strangeness of the circumstances” [1892 – M‘AQ: 117, 178, 258-260].

A little less than ten years after Mikhīmar’s execution, Muḥammad Ibrāhīm Balīla chooses a very different means to express his rejection of the judicial system of the native courts: suicide.

In the file of the case that has been preserved in the archives, the 50 year old peasant from the vicinity of Ashmūn is dumb, silenced by an institution that has only kept from his story the documents related to the appeal, the cassation and the suicide. By cross-checking the various pleadings and judgments, it is however possible to reconstruct part of his life. Around 15 years

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613 On the issue of the proxy murder, see: chapter 1 – subpart 1.4: “Petitions in appendices: ‘Jumble,’ acculturation and agency at the margins of the file.”
614 See: chapter 1 – subpart 1.4.1: “The appendix subfolder or how to conceal the ‘jumble’ and the blurring of the role distribution,” and appendices 5 and 6.
before his death, Muḥammad Balīla had been sentenced by the court of appeal to two years and another year and half of hard labor for his participation in two cases of robbery and burglary that had led to the death of three people [1902 – MIB: 3087]. He then seems to have lived a quiet life until 1901 when a local civil servant, Muḥammad Zilābiyya, denounced him as a thief. Following up on these declarations, the police arrested Baṭla and “escorted” him through the village streets to the police station [1902 – MIB: 3092]. While stolen goods were subsequently retrieved from his brother, Baṭla himself was cleared of the charges. His honor had nonetheless been hurt by the force of Zilābiyya’s word, and he decided to take his revenge. According to the version of the facts reconstituted by Aḥmad Ṭal’at, the local prosecutor, both men met on the road on December 18th, 1901, Zilābiyya greeted Baṭla, and the latter replied by shooting the former in the stomach. Baṭla then toppled his victim, stuffed his mouth with dirt ("حشى فاه" بالتراب), and finally smashed his skull with his weapon [1902 – MIB: 3085].

Emphasizing the extreme “heinousness” ("فظاعة") and “cruelty” ("قسوة") of the crime, the prosecutor requested the death penalty. On March 26th, 1902 however, the Ṭanṭā tribunal of first instance chose to show Muḥammad Baṭla mercy by rather sentencing him to hard labor for life. The rationale behind the court’s verdict was that the accused had killed to defend his honor and money against the false charges of theft brought up by the victim. A week after this first trial, both Baṭla and the prosecutor appealed the judgment [1902 – MIB: 3083, 3084]. Aḥmad Ṭal’at reiterated his demand for capital punishment, underlining this time the antecedents and supposed bad reputation of the accused along with the circumstances of the crime. As for the damaging allegations of the victim against the defendant, the magistrate considered that they should have led Baṭla to “mend his lifestyle” and “straighten his deviant morals,” rather than to murder his accuser who was “a simple government employee who lived and ate from his work” [1902 – MIB: 3085]. The appeal court presided by Walter Bond followed the prosecution’s requests, and on July 24th, 1902, it commuted the penal servitude for life into a death penalty substantiated by a narrative of “anger” and “hatred.” On September, 17th, the cassation court refused to quash the judgment, and the sentence was ultimately confirmed by the Khedive on the 27th [1902 – MIB: 3093-3096, 3102]. Five days later on October 2nd, Muḥammad Baṭla is still in Cairo in a cell of the appeal prison. In the early hours of the morning, he uses the belt of his trousers, a piece of a scarf, his mattress, a cover, a brush, and the window to hang himself. He is found at 6:15 a.m. by an agent of the prison who draws up a short report to the General
Prosecutor [1902 – MIB: 3097]. In this text written in a very dry and low-register administrative style, Balīla is mainly identified as “the prisoner number 2116,” and no attempt is made to account for his tragic act. Priority is given to an explanation of the elaborate technique used by the inmate to commit suicide, as well as to the procedural measures to be taken following his death.

Muḥammad Balīla’s story, from delinquency to murder and suicide, illustrates the extreme form of resistance taken by a peasant faced with the oppressive power of both the local officials’ and the Cairene judges’ word. Against the false accusations of the one who is soberly described as “a simple government employee” – declarations that have officially “made” him a thief in the eyes of the village community –, Balīla resorts to terrible means to shut Zilābiyya up both physically and symbolically. Then, while the magistrates of the Ṭanṭā tribunal interpret this dramatic gesture as a crime meant to avenge his honor and show him mercy, the judges of the Cairo court of appeal prefer to bring up cases in which he was convicted 15 years earlier and to rely on local rumors of bad reputation to categorize him as a “savage” peasant, “jail” him in a tale of “hatred,” and eventually sentence him to capital punishment. Faced this time with the power of death of the judges’ narrative, and totally silenced by courts that work as “stages” for law professionals, Muḥammad Balīla decides to express himself by another means. Through his suicide, the 50 year old fallāḥ does not only draw the logical conclusion of a system that has denied him the right to speak, but he also recovers some degree of agency, by subtracting himself from a justice he rejects and preventing the authorities from putting him on display. A century after the events, Balīla is further silenced by the archival practices of a judicial institution that has preserved only part of his story. But if his words are lost, the symbolism of his acts still transpires from the records, and remains open to the historian’s interpretation.
4.6 Conclusion

At the close of this chapter dedicated to the last steps of the appeal, the cassation, and the execution, I would like to emphasize the three main points that the cases of Aḥmad, Sayyid, Kīlānī, Ḥaggāg, ‘Abd al-Ghaffār, Mikhīmar, and Muḥammad have revealed:

- the fact that the judicial system was conceived of, by the various actors and in very different ways, as a highly political institution;
- the multiple meanings that were then attached to the term “justice” and that derived from these conflicting perceptions;
- and finally, the creative manners by which the fallāḥīn on trial made use, until the very end of the procedure, of the craft of the petition-writers and the stage of the gallows to make their voices heard.

With regard to the political dimension of the mahākim ahliyya, the analysis of the archival corpus has unveiled the peasants’ attempts, notably through their countless petitions, to re-contextualize the cases for which they were tried within the intricate politics of the village; denounce the abuse, incompetence and corruption of the local authorities; and bring the judicial institution into their struggle with the community headmen, at a time when they had just been deprived of their say in the latter’s recruitment. But this research has also shown that, far from answering the fallāḥīn’s expectations, the justice professionals considered peasants’ trials as opportunities to launch into abstract pleadings around their relative stupidity/savagery, in a period when the magistrates’ main interest did not lay in an investigation of the injustice of the colonial situation at the local level, but rather in the intersection between the national/colonial politics and their own career advancement.

Within this context, the fallāḥīn’s awareness of the highly political nature of the judicial system did not prevent them, however, from claiming their rights of inheritance and property, and to a lesser extent, from expressing their resentment towards a growing sense of inequality before the law. In the process, the peasants would invoke notions of “traditional” justice such as the guarantee of one’s just share and the protection of the weak against oppression, but they would also reinvest these with an undeniable new force and a particular colonial connotation. While
the verdicts of the first instance judges sometimes betrayed an understanding of this conception of justice, those of the appeal counselors almost invariably reflected the idea that the institution should preserve the colonial status quo and that when stupid/savage *fallāhīn* were on the bench of the accused, it was no longer a question of justice, but rather one of mercy.

Finally and more importantly, the cases studied in this chapter have shed light on an unsuspected capacity of agency on the part of two of the most vulnerable categories of peasants involved in these trials: women from the defendants’ families, and men in the death row. Whether they are the transactions of 25 year old Khaḍra bint Riḍwān with the petition-writers or her performance in the courtroom before Yaḥyā Ibrāhīm Bey, the provocative declarations of 23 year old Mikhīmar ‘Abd al-Nabī al-Qāḍī on the gallows, or the dramatic suicide of 50 year old Muḥammad Ibrāhīm Balīla, all these examples have demonstrated that the illiterate *fallāhīn* – taken into a repressive colonial judicial system aimed at silencing, coercing and objectifying them through orality, writing and performance – were still able to use the same and other means to express themselves and try to resist. While Khaḍra did so “from within” by presenting a creative narrative that nonetheless abided by the rules of the genre, Mikhīmar proved able to subvert the system by reinterpreting both deaths (that of the victim of the crime and his own) within an alternative moral framework. As for Muḥammad, his suicide also represents a last attempt to escape, by preventing the colonial legal authorities from displaying through his public hanging their version of his story.
Conclusion

A “vernacular” culture of the law?

The main contribution of this dissertation probably lies in its insight into the fallāḥīn’s culture of the law. The original approach to the court records proposed here has indeed served to invalidate both the image of the illiterate – and hence necessarily law-illiterate – and immoral peasant popularized at the turn of the century in literary works and official reports, and the contemporary scholarly conception of fallāḥīn as the victims of the deception of modern law and of the illusion that it constitutes a superior and objective abstract principle. This study has shown more specifically how the peasants’ very participation in the performance of the law through lengthy legal procedures not only offered them the possibility to engage in an active learning process of the official rules of the system, but also ensured that they would directly experience its misperformances, contradictions, and other “cracks.” The analysis of the proceedings and petitions has also revealed how, in the course of these multifaceted personal experiences of the native courts and in a dialectical – though profoundly unequal – relationship with the (allegedly) high legal culture of the magistrates, the fallāḥīn on trial developed a vernacular culture of the law. To be sure, this dissertation has shown the extent to which the concepts of “low/high” or “popular/official” language and culture were ideological constructs. In line with the entire project, my intention in using the adjective “vernacular” here is therefore not to reify any socially constructed and rigid dichotomies, but rather to emphasize the extremely heterogeneous and deeply interactional nature of the peasants’ legal culture.615 As I initially oriented my search for the fallāḥīn’s “voices” not towards any kind of sacralized orality but towards the hybrid locus of the performance, I locate their culture of the law in a series of in-betweens: in-between petitions and folksongs, in-between orality/‘āmmīyya and writing/fuṣḥā, in-between sharī‘a-siyāsa and ahlīyya, and in-between adaptation and resistance.

615 This perspective finds its inspiration in the works of Barbara Yngvesson (Barbara Yngvesson, “Inventing Law in Local Settings: Rethinking Popular Legal Culture,” The Yale Law Journal 98, no. 8 (1989): 1689-1709), and Steven Wilf (Steven Wilf, Law’s Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America (New York: Cambridge University Press, 2010)).
As the examples of Ḥasan Jalabī, Aḥmad ‘Abd al-Ḥaqq Yūnis or Khaḍra bint Riḍwān have shown, the peasants’ legal culture was shaped in the marks of orality and the storytelling style of their written petitions, i.e. in the combination of āmmiyya and fuṣḥā, direct and reported speech, and lay and legal terminology that these documents comprised. More broadly, it was developed not only in a single interaction with a kātib, but rather in a multiplicity of transactions with a diversity of petition-writers whose styles and efficiencies were compared and assessed against one another. Finally, it was also constructed in the in-between that links the written version of the claims contained in the petitions to its oral counterpart occasionally given before the court at the judges’ request. Besides the petitions, the fallāḥīn’s culture of the law was also created through the heroization, in folksongs and oral poems, of figures criminalized by the colonial legal system; an equally hybrid process undoubtedly nourished by the reading aloud of the written press.

Furthermore, the material presented here has suggested the existence of a high degree of intermingling in the peasants’ legal culture between the procedures of sharī’a courts and those of the native courts. This is particularly true regarding the different rules of evidence in both systems. Thus, Ḥasan Jalabī took great care in systematically providing the names of two male eyewitnesses for the events preceding his brother’s murder reported in his first petition, while at the same time abiding by the new standards in use in the courts for the quotation of threats. As for Mikhīmar, the defendant in this lawsuit, he was initially convinced that the witnesses’ testimonies against him were invalid since they emanated from the victim’s direct relatives, but he eventually understood that this was not the case, and found himself constrained to complete his simple denial strategy with the provision of an alibi. Similarly, Kīlānī, although very familiar with the procedures of the native courts, insisted that the deposition of the ‘umda’s brother could not be taken into account since the latter had an illegitimate son registered with the qāḍī. Finally, in one of her petitions, Khaḍra mentioned the alleged public reading of a note from the muftī threatening with high fines the people who had lied under oath at the trial in the native court. I would argue that such a combination of fragmentary elements of knowledge from both procedures does not reflect so much confusion on the part of the fallāḥīn as the fundamental hybridity of a “secular” system that had kept for the first decade sharī’a rules of evidence for death sentences and that would retain to this day the obligation to request the muftī’s opinion before implementing the execution. In this sense, Jalabī’s, Mikhīmar’s, Kīlānī’s, and Khaḍra’s
allusions to *shari‘a* procedural norms echo the judge’s allusions to Islamic law in al-Nakkā‘ī’s case, with one crucial difference however: while the peasants’ mentions of the *shari‘a* mainly shed light on the considerable lowering of the evidence standards that characterized the native courts, the magistrate’s invocations of Islamic law allowed him to legitimize a system that led to a considerable increase in capital punishments.

The *fallāhīn*’s conceptions and practices of the law also seem to have oscillated between the *shari‘a*-siyāsa and the *ahliyya* systems, or rather between the invocation of “ancient” notions of justice through novel legal procedures and the assertion of “modern” rights combined with references to the just ruler’s responsibility. The long and complex legal battle between Aḥmad ‘Abd al-Ḥaqq Yūnis and the ‘umda of his village has revealed that whereas both *shari‘a* and native courts were simply referred to by the term *mahkama*, the latter were very clearly identified as being part of *al-ḥukūma*, the government or state. From within this perspective, peasants usually began their legal journey by conventionally exposing the grudges and lawsuits opposing them to their local “enemies” and requesting a thorough investigation of the judicial archives, thereby demonstrating a fine understanding of the new bureaucratic practices in use in the courts. At this early stage of the procedure, peasants both reframed notions of justice associated with the pre-colonial era and imbued them with new meaning, in a novel attempt to recontextualize their stories and ultimately bring the judiciary into their local conflicts. In a context of intensified power and social struggles in the villages, the law of the native courts was seen as a malleable tool that could be used, honestly or dishonestly, by all parties in order to protect or advance their interests. The painful realization – and/or confirmation – in the course of the trial that, in this contest, the odds were stacked against them would however lead the *fallāhīn* presenting petitions to adapt their strategies. At the end of the process, they would thus bring into play the ancient principle that justice constitutes the ultimate foundation of political legitimacy, alongside threats of divine punishment against the unjust ruler. While these references undeniably bear witness to the peasants’ increasing awareness of the necessity to speak not only the language of law, but also that of power, I nonetheless argue that the manner in which these notions were invoked suggests that something new was being played out.

Contrary to the administrative complaints that were merely meant to inform the “just ruler” of the misbehavior and power abuse of his local agents and to call on his magnanimity to interfere
in order to protect his weak but loyal subjects from oppression, the suits and petitions filed by the fallâḥîn in the courts asserted and claimed legally codified rights from the justice professionals. These rights were however not conceived of as superior and objective abstract principles brought by the British, but rather as entitlements that had initially been granted by the “just rulers” between 1830 and 1870 and that had eventually been encroached upon by the colonial state. Thus, for instance, Aḥmad ‘Abd al-Ḥaqq Yūnis’s call for the safeguard of his property rights can be said to find its origins in Saʿīd’s 1858 Land Law, and his claim to protection against the tyranny of the local authorities to stem from Mehmed ‘Alī’s 1830 qānūn al-filâḥa, a subsequent series of laws aimed at weakening the power of ‘umad and mashāyikh and passed by Saʿīd in the 1850s (including parts of the 1855 criminal code), and the electoral ordinances issued by Ismāʿīl at the turn of the 1870s. When in the wake of the British occupation, the colonial state began to undermine these entitlements – following notably the development of colonial capitalism and the adoption of the 1895 and 1898 ‘umda laws –, the pre-colonial principles of the recognition of one’s due share and the protection of the weak against oppression took the form of an assertive claim that none should be allowed to place oneself above “the law,” a law defined against the magistrates’ ambiguous notion of “legality.”

Finally, while Ḥasan’s, Aḥmad’s, Khaḍra’s, and Sayyid’s petitions were located in between adaptation and resistance to the political nature of the native courts from within, both ‘Abd al-Ḥāris’s interpretation of the murder he perpetrated and Mikhīmar’s reframing of his crime and his own hanging constituted an attempt to resist the moralizing dimension of the colonial legal system from without. As early as 1893, Mikhīmar’s proud confession of the murder of Ḥasan Jalabī’s brother already represented not only his assuming the role of avenger of the family’s honor that some relatives had assigned him, but also a sort of provocative challenge to a judicial system that had sentenced him to death for taking the law into his own hands, but had failed to prosecute the instigators of the murder. In addition by qualifying his hanging as a “celebration,” he creatively reframed his criminalization by the colonial state and promoted alternative notions of morality and justice. Two decades later, ‘Abd al-Ḥāris’s referring to the story of ‘Alī Bilāl as a source of inspiration and a framework of interpretation for his crime epitomized the pinnacle of this phenomenon. Then, at the eve of World War I, his recurrent mention of Bilāl’s “revolt” to justify a priori his violent move did not merely represent a subversive reappropriation of the
stock figure of the ghaffār-bandit. It also constituted, I argue, a reaction to the state’s hypocritical attempt at “moralizing” the law while keeping the protection of the colonial situation at the local level at the heart of its conception of justice.
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Appendices

Appendix 1:

Reference of the case:
al-niyāba al-‘umūmiyya raqam 452 li-sanat 1892 – Mikhīmar ‘Abd al-Nabī –

Public Prosecutor’s Office Number 452 for the year 1892 - Mikhīmar ‘Abd al-Nabī
Series: “i’dām” (death penalty) - Film: 14002 – Frames: 109-270

[Photo Frame 110]

Transcription of the second half of the page

[First page of the police report (maḥdar al-shurṭa) – Interrogation of Muḥammad ‘Abd al-Ḥayy ‘Alqa (one of the accused) – Interrogator and most probably kātib: the police superintendent of Talā (mulāḥiz būlīs talā) – March 17th 1892]

[Translation of the second half of the page]
البوليس المصري
مدينة...
قم...

(النص غير قابل للقراءة بشكل طبيعي.)
One of them: his name is Muḥammad ‘Abd al-Ḥayy ‘Alqa; his age is 27 [years old]; his profession is Quran reciter; born and residing in Kafr al-‘Ulwīyya.

He said that he was fetching his book *The Light of the Visions* that belongs to him from the Shaykh ‘Aql in his village, and on his return around a quarter of an hour after sunset, behind the wall in the direction of the west in the southern part of the village, he heard the crack of something like a hit with a short stick and something like that in the body of Muḥammad Shalabī while he was coming back from the fields. He immediately fell down, face to the ground, and I heard ‘Alī Hindāwī, his cousin, say: “the kid died, Mikhīmar, like that!” So when I heard him say that, I started running in the onion field that belongs to the Shaykh […] in the land of ‘Alī Qurmān in order to try to discover who had done that, [but] I did not find him, and I saw neither the one who hit, nor anyone else running in front of me. And when I did not find anyone, I came back again. And this is my saying, and I write my name with my handwriting.

The writer [of this text]: The poor

Muḥammad ‘Abd al-Ḥayy ‘Alqa
Appendix 2:

[Reference of the case:

*al-niyāba al-ʿumūmiyya raqam 452 li-sanat 1892 – Mīkhar MarʿAbd al-Nabī –

Public Prosecutor’s Office Number 452 for the year 1892 - Mīkhar MarʿAbd al-Nabī

Series: “iʿdām” (death penalty) - Film: 14002 – Frames: 109-270]

[Photo Frame 125]

[Transcription of the first half of the page]

[A page from the inquiry of the Juge d’Instruction (taḥqīq qāḍī al-taḥqīq) – Interrogation of the victim’s brother (Ḥasan Shalabī) by ʿAshmāwī Shukrī (qāḍī taḥqīq jināyāt al-minūfīyya) and Aḥmad al-Ṭaḥān (kātib), March 19th 1892]

[Translation of the first half of the page]
اجئ يا علي، واما مك كامن قليلاً

هي الدنيا الملائكة، كلها طرف توحي

فطولها يفرح وكيفي، بوجودها، فرسانها تقولها، قرار الإجابة

معلومين الدافع، وطريقه في نفسي الق لاما، انها كلامك، حضور

واي مطارد واحدها المد، لم تجده، دعاء دا، فا، حسب

ووداد، ولهما نحن نحن، وتناول بعضنا ادم، بعد цифر السيد،

مثلمية ناكيما، دفعتين جدًا، هم مرتاح، كر لا، شمس

العجوبية، النافذة بالكم، يرتدونها، بيديها، وهم النوراء، تنقذوا

فآلمةباب به، يدخل دورا، كاتب دوام، اذا، دراك اigion، أربع

رفيقنا رشده، بك، ودعا كان، نحن الهم، العبادي، ومعا، وحيدلاونا,

وبداية، انا ضمت، مكانة، سيدة، و أنا، هم، نحن،

فظلنفسي، كونه، محض، اذهاب، ماضي، فاشتي، واي، على، الاذهاب، بيج ما،

سيجرو، يلهم، رحم، شاهد، كلاب، من، رجل

اعتكوان في الناحية، برنا

الله، علمنا وعلمنا، من، علمنا، من، علمنا، من، علمنا

المسيح، من، الرسول، من، الرسول، من، الرسول، من، الرسول

وسامع، العليم، علمنا، علمنا، علمنا، علمنا، علمنا

انه لسرب، العزم، عمل، خلق، وقوم، راح، وحيد، وحيد، وحيد

واد، مصري، ما، نعوي، مشاهد، وافتب، ايهام، ومبعد

وهي، في هذه، في هذه، في هذه، في هذه، في هذه

هذا، دعوى، دعوى، دعوى، دعوى، دعوى

330
س أخبرنا عن كيفية وفاة أخيك محمد شلبي

ج في ليلة الأربع الماضي كنت قاعد مع أخواتي محمد و شلبي في دارنا بعد المغرب نتعشا وإذا بمحروس الجنزوري والسيد الجنزوري ينادوني عليا أريدت عليهما فقالا أن شلبي أخيك ضرب مخيم القاضي في الغيط أحد عصابته فاتأ لنا لان اخي شلبي موجود معنا واصرا رحنا واخوتي المذكورين على مندرة ابراهيم

افندى الخناني الفلاقدني اخبرني بما اخبرني به الشخصين المذكورين فأخي قال ان شلبي اخيك ضرب مخيم القاضي في الغيط اخذ عبايته فاتأ لنا لان اخي شلبي موجود معنا واصرا رحنا واخوتي المذكورين على مندرة ابراهيم

وانصرفنا بعد ذلك وكمسيلة في مندرة منتصر يونس فاتأ لنا توجهت هناك وجدتهم جارين كتابة اشعار عن هذه المسيلة في مندرة منتصر يونس فاتأ لنا توجهت هناك وجدتهم جارين كتابة اشعار عن هذه الحادثة في

بلاشاعر بلابتاع والله ان لم يحضر العباية تعلقنا فالقتلة فيها براجل فرر وقتها مخيم وفلها واجد الندوة ورسال سالمان وكني المغرب ليلة الخميس صار وفاة اخي و في ليلتها بسط الحاجة نظر مخيم القاضي و يونس اخيه وعبد الرحيم اخيه (متلدين في الغلة) تعلق علي القرماني قبل حصول القتل ( أي في وقت غروب الشمس) و القتل حصل بعد الغروب بربع ساعة

تلي جوابه وأصر عليه وتختم

قاضي (إمضاء) - (إمضاء) كاتب - شاهد (خطم)
Q.: Inform us of the manner in which your brother, Muḥammad Shalabī, died?

A.: Last Wednesday night, I was sitting with my brothers Muḥammad and Shalabī in our house after sunset. We were having dinner, when all of a sudden Maḥrūs al-Ganzūrī and al-Sayyid al-Ganzūrī called me. So, I answered them, and they said that Shalabī, your brother, hit Mikhīmar al-Qādī in the field and he took his ʿabāya [a cloak-like woolen wrap]. So, me, I told them that my brother Shalabī [was] there with me. They insisted. Me, I went with my brothers above-mentioned to the mandara [sort of communal house for the settling of disputes, but that belongs to a private individual] of Ibrāhīm Afandī al-Khinānī, and then the Afandī informed me of what the two above-mentioned persons had informed me. So my brother said that he had not done that. And at that moment, Mikhīmar and his father were present, and after that, we left. And in the morning, it came to our ears that they were writing a notification of this case to the police in the mandara of Muntaṣir Yūnis. So, me, I went there, and I found them writing a notification. So Mikhīmar’s uncle, the one who is called Hasanayn al-Qādī, said: “(Forget about the notification, forget about this stuff!) I swear by God that if he does not bring the ʿabāya that belongs to us back, then for each thread of it, [we will kill] a man.” Mikhīmar immediately confirmed, and said: “I swear by God that if the ʿabāya is not brought back at sunset, (I will turn Jalabī’s belly into a diffīyya [another kind of loose woolen cloak different from the ʿabāya].)” And at that moment, Ḥusayn al-Ganzūrī, Muḥammad ‘Umar, and Raslān Salimān were present. And at sunset, on Thursday night, my brother died. And that night, Yāsīn al-Ḥāgga saw Mikhīmar al-Qādī, and his brother Yūnis, and his brother ‘Abd al-Raḥīm, (huddled together in the crops) that belong to ‘Alī al-Qurmānī before the murder happened (that is to say at sunset), and the murder happened quarter of an hour after sunset.

His answer was read aloud [to him], he persisted in [his statements], and affixed his seal.

Witness (seal) – Court Clerk (signature) – Judge (signature)
Appendix 3:

[Reference of the case:]

*al-niyāba al-‘umūmiyya raqam 452 li-sanat 1892 – Mikhīmar ‘Abd al-Nabī –*

Public Prosecutor’s Office Number 452 for the year 1892 - Mikhīmar ‘Abd al-Nabī

Series: “*i‘dām*” (death penalty) - Film: 14002 – Frames: 109-270]

[Photo Frame 117]

[Transcription of the page]

[Petition #1]

[Translation of the page]
من أجل دعم الإجابة، نحتاج إلى مزيد من المعلومات.

بالإضافة إلى ذلك، يمكن استخدام هذه الخصائص في برمجيات التدريس والتدريب.

من خلال هذا النص، يمكن فهم التفاصيل المهمة والتعليمية بشكل أفضل.

السؤال: ما هو السبب الرئيسي لجليسة القلم؟

الإجابة: جليسة القلم تساعد على تحسين القراءة والكتابة، مما يزيد من التركيز والانضباط.

النص: "جليسة القلم هي كل ما يجعلنا نفكر بوضوح ودقة. إنها ركيزة أساسية في إعداد الطلاب للتعلم وتعزيز الوعي باللغة."
نيابة محكمة بنها الأهلية ريسها عزتلو افندم

انا الواقع ختمي أدناه حسن جلبي الجنزوري من ناحية كفر العلوي بمركز تلا منوفية افندم هو ان مرسي القاضي احد مشايخ الناحية بلدنا المذكورة أمر مخيمر ولد عبد النبي القاضي من الناحية بقتل محمد أخي و كذلك أمر محمد ابو علقة بقتل اخي المذكور وذلك مع مشاركة حسن علقة شيخ غفر الناحية حيث أمر اخيه محمد المذكور بمساعدة القاتل المذكور و أمر مرسي القاضي المذكور كان على يد حسين دويدار و الصاوي جعفر من الناحية وأما أمر حسن ابو علقة لأخيه و تشبيعه (؟) في مساعدة القاتل كان على يد عبد الحميد الهنداوي و منصور رضوان من الناحية وكذلك عبد النبي القاضي ضرب اولاده بالفجأة و حرضهم على قتل محمد جلبي و هو السداد على يد الصاوي جعفر و محمد دويدار علوي و ابو القنيني الجنزوري فبعد ذلك تربع مخيمر ولد عبد النبي القاضي و محمد ابو علقة الى محمد جلبي اخي ليلة الخميس الماضي و قتله مخيمر عما بمساعدة محمد ابو علقة المذكور بأمر مرسي القاضي شيخ الناحية و حسن ابو علقة شيخ غفر الناحية وأما حسن ابو علقة فإنه قال لي انه كان متوجا لقتل اخيه تسعة انفر في ذلك الليلة من عائلتنا نحن القاضي و ابو علقة فبعرفة حضرتكم يجري اللازم نحو طلبهم و حصر بادي هذه الواقعة بما الدقة كما

الأصول

حسن جلبي

(ختم)

92

490 عرايض
Public Prosecutor’s Office at the Native Tribunal of Bانها, his President His Excellency Afandî

I, who affixed my seal below, Ḥasan Jalabî al-Ganzūrî, from the region of Kafr al-‘Ulwî, district of Talâ, Minūfiyya. Afandî, [the object] is that Mursî al-Qâḍî, one of the shaykhs of the region of our abovementioned village, ordered Mikhîmar, the son of ‘Abd al-Nabî al-Qâḍî from the region, to kill Muḥammad, my brother. And he ordered as well Muḥammad Abû ‘Alqa to kill my abovementioned brother, and this, with the participation of Ḥasan ‘Alqa, the chief of the local guards, insofar as he [Ḥasan ‘Alqa] ordered his brother Muḥammad the abovementioned to help the abovementioned killer. The order of Mursî al-Qâḍî the abovementioned was witnessed by Husayn Duwaydâr and Al-Ṣâwî Ga’far from the region. As for Ḥasan Abû ‘Alqa’s order to his brother and his [violent incitement?] to help the killer, it was witnessed by ‘Abd al-Hamîd al-Hindâwî and Mansûr Ridwân from the region. ‘Abd al-Nabî al-Qâḍî also hit his children in the field, and incited them to kill Muḥammad Jalabî, [saying that] he would pay the price for it; and this was witnessed by Al-Ṣâwî Ga’far, Muḥammad Duwaydâr ‘Ulwî and Abî al-Qanînî al-Ganzûrî. Then, after that, Mikhîmar, ‘Abd al-Nabî al-Qâḍî’s son, and Muḥammad Abû ‘Alqa laid an ambush for Muḥammad Jalabî, my brother, last Thursday’s night, and Mikhîmar intentionally killed him with the help of Muḥammad Abû ‘Alqa the abovementioned, on the order of Mursî al-Qâḍî, shaykh of the region, and Hasan Abû ‘Alqa, the chief of the local guards. As for Hasan Abû ‘Alqa, he told me that nine people from our families, us, the al-Qâḍî(s) and the Abû ‘Alqa(s), were going to kill your brother that night. So, through your intermediary, the necessary must be done to [ensure] their summons and the investigation of the beginnings of this event with the utmost precision as it should be.

Ḥasan Jalabî

(seal)

92

490 Petitions
Appendix 4:

[Reference of the case:

al-niyāba al-‘umūmiyya raqam 452 li-sanat 1892 – Mikhīmar ‘Abd al-Nabī –

Public Prosecutor’s Office Number 452 for the year 1892 - Mikhīmar ‘Abd al-Nabī

Series: “i‘dām” (death penalty) - Film: 14002 – Frames: 109-270]

[Photo Frame 231]

[Transcription of the page]

[Petition #2]

[Translation of the page]
حكاية من الدخان الأحمر

لمفتي أحد جنود الرعي أي رجاء ينادي دموعاً تنبات سباب والمؤرخ الأفضل ملائمة
زيت المهسي في حين يشارك والدته يشارك في الإضاءة مهتماً بمشكلة بما في
ذلك جريمة خصبة.

دعا الرئيس الرازي بحثاً للإجابة على سؤاله:

ومحتها الفتح، ما حروفه؟...

حتى كلام الموت الذي سمعه على الشوق في تلميذ الدين المعتمد، مبتغٌ وسيلة
لمضلاحي الفهم الذي مرت.

وحينما تزوج الإيقاع، صافن في الامل الزرين، وقلبه في العالم لم بين ماهل
لم يتم صنع تمثال لأسنى فإنما المؤمن

فأدرك: نفياً لنا هذا ما أنفذه مسيحيون، إذ عانفوا وذرفوا

الحزن، ونجدها بلالاً، حتى يدرك من ينفث من القلوب، ونذكر

变幻

(9)

1889

نص

مع عيدي براكين

بكر بن محمد جمعه واسمه شمس الدين

18 يوليوز

مزولة سمحري

بكر بن محمد جمعه واسمه شمس الدين

18 يوليوز

مزولة سمحري
محكمة بنيا الادلبية الاهلية ريس عزتلو افندم

مقدمينه حسن جلبي و جلبي جلبي و الحرمتين امنة و بسيونية بنات جلبي و الحرمة امنة بنت القطب حعفر

زوجة المرحوم محمد جلبي جميعنا مزارعين قاطنين باحه كفر العلويه متوانية تعرض لعزمكم ما سيأتي

انه كان موجود ببلسة جنايات يوم السبت 7 ابريل سنة 87 قضية النيابة نمرة 92 سنة 474 مشتملة تهمة

مخيمر القاضي في قتل مورثنا المرحوم محمد جلبي عمدا مع سبق الأسرار و الترصد في 16 مارس سنة

92 وقد تأخرت تلك الدعوي أسبوع بناء في طلب المتهم المذكور

و حيث ان التهمة المذكورة مثبوتة كل الثبوت قبلي مخيمر القاضي المتهم من جملة وجه سنينها يوم

الجلسة المحددة للفضية المذكورة

و حيث أنه يجوز لنا الادعي بحق مدني قبل المتهم المذكور و نطلب من المحكمة ان تحكم لنا بملح مالية

جنبيه مصري على الأقل بصفة تعويض لنا بسبب فقدنا المتوفي

فليذا

نالتمس قبل طلبنا هذا واعتبارنا بصفة مدين حق مدني بصفتنا ورثة المتوفي و نطلب الحكم لنا بملح مالية

جنبيه مصري بصفة تعويض مع تقدير رسوم كالمه مشطوبة اندي افندم؟

بسيونية بنت جلبي - امنة بنت جلبي - جلبي جلبي (ختم) - حسن جلبي (ختم)

امنة بنت القطب حعفر
Native Tribunal of First Instance of Banhā, The President His Excellency Afandī

Presenting [this document]: Ḥasan Jalabī, Jalabī Jalabī, the ladies Āmina and Basyūniyya, daughters of Jalabī, and the lady Āmina, daughter of Al-Quṭb Ga‘far and wife of the deceased Muḥammad Jalabī, all farmers and residing in the region of Kafr al-‘Ulwīyya, Minūfiyya.

We present to your Excellency what will follow:

A criminal session was held on Saturday April 2nd 1892 for the case of the Public Prosecutor’s Office number 474 for the year 1892, [case] concerning the charge [raised against] Mikhīmar al-Qāḍī in the murder of our legator, the deceased Muḥammad Jalabī; [a murder committed] intentionally with premeditation and in ambush on March 16th 1892. This case has been delayed for a week, on the basis of the abovementioned accused’s request.

And whereas the abovementioned charge against Mikhīmar al-Qāḍī, the abovementioned accused, was proved by all evidence and from different perspectives, [as] we shall show on the day of the session set for the abovementioned case,

And whereas we are allowed to become plaintiffs in a civil suit against the abovementioned accused, we ask the tribunal to make a ruling in our favor [by allocating us] the minimum sum of one hundred Egyptian Pounds as compensation for the loss of the deceased.

For this reason,

We petition for our request [presented here] to be accepted, and for us to be considered as plaintiffs [in a civil suit] in our capacity as heirs of the deceased. And we ask for a ruling in our favor with [the allocation of] a sum of one hundred Egyptian Pounds as compensation with the cost estimate for {word crossed out} the prosecution. (Afandī ?)

Basyūniyya daughter of Jalabī – Āmina daughter of Jalabī – Jalabī Jalabī (seal) - Ḥasan Jalabī (seal)

Āmina daughter of Al-Quṭb Ga‘far
Appendix 5:

[Reference of the case:

al-niyāba al-‘umūmiyya raqam 452 li-sanat 1892 – Mikhīmar ʿAbd al-Nabī –

Public Prosecutor’s Office Number 452 for the year 1892 - Mikhīmar ʿAbd al-Nabī

Series: “i’dām” (death penalty) - Film: 14002 – Frames: 109-270]

[Photo Frame 213]

[Transcription of the page]

[Petition #3]

[Translation of the page]
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
قاضي تحقيق الجنايات بمحكمة بنها عزتلو أفندم،

مقدم هذه لعزتكم حسن جلبي و جلبي جلبي من اهالي و سكان ناحية كفر العلوي بمركز تلا منوفية ترضع لعزتكم انه قبل حصول قتل اخينا محمد جلبي بيوم كان حصل مشاجرة بينه و بين مخيمر القاضي المتهم في القضية و بعد المشاجرة ذهبوا امام المرسي القاضي عم القاتل للمخاصمة امامه لأنه شيخ بالناحية و بعد احاطته ثبت حضورهم فما كان من المرسي القاضي اعم القاتل المذكور لأنه قال اذا كان يحصل مشاجرة و يقتل قتيل يمكن انه متروحوش للحكومة يقصد بذلك اجبارنا بأنه يمكن قتل المقتول بدون حصول شيء هذا فضا ماعن انه قال لـ> يا ولد اننا موجود و تخاف من الناس دول روح اقتله و اننا السدادة وكان ذلك امام حسين دويدار و عبد الحميد الهنداوي و هم في صبحية يوم القتل بالغيط كان عبد النبي والد مخيمر يضرب ولده المذكور و يقول له و يا الله لا تزعل على الغيط حتى تاخد تارك و تقتله و بالفعل حصل القتل في غروب اليوم المذكور و كان ذلك امام المصاوي جعفر و ابو العتين خطاب الجميع من اهالي الناحية و حيث ان القتل لا يقع الا بناء عليه هذه التحريضات و بناء عليه نرجو صدور الامر باستحضار المرسي القاضي و عبد النبي بصفة متهمين في هذه القضية و تحقيق هذه الواقعة لاعتبارهم مشتركين في القتل مع المتهم الأول (افندم؟)

حسن جلبي (ختم) - جلبي جلبي (ختم)

552 عرضحلات سنة 92
Criminal inquiry judge of the Tribunal of Banhā, His Excellency Afandī

Presenting this [petition] to Your Excellency: Ḥasan Jalabī and Jalabī Jalabī, from the people and the inhabitants of the region of Kafr al-‘Ulwī, district of Talā, Minūfiyya.

We present to Your Excellency that one day before the murder of our brother Muḥammad Jalabī, a fight took place between him and Mikhīmar al-Qāḍī, the accused in the case. And after the fight, they went before Al-Mursī al-Qāḍī, the murderer’s uncle to initiate an official procedure of dispute before him since he is a shaykh in the region. And after he became acquainted with the case, they stayed, and it was not long before Al-Mursī al-Qāḍī, the uncle of the abovementioned murderer, said: “if a fight were to happen and someone was killed, maybe him, don’t go to the government [i.e. the authorities],” and thereby he wants to tell us that it is possible to kill someone without anything happening, in addition to the fact that he said: “Son! Don’t [...] I’m here, and you’re afraid of those people? Go kill him, and I’ll pay the price for it.” And this [happened] before Ḥusayn Duwaydār and ‘Abd al-Ḥamīd al-Hindāwī. And on the morning of the day of the murder [while] the latter were in the field, ‘Abd al-Nabī, Mikhīmar’s father, was hitting his abovementioned son and was telling him: “By God, don’t be angry for the field, until you take your revenge and kill him,” and indeed, the murder happened at sunset the abovementioned day. And [all] this happened before Al-Sāwī Ga’far and Abū al-‘Aynayn Khaṭṭāb, all people from the region. And whereas the murder occurred solely on the basis of these incitements.

On this basis, we request the issuing of a summons for Al-Mursī al-Qāḍī and ‘Abd al-Nabī, in their capacities as accused in this case, and we request the investigation of this event by considering them as accomplices in the murder with the main accused. (Afandī?)

Ḥasan Jalabī (seal) - Jalabī Jalabī (seal)

557 Petitions Year 92
Appendix 6:

[Reference of the case:

*al-niyāba al-‘umūmiyya raqam 452 li-sanat 1892 – Mikhīmar ‘Abd al-Nabī –*

Public Prosecutor’s Office Number 452 for the year 1892 - Mikhīmar ‘Abd al-Nabī

Series: “i’dām” (death penalty) - Film: 14002 – Frames: 109-270]

[Photos Frames 245 and 1/245]

[Transcription of the pages]

[Petition #4]

[Translation of the pages]
الوشيقة الأصلية تائفـة
۳۴۷

نوبت پیام دریاییٰ به چاپ گرفته، مصوبهٔ شورای عالی علم

بنا بر نسبت به نورا رستم یافته‌ها، ۱۳۵۷ خورشیدی
قام النائب العام عن حضرموت الخديوية بمحكمة طنطا الابتدائية الاهلية رئيس عزت لو افندم

رافعهذ البلاغ الموقع ختمه فيه حسن جلبي من ناحية العلاوية بدميطة تلال بمديرية المنوفية

اقدرما تجريي مخيم عبد النبي على قتل أخي محمد جلبي بواسطة اغراه وتحريسه من والده عبد النبي ومرسي القاضي احد مشايخ الناحية على قتل اخي بينما هو حاضراً من الغيط و هو مع ذلك مترصد و متبرص

وفعلا و سوس لمخيم المذكور الخناس وسوت له نفسه وكم لاحي في طريقه و ضربه بنوعه وقد أراضت الضربة إلى وقته و اعدهم الحياة و عن ذلك رفع هذا الأمر بهذا اللزوم قد تحدث له جلسة مخصصة

و بما أنه امر لتحريض و اغرائه مخيم و اشترك عبد النبي القاضي و مرسي القاضي قد رفع مني عنه البلاغ اللازم

ليابة محكمة بنها قبل لغوها

و حيث انه فضل عن كونه <من> شهود الاثرات انت بعيرات مؤداها ثبوت الاغراء و التحريض من عبد النبي هو

ابو العنين خطاب و الصاوي جعفر يقول عبد النبي لولدتهم مخيم ان تعبر داري انت و لا أحيك ما لم تقتل محمد اخي و عمله لأمره اجري قتله ثم القول من مرسي القاضي بالاغراء هم حسين دويدار و عبد الحميد هنداو قولا اقتله و

انا المسؤل

و حيث ان هذا الأمر يهمنا جداً و لذلك قد رفع مني الطلب >...< لنيابة محكمة بنها و مع ذلك فان اعلم ماذا جرى حتى

اصبحوا أولئك المحرضين ساجين في طغيانهم و حيث انه ضياع دمي أخي هداً و جعل قتله كالأشيء و على الخصوص عدم اكتراهم هذين الشخصين برهبة الحكومة امر لا تسحم به العدالة ولا تجيزه القوانين

و حيث ان قد >...< و سلطنة المذكورين و فقروا حملتنا ظروف الاحوال وقد سببت الضرورة لحضورية تارة اخرى خوفاً مما عساهم ان ينجم من افعالهم و سوء قصدهم سفك دمي اننا الآخر غيناً >...<

و حيث ان قانونا العادل فضي يوجب الامرين فيذك يجعل الذي مصطر في فعل الجناية و الامر ايضا

فذاك اطلب صدور أمر متكم بإجراء اللازم اصولاً لكبلا تبخس الحكومة الناس اشيائها و للعدل رجال قائمين

بواجباته خير قيام (افندم؟)

حسن جلبي (ختم) - 30 مايو 1892

1171 عرايض في (طنطا)
Office of the Public Prosecutor for His Majesty the Khedive at the Native Tribunal of First Instance of Ṭanṭā

The President His Excellency Afandī

Presenting this declaration: the one who affixed his seal to it, Ḥasan Jalabī from the region of Al-‘Alāwiyya, district of Talā, province of Minūfiyya, I am honoured to present what follows:

Afandī, when Mikhīmar ‘Abd al-Nabī dared to kill my brother Muḥammad Jalabī through the incitement and the provocation of his father ‘Abd al-Nabī and of Mursī al-Qāḍī one of the Shaykhs of the region; incitement to kill my brother while he was coming back from the field, and with that [while] he [Mikhīmar] was positioned in ambush,

And indeed the devil tempted Mikhīmar, and he let himself be seduced, and he positioned himself in ambush for my brother on his way, and he hit him with a nabbūt [long and thick stick]. And the strike led to his death and to the annihilation of his life. And this case has been raised as it should be [before the competent authorities], and a special session [of the tribunal] has been set for it,

And given the order of provocation and incitement [received by] Mikhīmar, and the participation of ‘Abd al-Nabī al-Qāḍī and Mursī al-Qāḍī, the necessary declaration [on this topic] has been submitted by myself to the Public Prosecutor’s Office at the Banhā Tribunal before its suppression,

And whereas thanks to the existence [of this declaration], the witnesses for the prosecution mentioned expressions the meaning of which confirms the incitement and the provocation of ‘Abd al-Nabī: Abū al-‘Aynayn Khaṭṭāb and Al-Ṣāwī Ga’far witnessed the [following] words from ‘Abd al-Nabī to his son Mikhīmar: “Don’t enter my house, neither you, nor your brother, as long as you haven’t killed Muḥammad my brother,” and pursuant to this order his murder was perpetrated; then Ḥusayn Duwaydār and ‘Abd al-Ḥamīd Hindāwī [witnessed] words of incitement from Mursī al-Qāḍī, saying: “Kill him, and I am responsible [for it].”

And whereas this case is very important to us, and that is why a request on this topic […] has been submitted by myself to the Public Prosecutor’s Office of the Banhā Tribunal, and I know
what is happening, and even that these instigators swim in their tyranny; and whereas my blood, my brother, has been lost in vain, and that [this] made his murder insignificant; particularly [because of] the absence of fear and respect of the government [i.e. the authorities] on the part of these two people, something that justice does not permit, and that laws do not allow.

And whereas [...] and the power of the abovementioned people and our poverty; the circumstances of the situation have carried us, and have made my presence necessary a second time, for fear of what might result from their actions and their evil intentions, [as] the shedding of my blood, me, the other unjustly [...],

And whereas our just laws have determined, or rather made compulsory, [the sentencing] [...] [both] of the one who participates in the perpetration of a crime and the one who has ordered it.

For all these reasons, I request that you issue an order to implement all that is necessary so that the government does not neglect the affairs of the people. And justice has its men who perform their duty, and for them [is reserved] the best existence. (Afandî?)

 Hasan Jalabî (seal) – May 30th 1892

1171 Petitions in [Ṭanṭā]
Appendix 7:

[Reference of the case: ]

al-niyāba al-‘umūmiyya raqam 217 li-sanat 1908 – ‘Āmir Muḥammad Badawī wa ākhar –
Public Prosecutor’s Office Number 217 for the year 1908 – ‘Āmir Muḥammad Badawī and other
Series: “i’dām” (death penalty) - Film: 12/14003 – Frames: 16712-16830]

[Photo Frames 16751-16757]

[Identification and judicial antecedent forms of ‘Āmir Muḥammad Badawī and Qandīl Ibrāhīm al-Zuhayrī]
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**النهاية**

قد أخذت هذه الأوراق بمرتكب 2673 سنة 1906.
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الوثيقة الأصلية تائف
الوضيحة الأصلية تالفة

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**الشكاوى**

1. الانتهاكات المعنوية
2. الانتهاكات الدينية
3. الانتهاكات الاجتماعية

**التفاصيل**

4. معلومات حول السيرة الذاتية
5. معلومات عن العائلة
6. معلومات عن الإducation

**ال değiştir**

7. التغييرات اللاحقة
8. التغييرات الشاملة
9. التغييرات المحددة

**العوامل**

10. معلومات عن العوامل المتصالبة
11. معلومات عن العوامل الأخرى
12. معلومات عن العوامل الخاصة

**الاستنتاج**

13. الاستنتاج العام
14. الاستنتاج الفردي
15. الاستنتاج الفردي العكسي

**الإشعار**

16. الإشعار العام
17. الإشعار الفردي
18. الإشعار الفردي العكسي

**التوقيع**

19. التوقيع
20. التوقيع الفردي
21. التوقيع الفردي العكسي
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** примечание:** نحن لا ننتج محتوى من الصور المطبوعة أو المخطوطة. إذا كنت بحاجة إلى مساعدة حول شيء آخر، فحول إلى السؤال.
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(الرقم [16756])

(البيانات [فيما وراءه])

(التحليل [فيما وراءه])

(ال примечания [فيما وراءه])

(ال примечания [فيما وراءه])
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(مَوَاذِب المَتَمَّم المَعَازِمَة البَلَيْسَ)
Appendix 8:

**[Reference of the case:]**

al-niyāba al-‘umūmiyya raqam 343 li-sanat 1912 – ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād wa ākhar

Public Prosecutor’s Office Number 343 for the year 1912 – ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād and other

Series: “iʿdām” (death penalty) - Film: 2/14004 – Frames: 3176-3343

[Photo Frames 3235-3238; 3239-3242; 3243-3246]

[Identification and judicial antecedent forms of the three brothers ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād, Muḥammad ‘Aṭiyya Ḥammād, and ‘Abd al-‘Aẓīm ‘Aṭiyya Ḥammād]
قدمت علامة بدنية مميزة موجودة على 
(حلقة الوسطى والظهر الصدر)
(الذراع اليمنى والصدر)
(الرقبة)
(حذاء حزام) 
قد أخذت هذه الأوصاف بمجرد ما في 
1916
(المركز قسم السواقي)
قد كشف عن سواقي صاحب هذه الورقة، فهو 
جراح بالورق بالقرأة في 
1914
(المركز قسم السواقي)
الوشيقة الأصلية تائفة

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ملاحظات:
- يجب تقديم الأدلة المطلوبة للتحقق من الهوية والإقامة.
- فحص المستندات المقدمة بواسطة السلطات المختصة.
- التسجيل غير مكتمل.

التوقيع:
[توقيع المشرف]
الوثيقة الأصلية تالفة

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**توضيح**

1. تؤثر العلامات الحفظية على الحالة المرضية بالحبر الأحمر فقط.
2. كأنه ملامسًا من قبل النص الفعلي في قانون الولاء.
3. من السنبل تكون شخصية النمط.
4. في حالة الشك في النصوص، يجب أن يكون النص الإلزامي.

ـ (198) "اسم النص الإلزامي".

**اللواء**

قائمة المدن، بناء مقاطعة المدن، مجهزة ملتزمة بـ (198) "اسم النص الإلزامي".


- **نص**

~~~
ف قد أخذت هذه الأداة إبتداءًا في 15 غد السنه سنة 191٤، وإلى هذا اليوم.

(مراجع: مراسيم باللغة)...

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**ملاحظة**

- **التمديد**

التمديد بالنص الذي يشير إلى الوضعية في القانون رقم 74.
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IV. - Poltrone

V. - Etre

VI. - Infant du corps
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الإسم: محمد علي
العنوان: مكتب التموين
الحدث: إلغاء الرخصة
التاريخ: 2023/01/01
السبب: عدم الالتزام

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**Remarques**

- Numéro 3246
- N° rec. 27
- N°新生儿 27
- IV. - Police
- V. - Docteur
- VI. - Restant du corps
Appendix 9:


[Drawing pages I-VIII]
Appendix 10:

[Reference of the case:

*al-niyāba al-‘umūmiyya raqam 576 li-sanat 1900 – Maḥmūd Muḥammad Ma‘rūf –

Public Prosecutor’s Office Number 576 for the year 1900 - Maḥmūd Muḥammad Ma‘rūf

Series: “*i‘dām*” (death penalty) - Film: 7/14002 – Frames: 11306-11380]

[Photo Frames 11333-11335]

[Transcription]

[First interrogation of Muḥammad Ma‘rūf (father of both victim and accused) – Interrogator (and most probably *kātib*): Muḥammad ‘Allām, Representative of the Public Prosecutor’s Office in Shibīn (*wakīl al-nīyābat bi-Shibīn*) – October 10th 1900]
س: أما تعرف بزعل بين محمود وبين مبارك.

ج: مبارك كانت في بعض الأحيان تقول لي الولد محمد بيخاف من اخوه محمود قوي حتى أنه بعض مرات لما ينظره ينتظر في وسط فاقول لها يا مره ده اخوه.

س: أما نظرت انت نفسك شيء في ذلك.

ج: بعض مرات كنت أكون قاعد في الديار ويثبض الولد طشف من برة كنت أله عمي الذي ضربه في الولد.

س: ولاي سبب كان يضربه.

ج: معرفش اه مرات كان يضربه.

س: الم تقل لك مبارك أن محمود كان بيصص لها.

ج: أنا لما حضرت من السفر بقي احكى لي عن السبب الذي يوجب للفلاح قتل اخوه فقالت لي أن محمود حضر من برة وقت نوم امه خضرة في القاعة الكبيرة وفتح القاعة ودخل عليها دي مبارك فسألته عزم هو فقال لنا أن محمود وقالت له عايز ايه وقال لها ولا حاجة للفلاح دي الواحد ماينطق فيها فقالت له بابتي انت حاجي دلوقتي في الليل ليه مناور ايه وبدأ يحس عليها فقالت اختشى ياولد انا زي أمك الا والمرة خضرة اللي في القاعة قالت له يا محمود ومبارك قالت اطلع بابتي روح في القاعة اللي نتام فيها عيب فطلع وراح على خضرة.

س: وما هو سير محمود ولدك.

ج: أنا ففي مدة العيد توجهت الشرقية وتركته عند أوائله لأن له عادة يطفش مني ويخذ بالثلاثة أو أربعة أشهر عند أوائله وما عدت من الشرقية قال لي ولدي الكبير السيد يا ابي احنا محتنين لنفر شغل معا نروج اجيب أخى من عند أوائله فقلت له بابتي أنا مش عاوزه ده ابي حرار وسيره بطل لما ببحض وبرمومين يفعد عندنا بيديق الولد محمد ولا يطاوعني وعند عودتي وجدته في الديار وكل ما اقل له على شي لا يعمله فانتهبت بابتي لا أكلمه.

س: وهل تفكر أنه قتل وصدي محمد عمدا.

ج: دي حاجة ظاهرة لكل الناس وأفعاله السابقة تخبر عنه.

تمت اقواله واصير عليها وتحتم.
[Translation]

We summoned Muḥammad Ma'rūf the father of Muḥammad the victim. We asked him and he said that his name is as mentioned, his profession is “peasant” and his age is 55 years old, from Kafr al-Shaykh Shiḥāta

He took the oath

Q.: You were absent for how many days?
A.: I was absent [he corrected] I left on a Tuesday and I returned on a Monday at night

Q.: What did you know regarding the death of your son Muḥammad?
A.: I have heard that Muḥammad was wandering with his brother Maḥmūd in the fields and that he died. And when they found him, they saw in his neck [what was] probably the blow of an axe next to his ear and a blow here on his side.

Q.: Haven’t you heard about who did this to him?
A.: They say Maḥmūd.

Q.: When you were in the village did the small boy use to wander with Maḥmūd?
A.: He used to wander with Ḥammūda.

Q.: Has he ever wandered alone with Maḥmūd?
A.: No.

Q.: Don’t you know of any anger between Maḥmūd and Mubāraka?
A.: Mubāraka used to tell me occasionally that the boy Muḥammad is very much afraid of his brother Maḥmūd, to the extent that sometimes when he sees him coming, he sits amongst [us], and I [would] tell her: “woman, it’s his brother.”

Q.: Haven’t you seen any of this yourself?
A.: Sometimes I was sitting in the house and the boy [would] come crying from outside. So I [would] ask him who hit him, and he [would] tell me Maḥmūd. And I used to talk to Maḥmūd many times about his beating of the boy.

Q.: For what reason was he hitting him?

A.: I don't know. Some times, he [would] listen to my word, and stay away from him for a month; and other times he [would] ignore me when I talk to him and insult him.

Q.: Didn't Mubāraka tell you that Maḥmūd was harassing her?

A.: Me, when I came back from the trip, [I asked her to] tell me about the reason that leads a person to kill his brother. She told me that, when his mother Khaḍra was asleep, Maḥmūd came from outside into the big hall, opened the hall and he entered while she (i.e. Mubāraka) was in. So, she asked who it was, and he said: “it’s me, Maḥmūd.” So, she told him: “what do you want?,” and he told her: “nothing, this whole [in the wall], wouldn't someone jump through it?” So, she told him: “My son, why are you coming now at night? And what whole are you talking about?” And he extended his hand, and he groped her. So, she told him: “You should feel ashamed, boy! I am like your mother!” And it didn’t take long before the woman Khaḍra who was in the [other] hall told him: “Maḥmūd!” And Mubāraka said: “Get out, my son. Go to the hall in which you sleep. It’s a shame.” So, he got out and went to Khaḍra.

Q.: What is the way of life of your son Maḥmūd?

A.: In the period of the Major Feast, I went to the province of Sharqiyya, and left him at his uncles’ place, because he used to run away from me and to stay for three or four months at his uncles’ place. And when I came back from Sharqiyya, my eldest son, al-Sayyid, told me: “My father, we need someone to work with us. I go and bring my brother from his uncles’ place.” So, I told him: “My son, I don’t want him. He is a bastard, and his way of life is indecent. When he comes for a couple of days and stays at our place, he annoys the boy Muḥammad and doesn’t obey me.” And upon my return, I found him in the house and whenever I tell him about something, he doesn’t do it, so I stopped talking to him.

Q.: Do you think that he killed your son Muḥammad intentionally?

A.: This is something obvious to all, and his previous deeds speak about him.

His statements ended, he persisted in them, and affixed his seal.
Appendix 11:

[Reference of the case:

*al-nīyāba al-ʿumīmiyya raqam 576 li-sanat 1900 – Maḥmūd Muḥammad Maʿrūf –*

Public Prosecutor’s Office Number 576 for the year 1900 - Maḥmūd Muḥammad Maʿrūf

Series: “*iʿdām*” (death penalty) - Film: 7/14002 – Frames: 11306-11380]

[Photo Frames 11345-11346]

[Transcription]

[Act of Indictment against Maḥmūd Maʿrūf for the intentional murder of his brother Muḥammad, perpetrated with premeditation and in ambush – Document written by *al-nāʿib li-niyyābat Shibīn* – October 18th 1900]

ورقة اتهام

من قضية النيابة نمرة 176 جنايات تلا المشتملة تهمة محمود معروف عمدا معسبق

الارسال والترصد والتريص له، يوم 7 اكتوبر سنة 900 بكفر الشيخ شحاتة بواسطة كتم نفسه في الماء بعد ضربه

وقائع الدعوى

لمحمد معروف الكبير عدة من الزوجات ومن الأولاد ومن بين أولاده ولد شقي سيء السمعة غير مطيع لأوامر والده

لدرجة ان والده المذكور كان ان يسقطه في النهاية فعلا من عدد أولاده وهو ليس من محمود معروف المتهم اليوم

فيضسه بال💼 واعتنى بخصره وهذا المقتول فكان كلما وقعت نظره عليه ينهره

ويضسه حتى استلقت معامته له انظار كل عائلة والده من كبير لصغير واستوجب زجر والده له على هذا الفعل

واستلزم أن كل ما كان يراه الولد الصغير يفر منه ويضايق ولم يقتصر محمود المتهم المذكور على ذلك بل ترقي

إلى ما هو ادنى من الاعمال البهيمية المحضة فقد انتهي فرصة تغيب والده عن البلد في الليلة السابقة على يوم ارتكابه

هذه الجريمة القطعية وحاول اتيان احدى زوجات والده الحزينة مباركة والدة المقتول فلم يستطيع لذلك سبيلا من جهة

لمعارضتها وزجرها له ومن جهة أخرى لمباغته من زوجة اخرى خضرت التي احسته البالامر ونادت عليه من

قاعة مباركة فكم في صدره السوء لها لعدم حصوله على غرضه منها وفي الصباح على غير العادة قال واظف ابنها

نومه ونهره وعلى غير العادة استصحابه الى الغيط ومعهما ماهية للعائلة وعلى غير العادة توجه الولد والماسية

المذكورين لغيط غير الغيط المعتاد وجود المواشي فيه وبالجملة اخذة بحالة لم ترضي والدته التي اتبعته بالإكراه في

الطريق منفرطة الوفاء على ولدها بسبب هذه المعاملة ولما وصل إلى حيث يريد لم يتاخر عن تنفيذ تصميمه فبعد أن
عذب أخاه بالضرب وغيره القاه في المسقاة وبقي قابضا عليه حتى مات غرقا. ولما تحقق بعد مدة من وفاته عمد إلى دفنها وخافا أمره وفعلا دفنه في الغيط. وعند عودته في المساء للبلد حاول أن يوهم رجوعه قبل ولكن ما ليه الخبر حتى اكتشف نفسه مع التدقق عليه دل على محل ووجود الجثة. وتبتين من الكشف عليها أن الوفاة باسكتفسيا الغرق فضلا عن أثار الضرب. وعادا أولا انه غرق ثم ترقى فقال أنه ضربه بالكف وتركه ونزل الغيط. وعند عودته وجد غرق ثم ترقى بعد ذلك إلى القول بأنه ضربه وزقه فوقع في الماء فمات ثم انتهى وقال بالحقيقة السابقة. هذه هي وقائع الدعوى.

أما الأدلة فهي محصورة في الاوجه الآتي:

أولا: الكشف الطبي الذي أثبت أن الوفاة باسكتفسيا الغرق.

ثانيا: أعتراف المتهم نفسه. اعتبر نفسه يعتبر بائولا بالنيابة بقتله. اتجه عمدا للالقائه له في المسقط واستمراره على وضع يده حتى فارقت روحه (...).

ثالثا: شهادة الزوجتين وحمودة وعلى الخصوص والدة المقتول التي (...). سبيل أصرار المتهم وتربيسه بقتل أخيه مما اتاه مع المذكورة في ليلة القتل ومن توجهه باكرا بخلاف السيرة وايقاظه لاحيته وتهوره قبل الخروج وخروجه دون أحد من باقي الأولاد على خلاف السيرة أيضا توجهه مع خيفر غياب الضرب في الغيط التي توجهت إليه باقي مواساة العائلة مع المتواين على السروح بها مع كل هذه الظروف بالطريقة التي اعتبر بها المتهم اخيرا.

رابعا: شهادة والد المتهم. والفتيل من حيث سوء سيرة المتهم وسوء معاملته للمقتول لنوع خصوصي

بناء عليه

تطلب النيابة العمومية من محكمة الجنايات التي ستستمع بمحاكمة طنطا (....) يوم الأربعاء 7 نوفمبر سنة 1900 محاكمة المتهم بالمادة 208 من قانون العقوبات بعد سماع شهادة الحرمة مباركة والدة الفتيل والحرمة خضرة وحمودة معروف ومحمد معروف الشهود.

ختم: النائب لنيابة شبين
Act of indictment

In the case of the Public Prosecutor’s Office Number 176 of the crimes of Talā against Maḥmūd Maʿrūf, charged with the murder of his brother, Muḥammad Maʿrūf; a crime perpetrated intentionally with premeditation and in ambush on October 7th, 1900 in Kafr al-Shaykh Shiḥāta by means of suffocating him in water after beating him.

The facts of the case:

Muḥammad Maʿrūf senior has several wives and children. Among the latter is an evil child of bad reputation who does not obey his father’s orders to the extent that his aforementioned father was about to disown him or actually disowned him from among his children. His name is Maḥmūd Maʿrūf, and he is the accused today. This accused made (...) humiliation and torture of a little brother of his from another wife, and the latter is the victim. Whenever his eyes fell on him, he used to scold him and hit him to the extent that his treatment of [his little brother] attracted the attention of the whole family of his father, from old to young, and made it necessary for his father to reprimand him for this deeds. And this [also] led to the fact every time the small boy saw him, he would run away from him and fear him. But Maḥmūd, the above-mentioned accused, did not limit himself to that, but went further to what is lower than the acts of pure bestiality. So, he took the opportunity of his father’s absence from the village the night preceding the day when he committed this horrible crime, and tried to have intercourse with one of his father’s wives, Mubāraka the victim’s mother. But he was not able to do that, first because of her opposition and her reprimanding him, and second because the other wife of his father, Khaḍrā, who had sensed the matter, surprised him and called him out of Mubāraka’s room. So, he concealed in his heart the bad [feelings he felt towards her] for not getting what he desired from her. In the morning, out of the usual, he got up, woke her son up from his sleep, and insulted him. And out of the usual, he took him to the field along with the family’s cattle. And out of the usual, he headed along with the boy and the cattle to a field that was not the one in which the cattle would usually be. Overall, he took him in a manner that did not please his mother, who had followed him with the food on the way broken hearted for her son because of such a treatment. When he arrived to where he wanted, he did not delay the implementation of
what he had planned. After torturing his brother by beating him among other things, he threw him in the irrigation canal, and kept holding him until he died by drowning. When after a while he made sure of his death, he planned to bury him and hide his act. And indeed, he did bury him in the field. When he returned to the village in the evening, he tried to make people believe that [the boy] had come back before, but it did not long before the news was disclosed. After being pressured, he himself guided [the authorities] to the place of the corpse. The examination of [the corpse] showed that the death was [caused] by the asphyxia of the drowning, in addition to the marks of the beating. He first claimed that [the boy] had drowned. Then, he went further by saying that he had hit him with the palm of the hand, had left him, had gone down to the field, and that when he had come back, he had found him drowned. Then, he went even further by saying that he had beat him and pushed him, and that hence he fell in the water and died. Then, he finished by saying that the truth he had previously expressed actually contained the facts of the case.

As for the evidence it is listed in the following elements:

First: The forensic examination that established that the death was [caused] by the asphyxia of drowning

Second: The confession of the accused himself, finally, in the public prosecutor’s office; confession that he had intentionally killed his brother by throwing him in the irrigation canal and keeping his hand on him until his soul departed (...)

Third: The testimony of the two wives and Hammūda, and specially the mother of the victim who (...) the premeditation of the accused and his ambushing in the murder of his brother, and what he committed with the [woman] above-mentioned the night of the murder, and the fact that he got up early out of the usual, that he woke his brother up and insulted him before going out, that he went out with him [but] without anyone from the rest of the boys out of the usual as well, and that he went with him to a field different from the one to which the rest of the family’s cattle would go with those who used to graze it; with all these circumstances in the way the accused finally confessed
Fourth: The testimony of the accused’s and the victim’s father regarding the bad way of life of the accused and his mistreatment of the victim in particular

Based on this:

The public prosecutor’s office requests from the criminal court which will be held in the tribunal of Ṭanṭā (…) on Wednesday, November 7th, 1900, the trial of the accused according to the article number 208 of the Penal Code, [and] after hearing the testimony of Mubāraka, the victim’s mother, and Khaḍrā, Ḥammūda Ma‘rūf and Muḥammad Ma‘rūf, the witnesses.

Seal: The Deputy Prosecutor in Shibīn
Appendix 12:

[Reference of the case:]

al-niyāba al-ʻumūmiyya raqam 576 li-sanat 1900 – Maḥmūd Muḥammad Maʻrūf –
Public Prosecutor’s Office Number 576 for the year 1900 - Maḥmūd Muḥammad Maʻrūf
Series: “i’dām” (death penalty) - Film: 7/14002 – Frames: 11306-11380]

[Photo Frames 11365; 11368]

[Transcription]

[Judgment issued by the Native Tribunal of Țanṭā (first instance) against Muḥammad Maʻrūf on November 14th 1900]

بجلسة الجنايات المنعقدة علنا بسري النيابة في يوم الأربعاء 14 نوفمبر سنة 1900 - 21 رجب 318

تحت رئاسة حضرة أحمد بك حلمي رئيس المحكمة

وحضور حضارات أحمد افندي حمدي ومحمود افندي توفيق قضاة

وحضرة محمد افندي شكيب وكيل النيابة وحمحمد افندي فوزي كاتب المحكمة

أصدرت الحكم الآتي

في قضية النيابة نمرة 576 جنایة تلا الواردة بالجديد سنة 1900 نمرة 149

ضـمـ

محمود معروف فلاح مولود ومقيم بكفر الشيخ شحاتة 20 سنة

بعد سماع طلبات النيابة واقوال المتهم والمحامي عنه وسماع شهادة الشهود والاطلاع على أوراق القضية والمداولات قانونا
حيث ان النيابة العمومية اقامت الدعوى على محمود معروف وطلبت معاقبته بمقتضى المادة 208 من قانون العقوبات نظراً لاقادمه على قتل اخه محمد معروف عمداً مع سبق الاصرار والترصد والتربص في يوم 7 أكتوبر سنة 1900 بناحية كفر الشيخ شحاتة بواسطة كتم نفسه في الماء بعد ضربه.

وحيث ان المتهم قال أمام المحكمة انه ترك أخاه عند المواشي ولمه عاد وجده يلعب في المياه فضربه بالكف ووقع في المياه ولم يخرج منه وجدته واما المحامى على المتهم المذكور طلب من المحكمة اعتبار الواقعة قتل خطأ ينطبق على المادة 216 من قانون العقوبات واحتياطي اعتبار الواقعة المنسوبة إلى المتهم بغير سبق إصرار وذلك للأسباب التي أبديها وذكرت بمحضر الجلسة.

وحيث انه تبين من التحقيقات التي حصلت في هذه القضية أن محمد معروف الكبير له عدة زوجات وله منهم عدة أولاد من بينهم المتهم محمود معروف واشتهى هذا الولد بسيء سلوكه وبخروجه عن طاعة أبيه حتى كاد يسقطه من عداد أولاده ومن ضمن ما اعتاد عليه الولد كراهية إخوته وهو المقتول بحيث كان دائما يضر به وينهره أبينا وجدته وانتهت الحال بالمقتل أنه بمجرد ما كان يرى أخاه محمود معروف يدخل المنزل يختفي من أمامه ويلتبي إلى امه لتحميه من شره ومن سوء معاملته به واتفق أن محمد معروف الكبير تغيب عن المنزل في أشيال صحيحة له في الغيوم فانتزى المتهم فرصة غيابه ودخل ليلا في قاعة أم القتيل التي هي زوجة أبيه واتخذ قرودها عن نفسها ولكن لم يرى منها إلا الأباء المطلق فخرج من القاعة لممارستها من جهة ومن جهة أخرى لخوفه من زوجة أبيه الثانية الحزينة خصيرة التي لما استشعرت غيابه عن محل نومه نادت عليه ولمه خاب سعي المتهم فيما كان يبغيه بوالدة القتيل اشد عند حب الانتقام وفعل لما قام في الصباح نبه على أخيه حمودة معروف بنأخذ الجمل والجاموس ويسرح في غياب الدهر وهو سيأخذ أخاه الصغير محمد والثور يذهب إلى غياب القطن الكائن في جهة أخرى متباعدة عن الغاط الأول فاعتراض عليه حمودة قائلا اعطني محمد لا يعطى العمل والجاموس واتن يكون معك الثور فقط فما كان من المتهم إلا أنه نبه عليه بتنفيذ ما أمره به وفعلاً اخذ حمودة الجمل والجاموس وذهب بهما إلى غياب الدهر واما المتهم فأخذه أخاه حمودة الصغير والثور وذهب بهما إلى الجملة المنزرع قسطا ولما وجد نفسه مطلق اليدين مع أخيه الصغير هجم عليه وضربه ثم قبض عليه وادخله في مياة المفروض الكائنة بالقرب من غياب القطن وبقي ضاغطا عليه تحت الماء حتى فارقت روحه الحياة وتم بمثل هذه الكيفية ما كان مصمما عليه من قبل حيث اراح نظره من كان يبغيه ثم انتهى أيضا من ام ذلك الولد التي ابتت ان تسلم نفسها ليقضي شهواته البهيمية.

وبعد ذلك اخذ جثة اخاه القتيل ودفنتها بالغياب لييفخى جريمته.
فلهذه الأسباب

وبعد الإطلاع على المواد 208 من قانون العقوبات و 207 ، من قانون تحقيق الجنايات الآتي نصها الأولى كل من عمد قتل نفسه عمدا مع سبق الاتجار على ذلك أو الترصد يعاقب بالقتل بحسب الأصول المقررة في هذا القانون.

الثانية يجب على المحكمة في مواد الجنايات التي تستوجب الحكم بالقتل على حسب الشريعة الإسلامية الغراء أن تستفتح قبض الحكم مفتي الهيئة الواقعة فيها.

الثالثة ويجب عليها لذلك أن ترسل إلى المفتى أوراق الدعوى ويلزم ردها إليها في ظرف ثمانية أيام بالأكثر مصحوبة برأيه.

حكمت المحكمة حضوريا بالإعدام شنقا على محمود شناوي المتهم في هذه القضية وأمرت بأن يكون التنفيذ في بكفر الشيخ وكيل ورفعت المصاريف على جانب الحكومة.

ختم: رئيس المحكمة

[Translation]

In the criminal session [that was] held publicly in the Palace of the Public Prosecutor’s Office on Wednesday, November 14th, 1900 - Ragab 21th, 318

Under the presidency of His Excellency Aḥmad Bey Ḥilmī, the President of the Court

And the presence of Their Excellencies Aḥmad Afandī Ḥamdī and Maḥmūd Afandī Tawfīq, judges

And His Excellency Muḥammad Afandā Shakīb, deputy prosecutor, and Muḥammad Afandī Fawzī, the court clerk

The following ruling was issued:
In the case of the Public Prosecutor’s Office Number 576 – crimes of Talā – present in the register [for] the year 1900 [with the] number 149

Against

Maḥmūd Maʿrūf, peasant born and residing in Kafr al-Shaykh Shiḥāta, 20 years old

After hearing the demands of the prosecution, the statements of the accused and of his lawyer and [after] hearing the testimonies of the witnesses and [after] reviewing the file of the case and [after] the deliberation according to the law

Whereas the Public Prosecution filed a case against Maḥmūd Maʿrūf, and demanded that he be punished according to the article 208 of the Penal Code, given that he dared to murder his brother, Muḥammad Maʿrūf, intentionally with premeditation and in ambush on October 7th, 1900 in Kafr al-Shaykh Shiḥāta by suffocating him in water after beating him

And whereas the accused said before the court that he left his brother by the cattle and [that] when he came back, he found him playing in the water, and hence slapped him; that he [i.e. the victim] fell in the water, and that when he [i.e. the accused] got him out of it, he found him dead. As for the lawyer of the accused, he demanded from the court to consider the incident as an accidental murder according to the article 216 from the Penal Code, and, as a precautionary measure, to consider the incident attributed to the accused without premeditation, and this for the reasons that he demonstrated and that are mentioned in the minutes of the session.
And whereas it appeared from the investigations that were conducted in this case that Muḥammad Ma’rūf senior has many wives from whom he has many children among whom the accused Maḥmūd Ma’rūf; and [that] this child became known for his bad behavior and his disobedience to his father to the extent that [the latter] was about to disown him from among his children; and [that] among the things that he used to do was to hate his brother, the victim, as he was always beating him and insulting him wherever he found him; and [that], as soon as he saw his brother, Maḥmūd Ma’rūf entering the house, the victim would end up hiding from him, and taking refuge with his mother seeking her protection from his evilness and mistreatment. And, incidentally, Muḥammad Ma’rūf senior was absent from the house for some personal business of his in al-Fayyūm; [that] the accused consequently took advantage of his absence, entered at night the room of the victim’s mother – who is his step mother – and began seducing her; but [that] he saw from her nothing but complete rejection; [that] he went out of her room first because of her opposition, and second because of his fear of his other stepmother, Khaḍra, who, when she had felt that he was away from his sleeping place, had called him; [that] when the accused failed in what he desired from the victim’s mother, his love for revenge intensified; [and that], indeed, when he got up in the morning, he urged his brother Ḥammūda Ma’rūf to take the camel and the water buffalo and graze [it] in the corn field, while he would take his little brother Muḥammad and the bull, and would go to the cotton field that is [located] in another direction away from the first field; [that] Ḥammūda objected to that by saying: “give me Muḥammad because I have the camel and the cow and you, you’ll only have the bull;” [that] the accused merely insisted that [his brother] execute what he had ordered him; and [that] indeed Ḥammūda took the camel and the cow and went with them to the corn field; [that] as for the accused, he took his brother Muḥammad junior and the bull and went with them to the field planted with cotton, and [that] when he saw that he had free rein with his little brother, he attacked him and beat him; [that] he then held him and plunged him in the water of irrigation canal that is [located] near the cotton field, and kept pressing him under water until he died; [that] he completed, in this manner, what he was previously determined to do, in that he relieved his sight from the one whom he hated and also took revenge from the mother of this boy who refused to submit herself to the satisfaction of his bestial lust; [that] afterwards, he took the corpse of his murdered brother and buried it in the field to hide his crime.
For these reasons:

And after reviewing the articles 208 of the Penal Code, and 207 and 208 of the Code of Criminal Investigation, the text of which follows:

The first: Anyone who intentionally committed a murder with premeditation or in ambush is punishable by death according to the principles stated in this code.

The second: In criminal cases that require a death penalty according to Islamic law, the court must seek, before the judgment, the opinion of the local Mufīī.

The third: For this [purpose], [the court] must send the file of the case to the Mufīī, and [the latter] must return it [to the court] in a maximum of eight days along with his opinion.

The court pronounced, in the presence [of the accused], a death sentence by hanging against Maḥmūd Maʿrūf, the accused in this case, and it ordered the execution to be [carried out] in Kafr al-Shaykh Shiḥāta, the place of the incident. The expenses are covered by the government.

Seal: The President of the Court
Appendix 13:

[Reference of the case:

al-niyāba al-'umūmiyya raqam 217 li-sanat 1908 – ‘Āmir Muḥammad Badawī wa ākhar –
Public Prosecutor’s Office Number 217 for the year 1908 – ‘Āmir Muḥammad Badawī and other
Series: “i’dām” (death penalty) - Film: 12/14003 – Frames: 16712-16830]

[Photo Frames 16718-16719]

[Transcription]

[First interrogation of ‘Abd al-Magīd ‘Alī ‘Abd al-Rāziq (the victim’s neighbour) – Interrogator: Busṭūrūs Bishāra (Deputy Prosecutor in Minūf) – Kātib: Aḥmad Amīn – May 29th 1908]

احضرنا احد الجيران عبد المجيد علي عبد الرازق وسأل فأورى ان اسمه كما ذكر عمره 24 سنة مولود
ومقيم في بالمشط وسنتراني بعد ان حلف اليمين

س: ما الذي تعلمه في قتل الحرمة شلبية

ج: أنا جار ملاصق للحرمة شلبية من الجهة القبلية وليس ببني وبينها قرابة مطلقا وانا عازب ومقيم في
منزلنا اننا محمد اسماعيل ومحمد اسماعيل المذكور جاري ولانه عازب بنام معي في اغلب الأيام وانا انام
معه فوق السطح ومن مدة ليلتين وانا اسمع عامر يعيش مع والدته شلبية ويقول لها يا بنت الكبى يا تبعي
النصف فدان اللي عندك وتدني فرشين اعمر بهم الدكان لأنها خربت ًوعامر كان عنده دكان بيبيع فيها
حلويات وصابون وبن وقفله من مدة عشرين يوم لأنه شتب على الاشياء التي كانت فيها ًوان ما كنتي
تبيعه اقطع عموه وكانت الحرمة شلبية تقول له اي لو لودها عامر النصف فنان بعمرك وفي هذه الليلة اي
ليلة قبلها سمعت عامر يقول لامه شلبية بعد العشاء انتي رابثة تنزوحي واحد اصغر مني وهي قالت له اننا
اتروجنا غصب عنك واحنا كنا سمعنا من زمان أن شلبية كانت عاززة تتجوز محمود ديش الغفري وبدع هذه
الخانقة التي حصلت في العشاء حصلت سكنة ونمت انا وماه اسماعيل كالعادة فوق السطح وقيل الفجر
بساعة ونصفت سمعت مهابة في بيت شلبية في الحوش الجوانى وسمعنا صرختها مرة واحدة وقالت الحقوقي
فانا دغري نزلت من السطح واخبرت الخفير فرج مرجان بما سمعت وقتى للحق هات شيخ الخفر
ورجعت وقفت فوق السطح فسمعت عامر ابن شلبية يقول خلص عليها يا قنديل فانا نزلت ثانيا من على السطح ووقفت بنفسى على شيخ الخفر وقلت له علی ما سمعت واحضرته معه هو والخفير الذي كان معه واسمه محمد محرز وله وصتنا الى بيت المقتولة شيخ الخفر والطفاف الآتي معه دخل الى البيت تعلقت شلبية وقالا له روح انظر خلف البيت لان حيطتها واطية من الجهة الغربية فرحت ولم اكد اصل عند الحيطة المذكورة فنظرت قنديل ين والطفاف محمد محرز ثم اخذنا ورحنا علی شيخ الخفر هصر وضبطه معه هو والطفاف محمد محرز ثم اخذنا ورحنا علی شيخ شلبية ووجدنا ابناها عامر قافل على روحه القاعة فخبتنا عليه مسافة ثم فتح الباب وعمل نفسه يعني على امه محمد اسماعيل الذي كان معی لم يفارق نطقته اي السطح محل ما ننام حتى ضبطنا قنديل

[Translation]

We summoned one of the neighbors ‘Abd al-Magīd ‘Alī ‘Abd al-Rāziq. He was interrogated, and showed that his name is as mentioned, [that] his age is 24 years old, [that he was] born and resides in Balmashṭ. He was interrogated after he took the oath:

Q.: What do you know about the murder of the woman Shalabiyya?

A.: I am an adjacent neighbor of the woman Shalabiyya from the southern side, and there is no family relationship between me and her at all. I am a bachelor, and reside in my house with Muḥammad Ismā‘īl. The above-mentioned Muḥammad Ismā‘īl is my neighbor, and, because he is a bachelor, he sleeps with me most of the days, and I sleep with him on the roof. Two nights ago, I heard ‘Āmir quarrelling with his mother Shalabiyya. He was telling her: “Daughter of the dog! Either you sell the half feddan that you have and give me some money to reopen my shop because it was ruined, – “‘Āmir used to have a shop in which he was selling sweets, soap, and coffee grinds. He closed it down 20 days ago, because he finished everything that was inside” – and if you were not to sell it, I [would] kill you!” The woman Shalabiyya was telling him (i.e. her son ‘Āmir): “The half feddan against your life!” And that night, i.e. the night of her death, I heard ‘Āmir saying to his mother Shalabiyya, after the evening prayer: “You’re going to marry someone younger than me!” And she told him: “[I’ll] marry him against your will!” We had heard for a long time that Shalabiyya wanted to marry Māḥmūd Dabash, the ghafīr. After this
quarrelled that happened in the late evening, there was silence. Muḥammad Ismāʿīl and I slept on the roof as usual. An hour and a half before dawn, I heard noises of banging in Shalabiyya’s house, in the courtyard. We heard her scream once, and she said: “save me.” So, I directly went down from the roof, and informed the ghafīr Farag Mūrgān of what I had heard. I told him: “go get the shaykh al-ghafar,” then I returned and stood on the roof. I heard ‘Āmir, Shalabiyya’s son, say “Finish her off, Qandīl.” So, I went down the roof again, went myself to the shaykh al-ghafar, and told him what I had heard. I brought him with me, he and the ghafīr who was with him, and whose name is Muḥammad Miḥriz. When we arrived at the victim’s house, the shaykh al-ghafar and the ṭawwāf who came with him entered Shalabiyya’s house. They told [me]: “you, go and look behind the house, because its wall is low on the western side.” So, I went and, as soon as I arrived at the above-mentioned wall, I saw Qandīl jumping off it. I caught him and called out for the shaykh al-ghafar. He came, and caught him with me, he and the ṭawwāf, Muḥammad Miḥriz. Then, we took him, and went to Shalabiyya’s house. We found her smashed to the ground, dead, in the courtyard. We found her son, ‘Āmir, locking himself up in the room. So, we knocked on his door for a while. Then, he opened the door, and acted as if he was crying for his mother. Muḥammad Ismāʿīl, who was with me, didn’t leave his position, i.e. the roof, the place where we sleep, until we caught Qandīl.
Appendix 14:

[Reference of the case:]

al-niyāba al-ʿumūmiyya raqam 217 li-sanat 1908 – ‘Āmir Muḥammad Badawī wa ākhar –

Public Prosecutor’s Office Number 217 for the year 1908 – ‘Āmir Muḥammad Badawī and other

Series: “iʿdām” (death penalty) - Film: 12/14003 – Frames: 16712-16830]

[Photo Frames 16777-16778; 16780-16781]

[Transcription]

[Judgment against ‘Āmir Muḥammad Badawī and Qandīl Ibrāhīm al-Zuhayrī – President of the Tribunal: Aḥma Ḍ Hilmī Bey – Kātib of the Tribunal: Maḥmūd Fikrī Afandī – August 5th 1908]

باسم الجناب الأفخم عباس حلمي باشا خديو مصر

محكمة جنايات طنطا

المشكلة علنا تحت رئاسة حضرته احمد حلمي بك

وحضور حضرات علي ذو الفقار بك وأحمد زيوبر بك مستشارين بمحكمة الإستئناف الأهلية وحضرت البوائيم

ميخائيل افندى وكيل النيابة ومحمود فكري افندى كاتب المحكمة

اصدرت الحكم الآتي

في قضية النيابة العمومية نمرة 217 منوف سنة 1908 المقيدة بجدول المحكمة نمرة 93 سنة 1908

قضت على محمد بدون حسن عمره 22 سنة وصنعائه جزار وسكنه بالمصط منوف منوفية الشهر

بالعسراوي

- فنديل ابراهيم الزهيري " فلاح 

وحضر عن الأول عثمان بك محمد وعن الثاني الشيخ محمد نوارة المحامين

(...)
وحيث انتهت جلسة هذا اليوم المحدد لنظر القضية النيابة صممت على سابق طلباتها والمحامي عن الأول طلب استعمال الرأفة والمحامي عن الثاني طلب البراءة.

وحيث أن تبين من التحقيقات التي جرت في هذه القضية أن المجني عليها الحرمة شلبية بنت عامر كانت تملك من حطام الدنيا نصف فدان وكانت تبيع أيضا الخضروات.

وكان ابنها المتهم الأول عامر محمد بدو الشهير بالعسراوي فاتحا دكان عطارة ومقيما بمنزل والدته بجهة المنشطة التابعة لمركز منوف وسوء سيره وسلوكه وانهماكه في اللذات اضاع نقوده ثم صار يصرف في بضاعة الدكان حتى نفذت بتمامها واصبح عالة على والدته فلم يكفه هذا الأمر بل طلب من والدته المذكورة أن تبيع النصف فدان ملكها وتعطيه نقودا لفتح الدكان فلم تقبل وتصادف أن المجني عليها بعد وفاة زوجها ارادت الدموع محمد سيد أحمد دينا فاعد المتهم الأول عليها الكره وطلب منها النقود لفتح دكانه فابت وأبت على ذلك ان تعارك معها ليلتين قبل الواقعة بخصوص النقود فرفضت اعطائه شيئين بالممرة والمتهم الأول أن جميع مساعيه ذهبوا ادراج الرياح صممت من ساعتها على قتل والدته المجني عليها وتم تنفيذه لفسده هذا اتفاق مع المتهم الثاني قنديل ابراهيم الزهير على أنهما يقتلاها بواسطة كتم النفس وفعلا حضر المتهم الثاني في ليلة 29 يوليو سنة 1908 إلى منزل المجني عليها ثم قاما في الحال وهما عليها ووضع على فتحات انفها وفمها قطعتين من القماش مبللتين بالماء وصارا يضغطان عليها بقوة برجه من الزمن حتى فقدت المجني عليها الحياة ( ...)

( ... )

وحيث ان من جميع ما تقدم يثبت بطريقة لا تقبل الشك أن المتهمين قتلا الحرمة شلبية بنت عامر عمدا مع سبق الإصرار في ليلة 29 مايو سنة 1908 بناحية بالمشت التابعة لمركز منوف وذلك بواسطة كتم نفسها بالكيفية السابق شرحها في وقائع الدعوى.

وحيث ان سبق الإصرار متتوفر في هذه القضية - أولا - من اتفاق المتهمين على قتل المجني عليها بواسطة كتم نفسها بقطعتين من قماش مبللتين بالماء وثانيا - من اجتماعهما معا في منزل المجني عليها ليلة الواقعة.
ومن قتليها بالكيفية المذكورة بواسطة وضع القطعتين من القماش المذكورين على فمها وانفها بدون موجب
غير طمع المتهم الأول في مالها حتى يخلو له الجو ويضع يده على جميع ما تملكه ومن به يتعين معاقبة
المتهمين المذكورين بالمادة 194 من قانون العقوبات

(....)

وحيث أن المتهم الأول عامر محمد بدوي حسن الشهير بالعسراوي هو السبب الأصلي في ارتكاب جناية
القتل وهو الذي اتفق مع المتهم الثاني على قتل المجني عليه طمعا في مالها وعلى ترى المحكمة معاملة
المتهم الثاني المذكور بالمادة 97 من قانون العقوبات

فلهذة الأسباب

وبعد رؤية المواد 194 و17 من قانون العقوبات و49 من قانون تشكيك محكمة الجنايات
حكمت محكمة الجنايات حضوريا أولا بمعاقبة قنديل ابراهيم الزهيري بالأشغال الشاقة المؤبدة وثانيا باعدام
عمر محمد بدوي الشهير بالعسراوي شنقا

هذا ما حكمت به محكمة الجنايات بجلستها العلنية المنعقدة في يوم الأربعاء 5 أغسطس سنة 1908 الموافق
8 رجب سنة 1326 الف وثلاثمائة سنة وعشرين

كاتب المحكمة

رئيس المحكمة

ارسلت صورة طبق الأصل لمحكمة الإستئناف في 22 أغسطس سنة 1908
[Translation]

In the name of His Majesty Ābbas Ḥilmī Pasha, the Khedive

Ṭanṭā Criminal court

Formed publicly under the presidency of his Excellency Aḥmad Ḥilmī Bey

And the presence of their Excellencies ‘Ālī Dhu Al-Faqqār Bey and Aḥmad Zīwar Bey, counselors to the Native Court of Appeal, and his Excellency Buwāqīm Mīkhā’il Afandī, the deputy prosecutor, and Maḥmūd Fikrī Afandī, the court clerk

The court issued the following ruling:

In the case of the Public Prosecutor’s Office Number 217 – Minūf – for the year 1908 [which is] recorded in the register [with the] number 93 [for] the year 1908

Against:

‘Āmir Muḥammad Badawī Ḥaṣan: his age is 22 years old, his profession is a butcher, his residence is Balmashṭ Minūf, Minūfiyya, [and] he is known as al-‘Asrāwī

Qandīl Ibrāhīm Al-Zuhayrī: his age is 22 years old, his profession is a peasant, and his residence is Balmashṭ Minūf, Minūfiyya

Came to represent the first one [i.e. accused] ‘Uthmān Bey Muḥammad, and came to represent the second one [i.e. accused] al-Shaykh Muḥammad Nawwāra, the lawyers

(…)

Whereas, today’s session is set for ruling the case. The Public Prosecutor’s Office insisted on its previous demands. The lawyer of the first [accused] demanded the application of clemency and the lawyer of the second one demanded a non-guilty verdict;
And whereas it appeared from the investigations conducted in this case that the victim Shalabiyya, the daughter of ʿĀmir, owned half a feddan of the ephemeral possessions of this world, and [that] she also used to sell vegetables;

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Her son, the first accused, ʿĀmir Muḥammad Badawī, also known as al-ʿAsrāwī, opened a shop for spices, and was living in the house of his mother in Balmashṭ in the markaz of Minūf, and because of his bad manners and bad way of life and because of his indulgence in pleasures, he wasted his money. He started to sell the goods in his shop until it all ran out, and he became dependent on his mother. He didn’t stop there. He asked his afore-mentioned mother to sell the half feddan she owns and give him money to [re]open the shop, but she did not accept. After the death of her husband, the victim coincidentally wanted to marry Maḥmūd Sayyid Aḥmad Dabash. The first accused reiterated his hatred to her, and demanded the money to reopen his shop but she refused. As a result, he fought with her two nights prior to the incident regarding the money, and she refused to give him anything at all. When the first accused found that all his effort was in vain, he insisted at that moment to murder his mother, the victim. To execute this goal of his, he agreed with the second accused, Qandīl Ibrāhīm Al-Zuhayarī, to kill her by suffocation. Indeed the second accused came on the night of July 29th, 1908 [cit.] to the house of the victim and attacked her right away. They put two pieces of wet cloth on the openings of her mouth and nose, and kept pressing forcefully for a while until the victim lost [her] life (...);

(...) 

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Whereas from all the above-mentioned, it is proven beyond doubt that the two accused murdered the woman Shalabiyya, the daughter of ʿĀmir, intentionally with premeditation on the night of May 29th [cit.], 1908 in the vicinity of Balmashṭ, in the markaz of Minūf, by means of suffocating her in the way previously explained in [the presentation of] the facts of the case;

Whereas premeditation is established in this case, first: by the agreement of the two accused on killing the victim by suffocation using two pieces of wet cloth; second: by their meeting together
in the house of the victim the night of the incident and [from] killing her in the above-mentioned manner by means of putting the two above-mentioned pieces of cloth on her mouth and nose, for no reason but the greed of the first accused for her money, so that he frees [himself of any restrictions, and] can put his hand on everything she owns. As a result, the two above-mentioned accused shall be punished according to the article 194 of the Penal Code;

(...)

Whereas the first accused, ‘Āmir Muḥammad Badawī Ḥasan, also known as al-‘Asrāwī is the primary reason for the perpetration of the crime, and [whereas] he is the one who agreed with the second on murdering the victim out of greed for her money, as a result, the Court sees the treatment of the second accused according to the article 97 of the Penal Code;

For these reasons:

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and after reviewing the articles 17 and 194 of the Penal Code, and the article 49 of the law of the formation of the criminal court

The court pronounced, in the presence [of the accused], first a sentence of hard labor for life [against] Qandīl Ibrāhīm Al-Zuhayrī; and second the execution of ‘Āmir Muḥammad Badawī, also known, as al-‘Asrāwī by hanging.

This is what was ruled by the criminal court in its public session which was held on Wednesday, August 5th, 1908 - Ragab, 8, 1326.

The court clerk

The President of the Court

An identical copy was sent to the Court of Appeal on August 22nd, 1908
Appendix 15:

[Reference of the case:

_al-niyāba al-‘umūmiyya raqam 1006 li-sanat 1902 – Muḥammad al-Nakkā‘ wa ākhar_

Public Prosecutor’s Office Number 1006 for the year 1902 – Muḥammad al-Nakkā‘ and other

Series: “i’dām” (death penalty) - Film: 3/14003 – Frames: 4572-4665]

[Photo Frames 4607-4610]

[Transcription]


=ابو النجا عزام المتهم=

استحضرا أبو النجا عزام وأعدنا استجوابه بالآتي

س: لما حلف محمد النكاح اليك بالطلاق لا حضار البتاعة ما الذي فهمته من هذه اللفظة "البتاعة"

ج: مما سمعتني دي

س: نفس المقتول قال إنه سمع محمد النكاح يحلف لك بالطلاق بنزوم احضار البتاعة ومحمد النكاح نفسه يقول ذلك فلماذا تنكر ذلك

ج: لما سألنا المقتول عن البندية وقال أنا لا أخذها وطلعنا على جسر الباجورية عند خيش النكاح قال لي ولعبد المجيد يا جماعة جمعيو دعو لي على البندية فقال عبد المجيد كل واحد يبحث من جهة فأنا رحت للقطن خفاراتي وروحت للبلد بعد العصر بشوية لأجل أوصي جماعتي بتعظيم نارا شيء للعشا فلم أجد أحدا في الدار فرجعت وأنا خارج من البلد دعاني محمد النكاح فوقعتم وقال لي أنه راح لأواخر هذا ولم يذكر لي اسمه وكلمه عن البندية فقال له أنها إذا كانت في البلد لا تضيع فللت له رعنا يعترف فيها وكان هذا الكلام في وسط درة عبد المجيد وبعدها قابلنا عبد المجيد فقال ماذ فعملت فأخبرته بما حصل ثم مشينا نحو الثلاثة إلى درة محمد النكاح فوقعنا هناك كان في واحدة يشر في الدار فقال لي محمد النكاح روح هات لي البنيدة ثم مشيت ولا أعرف إن كان حلف بالطلاق أم لا والتي كانت تشتر الثورة زوجة ابن محمد ابرعرايس وبعد ما مشيت أحضار البندية وقال ما أحضارها قابلنا سيدي أحمد الرملاوي خوالي عزبة شلبي افندى وقالت له أن محمد النكاح بنقتيته راحته وطالب البندية بيعت بها في الغيط وأننا عاوز أسمها فقال لي أعطه لها الله ما عاشي وقابلته قصد الغيط المسمى "مارس علم" ورحبت جبنة البندية وأعطيتها للنكاح

س: لماذا فهمت من قول البنيدة أنها البندية

ج: هو سبق كان طلبه ماني في الطريق ونحن حاضرين
س: ولمما لم يقل لك هات البندقية ويكني عنها بالبتاعة هل كان القصد من ذلك إخفاء الأمر على عبد المجيد.

ج: وأنا عارف أيه اللي طالع في دماغه.

س: وكيف فهمت قوله البتاعة أنها البندقية.

ج: أخبرني عنها قبل ما نخض على غيط عبد المجيد وما كان مضى زمن كبير على ذلك.

س: ما دام أخبرك قبل غيط عبد المجيد وهذا الغيط يبعد عن درة المتهم بعشرين قصبة فلماذا بعد مسير هذه المسافة والمحادثة في مواضيع أخرى تفهم أن قصده البندقية من قوله البتاعة.

ج: إذا كان لم يطلب مني إلا البندقية فلماذا أفهم أنه طالب حاجة غيرها.

س: ألم تقرأ مع محمد النكاح الفاتحة على قتل عبد المجيد اسماعيل.

ج: لا.

س: محمد النكاح يقول أنه قال لك هات البتاعة حتى لا يفهم عبد المجيد قصدكما.

ج: لا أعرف.

(...)

س: ألم تشترك مع محمد النكاح في قتل عبد المجيد اسماعيل عمداً مع سبق الأصرار في ليلة 4 ديسمبر سنة 1902 م بالغيط بناحية أكوة بواسطة إعطائه سلاحاً وهو بندقية ليقتله بها مع علمك بقصده.

ج: لا.

س: ألك سوابق.

ج: لا.

تمت أجابته.
We summoned Abū al-Nagā‘ Azzām and we resumed his interrogation as follows:

Q.: When Muḥammad al-Nakkāḥ swore to you by the divorce [requesting you] to bring [him] the stuff, what did you understand from this expression "the stuff"?

A.: I didn't hear that one.

Q.: The victim himself said that he heard Muḥammad al-Nakkāḥ swear to you by the divorce [saying that] you should bring [him] the stuff. Muḥammad al-Nakkāḥ himself says so. So, why do you deny that?

A.: When we asked the victim about the rifle, and he said: "me, I didn't take it," and we went up the bridge of al-Bagūriyya near al-Nakkāḥ’s tent, he [i.e. al-Nakkāḥ] told me and Abd al-Magīd: "guys, look for the rifle for me." So, Abd al-Magīd said: "each one searches in a [different] direction." I went to the cotton [field] I guard, and shortly after the afternoon prayer, I went back to the village in order to ask my family to make us something for dinner. I didn’t find anyone home, so, I returned. And when I was leaving the village, Muḥammad al-Nakkāḥ called me, so, I stopped. He told me that he went to someone here – and he didn’t mention his name to me – and that he spoke with him about the rifle. So, he [i.e. the unnamed man] told him that if it [i.e. the rifle] was in the village, it couldn’t be lost. I told him: “May God help you find it.” This talk was in the middle of Abd al-Magīd's corn [field]. Afterwards, we met Abd al-Magīd. He asked: “what did you do?,” so, I informed him of what had happened. Then, the three of us walked to Muḥammad al-Nakkāḥ’s corn [field], and we stopped there. There was a woman peeling corn. Muḥammad al-Nakkāḥ told me: “Go and bring me the stuff.” Then, I went and I don’t know if he swore by the divorce or not. The woman peeling the corn was Muḥammad Abū ‘Arāyis’s daughter-in-law. After I went, I brought the rifle. [But] before bringing it, I met Sayyid Ahmad al-Ramlāwī, the foreman of Shalabī Afandī’s estates. I told him that Muḥammad al-Nakkāḥ's rifle was lost, [that] he asks for my rifle to spend the night with it [in guard] in the field, [and that] I want to hand it over [to him]. So, he told me: “give it to him, no problem.” I met him across from the field called “māris ‘alam.” And I went to get the rifle, and gave it to al-Nakkāḥ.

Q.: Why did you understand from the word “the stuff” that it was the rifle?

A.: He had previously asked me for it on the way, while we were coming.

Q.: Why didn’t he tell you: “bring the rifle” and used the nickname “the stuff” instead? Did he mean to hide that matter from Abd al-Magīd?

A.: Do I know what was running in his head?

Q.: How did you understand from his saying “the stuff” that it was the rifle?

A.: He told me about it before we entered Abd al-Magīd’s field, and it hadn’t been a long time before.
Q.: Since he told you [about the rifle] before [entering] Abd al-Magīd’s field, and [since] this field is 20 rods away from the accused’s corn [field], why, after walking [all] this distance and discussing other subjects, did you understand that he meant the rifle by saying “the stuff”?

A.: If he asked me for nothing but the rifle, why would I understand that he was asking for something else?

Q.: Didn’t you read the fātiha with Muḥammad al-Nakkāḥ to kill Abd al-Magīd Ismā‘īl?

A.: No.

Q.: Muḥammad al-Nakkāḥ says that he told you: “bring the stuff,” so that Abd al-Magīd does not understand your intentions.

A.: I don’t know.

(...)

= His questioning was resumed =

Q.: Didn’t you participate with Muḥammad al-Nakkāḥ in the murder of Abd al-Magīd Ismā‘īl; a crime perpetrated intentionally with premeditation in the evening of December 4th, 1902 in the field in the vicinity of Akwa by means of giving him a weapon – that is your rifle – to murder him [i.e. Abd al-Magīd Ismā‘īl] with it while you knew his [i.e. Muḥammad al-Nakkāḥ’s] intention.

A.: No.

Q.: Do you have antecedents?

A.: No.

His answer was completed.
Appendix 16:

[Reference of the case:

al-niyyāba al-‘umūmiyya raqam 1006 li-sanat 1902 – Muḥammad al-Nakkā‘ wa ākhar

Public Prosecutor’s Office Number 1006 for the year 1902 – Muḥammad al-Nakkā‘ and other

Series: “i’dām” (death penalty) - Film: 3/14003 – Frames: 4572-4665]

[Photo Frame 4636]

[Transcription]


الأدلة على ابي النجا عزام=

أولا: مثبت من أقوال النكاح أنه كان متفقا كل الاتفاق مع ابي النجا عزام على القتل وقرأ الفاتحة معه على ذلك وأن القتل هو من بنات أفكار ابي النجا وهو الذي أغرى

ثانيا: أن البندقية التي استعملت في ارتكاب الجناية هي لا بدي اللجا واحضرها للقاتل

ثالثا: ما بيد على أن ابا النجا أحضرا البندقية وهو عالم بقصد النكاح هو أن ابا النجا أحضرا البندقية فورا بمجرد رمز رُمِزَ رُمِزَ له من محمد النكاح أي بمجرد ما خطبه محمد النكاح بهذه العبارة "علي الطلاق من الخشب المبردة دي لازم تجيب البتاعة دي قبل المغرب" وما رُمِز هذا الرمز إلا لصدور هذا القول أمام المقتول حتى لا يفهم قصدهما وفهم ابا النجا القصد من هذا الرمز دليل على السبب وجود الاتفاق في ذهن أه القرآن

رابعا: أن ابا النجا قد احتاط لأنه توجه بعد أحضار البندقية لدكان عبدالمعطي عبدالله وجلس به مع آناس حتى يُبعد فكرة السؤ عنه ولأجل الاستشهاد بهم عند النزوم فإن لم يكن ذا علم بما سيحصل ما كان هناك من داع لهذا الاحتياط

خامسا: أن ابا النجا مع ظهور قتل عبدالمعطي بمعرفة النكاح وهو صاحب الاثنين البندقية له لم يتوجه لمحل الواقعة وفي ذلك حكمة وهي درا الشبهة عند النزوم
دافع أبو النجا أنه لم يعط البندقية للنكاح إلا بعد أن أخذ رأي سيد أحمد الرملاوي خولي سليمان أفندي شلبي، أعني يريد أن يقول أن نيته كانت سليمة ولم يعلم بقصد الفاعل حتى أنه استشار في الاعطاء ومع كل سيد أحمد الرملاوي أنكر عليه ذلك. وحيث مما تقدم تكون تهمة القتل والاشتراك فيه ثابتة على محمد النكاح وابو النجا عزام وما وقع من الأول ينطبق على المادة 208 عقوبات وما وقع من الثاني ينطبق عليه المواد المذكورة 67، 68، 214 عقوبات.

فلهذة الأسباب=

تطلب النيابة العمومية بمحكمة الجنايات التي ستتعدى بسراي محكمة طنطا يوم 28 يناير سنة 903 معاقبة المتهمنين بالمواد المذكورة بعد سماع شهادة كل من طيبة بنت أحمد اسماعيل وحسين عمر وعبدالعزيز العتر تحريرا في ديسمبر سنة 902.

النائب لنيابة شبين:

-(توقيع)-

[Translation]

= Evidence against Abū al-Nagā ‘Azzām =

First: It is proven from al-Nakkāḥ’s statements that he had fully agreed with Abū al-Nagā ‘Azzām on the murder, and [that] he [i.e. al-Nakkāḥ] read the fāṭiḥa with him [i.e. ‘Azzām] on that; that the murder was Abū al-Nagā’s idea, and [that] he [i.e. ‘Azzām] is the one who incited him [i.e. al-Nakkāḥ] [to commit the crime].

Second: The rifle that was used to commit the crime belongs to Abū al-Nagā, and [that] he brought it to the murderer.

Third: What substantiates that Abū al-Nagā brought the rifle while knowing al-Nakkāḥ’s intention is that Abū al-Nagā brought the rifle immediately merely because of a sign that was given to him by Muhammad al-Nakkāḥ, i.e. merely because Muhammad al-Nakkāḥ addressed him with this expression: “May I be divorced from this patched tent [if you don’t] bring this stuff before sunset.” And this symbol would not have been used, if this speech had not been uttered in front of the deceased so that [the latter] does not understand their intention. Abū al-
Nagā’s understanding of what was meant by this symbol is a proof of the pre-existence of the agreement to murder in his mind.

Fourth: Abū al-Nagā took his precautions, because, after having brought the rifle [to al-Nakkāḥ], he headed to ‘Abd al-Muʾṭī ‘Abd Allah’s shop in which he stayed with people until the idea of evil was driven away from him, and in order to seek their testimony when necessary. So, if he had no knowledge of what was going to happen, there would not have been any motive for such a precaution.

Fifth: When Abd al-Magīd’s murder by al-Nakkāḥ was discovered, Abū al-Nagā did not head to the place of the incident, and this whereas he is a friend of both and the rifle is his. And the wisdom in this is that it would prevent suspicion when necessary.

Abū al-Nagā defended [himself by saying] that he gave the rifle to al-Nakkāḥ only after taking the opinion of Sayyid Aḥmad al-Ramlāwī, the foreman of Sulaymān Afandī Shalabī’s estates. I mean that [through this statement] he wants to say that his intention was sound, and that he did not know the [killer’s] intention to the extent that he even sought advice regarding the giving [of the rifle]. In any case, Sayyid Aḥmad al-Ramlāwī denied [what he has said].

And whereas, from what was presented above, the accusation of murder and complicity is established against Muḥammad al-Nakkāḥ and Abū al-Nagā ‘Azzām, and [whereas] what was committed by the first applies to the article 208 of the penal code, and what was committed by the second applies to the mentioned articles 67, 68, and 214 of the penal code.

= For these reasons =

The Public Prosecutor’s Office demands [the trial of the accused] by the criminal court that will be held in the palace of the Ṭanṭā tribunal on January 28th, 903, [and] the punishment of the accused according to the above-mentioned articles, after the hearing of the testimonies of Ṭayyiba daughter of Aḥmad Ismāʾīl, Ḥusayn ʿUmar, and ʿAbd al-ʿAzīz Al-ʿItr.

Written in December of the year 902.

The Deputy Prosecutor in Shibīn

(Signature)
Appendix 17:

[Reference of the case:]

al-niyāba al-‘umūmiyya raqam 1006 li-sanat 1902 – Muḥammad al-Nakkā‘ wa ākhar

Public Prosecutor’s Office Number 1006 for the year 1902 – Muḥammad al-Nakkā‘ and other

Series: “i’dām” (death penalty) - Film: 3/14003 – Frames: 4572-4665]

[Photo Frames 4646-4650]

[Transcription]


باسم الحضرة الفخيمة الكنونية

محكمة طنطا الاهلية

بجلسة الجنایات المنعقدة علينا في يوم الأربعاء 4 مارس سنة 1903 تحت رئاسة حضرة أمين بك علي

رئيس المحكمة

وبحضور حضرات القاضين عبدالعزيز أفندي محمد ومحمد افندي الطوير قضاة وحضور محمد أفندي

صديق وكيل النيابة ومحمد أفندي كامل الرافعي كاتب المحكمة

صدر الحكم الآتي:

في قضية النيابة العمومية نمرة 1006 تلا الورادة بالجندول العمومي سنة 1902 نمرة 226

ضد=

محمد النكاع

ابو النجا عزام

(...
ويحيث يتلخص من التحقيق أن محمد النكاع المتهم الأول كان ذهب لكرزيات لقضاء ما لزمه وترك خيشرة القريب من محل الواقعة ولم يعد لم يجد بندقيته التي كانت فيه فسأله عنها ابا النجا عزام والمتأولن فاجاباه بعدم علمهما بن إليه وبحث عنها فلم يعثر عليها فظن أن عبد المجيد اسماعيل هو الأخ الذي تفوق لأنه يعتقد أنه حرامي لسبق اتهامه في سرقة ذهب المدان ذات الدوامات من ذلك واضمر له السؤ ولعقد النية على قتله ثم قتله بعيار ناري استعاره من المتهم الثاني

وحيث أن سبب القتل قد جاء صراحة في إعتراف القاتل المتكرر وهو ظنه أن المقتول هو السارق لبندقيته فاعتبر عليه هذا الأمر الذي أعتقد بالطبع أنه استهان به وإن كان في ذاته تافها لا يستدعي أراقة الدم ولكن النفس الشريرة تثير غضبه ما لا يثير غيرها من النفس فتميل للانتقام لأقل حداث فلا وجه لاستغراب المحامية ان يكون ذلك داعيا للقتل

وحيث أن ما زعمه القاتل أن المتهم الثاني أغراه على القتل وذهب معه ل محل الحادثة وأخذت البندقية منه بعد إطلاقها لا يدل على صحته بل ثابت من منطق المقتول ومن قول من حضر له فورا عقب إطلاق العيار والصباح أن القاتل كان يعلم أنه ركز إلى القرار ومعه البندقية بعد إطلاقها على أنه لا يوجد أي سبب يحمل المتهم الثاني للإغراء على القتل بل أن سبب الجريمة محصور في القاتل وهو الذي يتأثر منه ويهم من أجل الانتقام وحيث بناء على ذلك جميعه تكون الأدلة القائمة على ثبوت الجريمة قوية جداً موقعية للجرم بحصولها من محمد النكاع عن تعهد وآصرار سابق بحالة لا يدخلها أي ريب فيجب حينئذ تطبيق القانون لأن الحادثة من الفظاعة يمكن عظيم فقد اعتى المتهم المذكور غيابًا على سفم دم محقون شرعاً وإزهاق روح بريئة لمجرد تخل أمر لا يستدعي ذلك ولم يظهر له صحة اطاعة لهوي نفس أبارة بالسوء بعد أن كل المقتول واطمئن له وإن أن الجريمة المذكورة تدخل تحت منطق المادة 208 من قانون العقوبات فيتعمق حكمها على الجاني لأن فيه الحكمة البالغة والنفس بالنفس والعبرة في الفصاح وحيث بالنسبة للمتهم الثاني فليس في الدعوى ما يثبت أن كان يعلم ضد الفاعل من استعارة البندقية منه وقد قال أنه فهم أن طلبهها لنفسه فقد بنديقت fie وهو أنه محتمل لم يتم دليل على خلافه ويؤيد استشارته أخر في الأعارة كما دل على ذلك شهادة من شهد أمام المحكمة لأنه لو كان يعلم أن ذلك لأستعمالها في الجناية لما أقدم على أخبار أحد لأن المشاركون في الجناية لا يدؤو ظهور جريمتهم ولا أطلاع أحد عليها

وحيث أنه أهم ما ارتكنت عليه النيابة في ثبوت جريمة الاشتراك ضده هو ما جاء في أقتراف القاتل من اعترافه مع القتل وأحذره البندقية عنها طلبه منها رمزاً وحيث سبق تقنيه ما جاءني في ذلك الاعتراف مما يتعلق بالمتهم الثاني لأن الأدلة قامت على ضده وكذلك قال المتهم الثاني بأن فهمه الزمر واحضاره البندقية كان لسبق طلب المتهم الأول اياها منه صراحة وهو أمر جائز الحصول وحينئذ لا ينهض دليلاً قاطعاً على الاتهام على الجريمة

وحيث أن باقي القول التي استندت عليها النيابة بالنسبة إليه ضعيفة لا توجب الجرم بالاشتراك في الجناية

وفيمن يتعين برآته

(...)
In the name of His Majesty the Khedive

Native Court of Ṭanṭā

In the criminal session held publicly on Wednesday March 4th, 1903 under the presidency of His Excellency Amīn Bey ‘Alī, the President of the Court

And in the presence of Their Excellencies the judges Abd al-‘Azīz Afandī Muḥammad and Maḥmūd Afandī Al-Ṭuwayr, judges; and in the presence of Muḥammad Afandī Siddīq, deputy prosecutor, and Muḥammad Afandī Kāmil al-Rāfī‘ī, the court clerk

=The following ruling was issued=

In the case of the Public Prosecutor’s Office Number 1006, Talā, present in the register [for] the year 1902 [with the] number 226

=against=

Muḥammad al-Nakkā‘

Abū al-Nagā‘ Azzām

(...)

Whereas it is summarized from the investigation that Muḥammad al-Nakkā‘, the first accused, went to Kafr Al-Zayyāt to do what needed to be done, and left his tent which is close to the place of the incident. When he returned he did not find his rifle which was in it [i.e. the tent]. So, he asked Abū al-Nagā‘ Azzām and the victim [about the lost rifle], and they answered [saying] that they did not know who took it. He looked for it [i.e. the rifle], and did not find it. He thought that ‘Abd al-Magīd Ismā‘īl took [the rifle], because he believed that he [i.e. ‘Abd al-Magīd Ismā‘īl] was a thief since he was previously accused of stealing a diffīyya. As a result, he became angry, and he concealed in his heart the bad [feelings he felt towards him], and he decided to kill him. Then he killed him with a shot from a rifle that he borrowed from the second accused.

(...)

[Translation]
And whereas the reason behind the murder came clearly in the repeated confession of the murderer, which is that he thought that the victim was the one who stole his rifle; and the matter intensified for him as he thought that he [i.e. the victim] definitely despised him. Even though, this in itself is insignificant, and does not require bloodshed, the anger of the evil soul is aroused by what does not arouse other souls, and it tends to avenge the most minor incident. Thus, there is no reason for the defense to be surprised that this is the motivation for murder.

Whereas the murderer claimed that the second accused seduced him into [committing] the murder, and went with him to the place of the incident, and took the rifle from him after he shot it, there is no evidence for its veracity, but rather what is established from the statement of the victim and of those who came to him immediately after the gunshot and the scream is that the murderer was alone, and that he escaped with the gun after shooting it. [Given that] there is no reason to compel the second accused to seduce [the first accused] into committing the murder, the cause of the crime is instead exclusive to the murderer. He is the one affected by it, and thus seeks revenge. And whereas based on all this, the inculpatory evidence is very strong as a motive for the crime committed without doubt intentionally with premeditation by Muḥammad al-Nakkā’. Thus, the law must be applied because of the great horror of the crime [in which] the afore-mentioned accused dared to shed blood that, according to the sharī'a, should have been spared and by annihilating an innocent life, for merely imagining something that does not require this [crime]. The validity of obeying a whim of the soul did not appear to him as a sign of evil, [even] after the accused had been fed and reassured by the victim. Since the aforementioned crime is within the framework of the article 208 of the penal code, its ruling must be applied to the perpetrator, because there is a profound wisdom in it, and [the ideas of] a life for a life and retaliation as the precept to be followed. As for the second accused, nothing in the litigation proves that he knew the intention of the perpetrator [merely] from the borrowing of the rifle from him. He said that he understood that he wanted it for himself because he had lost his own rifle, which is possible. No counter evidence was established, and it [i.e. this lack of knowledge] is supported by his consultation in the lending, as was indicated by the testimony of those who testified in front of the court. Because if he knew that this [i.e. the borrowing] was for use in the crime, he would not have told anyone, since the participant in a crime would not wish to show his crime or have anyone learn about it.

And whereas the most important [evidence] upon which the Public Prosecutor’s Office established the accusation of participation in the crime is what came in the murderer’s confession that he had made a deal with him [i.e. the second accused] to commit the crime, and that [the latter] brought him the rifle when he made a sign. Whereas what came in this confession relating to the second accused was previously refuted, because evidence proved otherwise. Also, the second accused said that his understanding of the signal and his bringing the rifle were because of the previous clear request for it by the first accused, which could have happened. Thus, there is no decisive evidence for [his] participation in the crime.

Whereas the rest of the circumstantial evidence on which the Public Prosecutor’s Office relied is weak and does not give cause for participation in the crime, his innocence is therefore obligatory.
The court ruled in the presence [of the accused] first: Abū al-Nagāʿ ‘Azzām’s innocence of what was attributed to him and his immediate release unless he is detained for another reason; second: Muḥammad al-Nakkā‘’s execution by hanging in the place specified by the government, and the expenses to be given to the government

[The verdict] issued and cited publicly in the session of Wednesday March 25th, 1903, under the presidency and the presence of the previous committee except for his Excellency the deputy prosecutor who is Amīn Afandī Ḥāfīz

The President of the Court (stamp)
Appendix 18:

[Reference of the case:]

al-niyyāba al-ʿumūmiyya raqam 545 li-sanat 1912 – Muḥammad Mitwallī Ibrāhīm –

Public Prosecutor’s Office Number 545 for the year 1912 – Muḥammad Mitwallī Ibrāhīm

Series: “i’dām” (death penalty) - Film: 3/14004 – Frames: 3344-3468

[Photo Frames 3350-3351]

[Transcription]

[First interrogation of the witness Bahnaṣī (Muḥammad) Sha’lān, fallāḥ and ghafīr in charge of the distribution of the irrigation water – Interrogator: Ibrāhīm Mumtāz (representative of the Public Prosecutor’s office in Minūf) – Kātib: Muḥammad Ţabrī – August 4th 1912]

استدعينا بهنسي شعلان أحد الأشخاص الذين كانوا في الوابور وقت حصول الحادثة فوجدنا أنه يلبس جلابية سوداء تحتها قميص أبيض وليدة صوف سمرة ولديها ولا في جسمه أثر يشتبه فيه وسألناه فقال إسمي بهنسي محمد شعلان وعمره 28 سنة مولود في العامرية ومتغلب بها وفلاح

(حلف اليمين القانونية)

س:وضح لنا معلوماتك في هذه الحادثة وكيف قتل محمد حجازي

ج: أنا شغل عن محمود بك سوسة وصهوني خفيف على مياة الوابور وأمر بالليل والنهار على الميمى حتى أعرف إن كانت تتوزع أم لا وفي ليلة أمس بعد العشاء بساعة تقريبًا حضرت من أمام الميمى إلى الوابور ووجدت بهنسي شغل عن محمود بك سوسة وصهوني خفيف على الميمى وقعدت أمامه كتبته ثلاثة ظلما حضرت الوابور ووجدت محمد حجازي قاتلعي في الوابور وقاعد أمامه إبراهيم زعلوك والاسطى متولي على المسطبة الشرقية له في شمال الداخلي ووجدت سليمان العربي قاعد خارج الوابور بجوار حائطه من برة حيث البام فسلمت عليه وقعدت بجوار سليمان لأنه قاتلعي وقعدنا تقربنا قد ساعة ووجدت محمد متولي جاع من الجهة الغربية للباب أي من ناحية العرض ورأيته لما كان بينه وبين الوابور مسافة خمسة أقسام وعرفته تمام وكان لا يعيب جماعة سوداء وطائفة بيضاء وفاضل مائي للغاية ما وصل لحد البام ووقف شوية وهمى لفيته ضرب فردها كانت في أيده وطلع منها وش وقمت لنا شريرة داخل الوابور ودخان طلع وراينا محمد متولي طلع يجري جهة الغيطان فقامت أنا وسليمان العربي طالعين نجري وراه فيصينا فقينا متولي نادي علينا وقال لنا تعالوا أتمن بتراجروا بهدا الفردة نظلت في محمد حجازي عورته فافحنا وقتها فهمنا إن الاسطى عازو يدهور المسألة واحنا ناس مع بعض وعاوز نؤمن على كلامه ولا فيش لا نزوم للسكينة فدخلنا الوابور ووجدنا محمد حجازي حاطط يشيا على وجهه ويقول ألقحني يا إبراهيم يا زعلوك دا وش اللي جه في رأسي وراح مرمي على المسطبة الغربية ودم نزل منه على المسطبة فإن ياأرمي قال لي أجري هات قارونه مرة باردة نحبه وش فكنا رحى ملبس قارونه من مية الوابور وحضت وغلتنا له دماغا ووجدنا أن روحه طلعت فلابلس متولي قال ما فيش لزوم للفضحة وقولوا إن الفردة طلعت فيه واحنا واكليين عيش وملح مع بعض نحن نظرا لكوننا قاعدين مع بعض فأننا
We summoned Bahnasī Sha'lān, one of the people who were on the site of the steam irrigation pump at the time of the incident. We found that he wears a black galabiyya, a white shirt under it, and a black wool libda [i.e. type of head wear]. We found nothing suspicious on it [i.e. his clothes] or on his body. We interrogated him. He said: My name is Bahnasī Muḥammad Sha'lān, his age is 28 years old, born and residing in al-ʿĀmira, and he is a peasant.

He took the legal oath

Q.: Detail us your information about this incident and how Muḥammad Ḥigāzī was killed?

A.: I work for Maḥmūd Bey Sūsa. My profession is ghafīr in charge of [the distribution of the irrigation] water of the steam irrigation pump. I pass in the evening and the morning over the water to know if it is distributed or not. Yesterday evening about an hour after the evening prayer, I came from the front [side] of the water to the pump. I was about two or three pastures away. When I reached the pump, I found Muhammad Ḥigāzī, the victim, feeding [coal] into the pump. Ibrāhīm Za'lūk and the foreman Mitwallī [were sitting] on the [stone] bench east of him [i.e. the victim] which is on the left side of the inside [of the pump]. I found Sulaymān al-ʿArabī sitting outside the pump next to its wall from the outside, where the door is. I greeted them. I sat beside Sulaymān because he is the ghafīr of the pump. We sat [together] for about an hour. [Then.] I found Muḥammad Mitwallī coming from the western side of the pump i.e. from the side of the trash. I saw him when he was five rods away from the pump. I fully recognized him. He was wearing a black galabiyya and a white hat. He kept walking until [he] arrived at the door. He stood for a while. I suddenly saw that he shot a pistol that was in his hand. A bullet went out of it. We heard screaming inside the pump and smoke went out [from the inside]. We saw Muḥammad Mitwallī running towards the fields. Sulaymān al-ʿArabī and I rose to chase him. We found Mitwallī calling us. He told us: “Why are you running? The glass went off into Muḥammad Ḥigāzī and injured him.” We understood at that moment that the foreman wanted to mess up the issue, [saying that] we are men together, [that] he wanted us to confirm his words, and [that] there was no need for a complaint. We entered the site of the pump. We found
Muḥammad Ḥigāzī putting his hand on his face and saying: “Ibrāhīm Za‘lūk, save me! The bullet struck my head.” He got thrown on the near [stone] bench. He shed blood on the [stone] bench. Ibrāhīm told me: “run and get a container of cold water to put on his face.” I went and filled the container from the pump water. I came and we washed his face. We found that his brains had went out. The foreman Mitwallī said: “No need for a scandal, say that the glass went off into him. We eat bread and salt together [i.e. We are going through thick and thin together].” Given that we were sitting together, we confirmed his words. We said: “No need, the living is better than the dead.” Sulaymān and Ibrāhīm Za‘lūk went to Maḥmūd Bey Sūsa, and informed him that the glass went into this individual and killed him. After an hour, by the time they went to Kafr al-‘Āmira and returned. We sat beside him [i.e. the victim] until the ‘umda and the shaykh al-ghafar and the deputy of the ‘umda arrived an hour and a half after the incident.
Appendix 19:

[Reference of the case:]

al-niyāba al-‘umūmiyya raqam 545 li-sanat 1912 – Muḥammad Mitwallī Ibrāhīm –

Public Prosecutor’s Office Number 545 for the year 1912 – Muḥammad Mitwallī Ibrāhīm

Series: “i’dām” (death penalty) - Film: 3/14004 – Frames: 3344-3468]

[Photo Frames 3371-3373]

[Transcription]

[First interrogation of the witness Maḥmūd Bey Sūsa, ‘Umdu of Kafr al-‘Āmira, employer of the victim and ex-employer of the suspect – Interrogator: Ibrāhīm Mumtāz (representative of the Public Prosecutor’s office in Minūf) – Kātib: Muḥammad Ṣabrī – August 6th 1912]

استحضرنا محمود بك سوسة العلمة وسألناه فقال إسمي كما ذكر وعمر 60 سنة مولود وقائم في كفر العامرة وعمدتها

حلف اليمين القانونية

س: ما هي معلوماتك في هذه الحادثة

ج: ليلة الأحد الساعة 10 أفرنكية مساء كنت قاعد في منزلي وحضر لي سليمان غياض وإبراهيم زعلوك

الأول خفف الوابور والثاني خولي الزراعة تعلق وآخرين الأخر وقال لي تعالى لمتى أقولك فرحت له فقال

لي أن محمد حجازي الوقاد اللي كان يحمي في الوابور إنكسر ميزان المي وطلع فيه [...] فيله فلم يرد علي

فتوجهت مباشرة للتليفون وأخطرت المركز بما بلغه لي إبراهيم الزعلوك ولما أتيح لي من أقوال إبراهيم

الزعلوك أن المسألة قضاء وقدرا ونظرا لشدة ظلام الليلة وبعد المسافة أرسلت بالنيابة عنني شيخ البلد ودياب

دياب وكيلي وقلت له خذ معك شيخ الخفر وافحص المسألة وتعلائي أخبرني بالتفصيل. فراح يطلع بجي

ساعة وعاد وأخبرني بأنه راح وجد ميت فأخطرت المركز بأن الشخص مات وفي الصباح قمت وتوجهت

لمحل الواقعة وكانت الساعة 6 أفرنكية صباحا تقريبا ووجدت محمد حجازي موجود في الوابور وتحته

مغطية فانتظرت قليلا ولم أشأ الكشف عن الجثة لاعتقادي أن المسألة حصلت كما رواها لي الذين حضروا

الواقعة وحضر حضرة الملاحظ والطيب ولما كشف عليها الأخير أخبرني أنها مصابة بعيار ناري فانًا وقتها
أحضرت إبراهيم الزعلوك وسيماني البنهسي الذين كانوا في البابور وسألت الأثنين الأول كيف أن محمد حجازي يطلق عليه عيار ناري وتبلغوني بأنه الزجاجة إنكسرت فيه وكيف أنهم مستخدمين عندي [...] لغاية هذا الحاد حتى أنه يعتمد على تفتيتشيهما بمثابة لمحمد متيولي وبنهسي وإبراهيم الزعلوك الحقيقة أنهما كانوا قادرين عند البابور ومحمد متيولي ابن الاستئنائي حضر وأطلق عيار ناري على محمد حجازي وأنا من خوفني منه لأنه شقي وليس أبوه أثركانا في أن لا نأتي بهذه السيرة لك ولكونا مع بعض أخفيك عنك مسألة طلق العيار الناري فتوجهت أنا والملاحظ منزله فلم نجده فيه وفتحنا وجدنا عليه صفيح داخلها رش وأطفر وأشياء أخرى لا أتذكرها واتركت الملاحظ مع والدة المتهم ولا أدري ما دار بينهم من الحديث وأنا خرجت عشان أبحث عن المتهم وأرسلت إبراهيم أخي شيخ البلد ودياب دياب وكيلي في العامرة فتوجهوا وأخذوا يبحثوا عنه عند أخيه العطشجي الذي في البابور علي أفندي صبري وبحثوا عنه في شنوان ولم يخبروني تفتيت القبض عليه.

س: وهل القتيل كان في خدمتك من زمن

ج: نعم هو موجود في خدمتي من قبل أو ثمانية سنوات ومحمد متيولي كان عندي أيضا وطرده جملة مرات لسو سبب له حتى أنني نبهت على والده أن يطرده أو أنه يخرج من خدمتي فوعده بي بذلك (هذا الشاهد التفت إلى متيولي وإبراهيم وقال له ألم أقل لك بذلك يا متيولي فقال لي حصل)

س: وما هي معلوماتك بخصوص سير القتيل والقاتل

ج: المقتول كان سيء السمعة وكنت أسمع عنه أنه يقلع المزروعات ويستاوي المواشي لكن لم تثبت عليه تهمة من هذا الشكل أمام القضاء وكذلك المتهم لاني أسمع عنه أنه يتشاج من الناس ويقلع مزروعاتهم وأنما قبل الواقعة يوم وجدته في البابور أخبرته لعلمي بسو سبب له التفت الشاهد للمتهم وقال له ألم يحصل ذلك فقال له حصل.

س: وهل لم تسمع بسبب هذه الواقعة

ج: يوم أمس وأنا ببحث وراء سبب الجريمة سمعت من إبراهيم الزعلوك والبنهسي بأنه كان لمحمد متيولي حمارة وماتت وأتهم القتيل في أنه سمعها وتوعده باخذ كارته منه وكان حصلت [...] بين عبدالسلام العربي نسبتهم وبين أشخاص آخرين وسببتها يعالج عبدالسلام العربي الآن الاستئنالية وأن محمد متيولي في اعتقاده أن للقتيل بد في ضرب عبدالسلام العربي وأن لم يأتوا بذكره في التحقيق وأنه راح له الاستئنالية وفهم
أنه حياخد تاره من القتيل وهذا الكلام سمعته بالإشاعة المتواترة على ألسنة الناس (هذا المتهم محمد قال أنا رحت الاستبالية عشان أعطيه فلوس وأعطيته باريزة وذلك من مدة ثمانية أيام وأنه لم يتهم محمد حجازي في ضرب عبد السلام نسيبي).

س: وهل تعرف بأن للمتهم فردة

ج: عندى سلاح ولكن لا أعرف نوعه وطبعا لو كنت شفته وياه كنت ضبطته تمت اقوال حضرته وامسي

العمدة:

-(توقيع)-

وكيل النيابة:

-(توقيع)-

الكاتب:

-(توقيع)-
We summoned Maḥmūd Bey Sūsa, the ‘umda. We questioned him. He said: “My name is as mentioned. I am 60 years old. I was born and I reside in Kafr al-‘Āmira, and [my profession is] ‘umda [of the kafr].

He took the legal oath

Q.: What is your information about this incident?

A.: Sunday evening, at 10 o’clock, I was sitting in my house. Sulaymān Ghayyāḍ, and Ibrāhīm Za’lūk came to me. The first one is the ghafīr of the pump, and the second one is the foreman of my estates. The latter informed me. He told me: “come, I want to tell you something.” I went to him, and he told me: “the water level [indicator] broke into Muḥammad Ḥīgāzī the stoker who was stoking the pump, [...] he did not respond to me.” I directly headed to the phone and notified the markaz of what Ibrāhīm al-Za’lūk had told me. When it became clear to me from Ibrāhīm al-Za’lūk’s statements that the incident was fate, and given the distance and the extent of the night’s darkness, I sent the shaykh al-balad and my deputy Diyāb Diyāb on my behalf. I told him: “take the shaykh al-ghafar with you and investigate the matter, and [then] come and tell me [about it] in detail.” He left and he was absent for about an hour. [Then], he returned and told me that he had gone and had found him dead. I notified the markaz that the person had died.

In the morning, I woke up and headed to the place of the incident. It was about 6 o’clock. I found Muḥammad Ḥīgāzī in the pump, and his corpse was covered. I waited for a while. I did not want to uncover the body, thinking that the incident occurred as narrated to me by those who had been present. His Excellency the mulāḥiz and the doctor arrived. When the latter examined it [i.e. the body], he told me that it had been afflicted by a gunshot. At that moment, I summoned Ibrāhīm al-Za’lūk and Sulaymān Ghayyāḍ and Al-Bahnaṣī who were in the pump. I asked the two [individuals], first: “How was Muḥammad Ḥīgāzī shot with a bullet, and you tell me that the glass broke into him? How could they be my workers [...] to that extent that I – relying on my confidence in them – informed the authorities of what they had told me? And then Sulaymān, Bahnaṣī and Ibrāhīm al-Za’lūk told me the truth, [saying]: “We were sitting in the pump, and Muḥammad Mitwallī, the son of the foreman, came and shot a bullet at Muḥammad Ḥīgāzī, while we were afraid of him [i.e. Muḥammad Mitwallī] because he is a brigand and because his
father begged us not to mention this story to you. Because we were together, we hid the matter of firing the gun shot.” The *mulāḥiz* and I headed to his house and we did not find him in it. We searched it and found a can in which there was lead, shells and other things that I can’t remember. I left the *mulāḥiz* with the mother of the accused. I don’t know what kind of conversation they had. I went out to search for the accused, and I sent my brother the *shaykh al-balad* and my deputy Diyāb Diyāb in al-ʿĀmira. They started searching for him [i.e. the accused] at the place of his brother, the stoker, who is in ʿAlī Afandī Ṣabrī’s pump. They searched for him in Shanawān and they didn’t inform me of his arrest.

Q.: Was the victim at your service for a long time?

A.: Yes, he has been at my service for seven or eight years, and Muḥammad Mitwallī was at my service as well. I fired him several times for his bad way of life. I even insisted on his father to kick him out, [threatening] him to dismiss him [from my service] as well, and he [i.e. his father] promised me to do so. (Here the witness turned to Mitwallī Ibrāḥīm and told him: “Didn’t I tell you so Mitwallī?” And he [i.e. Mitwallī] told me: “it happened.”)

Q.: What do you know about the victim’s and the murderer’s way of life?

A.: The victim had a bad reputation. I used to hear that he would pull out crops and poison cattle but no accusation of this kind was proved against him before the law. Similarly for the murderer, I hear that he quarrels with people and pulls out their crops. A day prior to the incident, I found him in my brother’s pump, and I kicked him out because I know of his bad way of life. (The witness turned to the accused and asked him: “Didn’t that happen?” He [i.e. the accused] told him: “It happened.”)

Q.: Didn't you hear of the motive behind this incident?

A.: Yesterday, when I was searching for the motive behind the crime, I heard from Ibrāḥīm al-Zaʿlūk and Al-Bahnašī that Muḥammad Mitwallī used to have a donkey that died. He accused the victim of poisoning it. He threatened the victim that he would take revenge. A [probably: fight] occurred between ʿAbd al-Salām al-ʿArabī, the accused’s brother-in-law, and other people. As a result [of this fight], ʿAbd al-Salām al-ʿArabī is now being treated at the hospital. Muḥammad Mitwallī believes that the victim had a role in the beating of ʿAbd al-Salām al-
‘Arabī, even though they didn’t mention him in the investigation. [The accused] went to [‘Abd al-Salām al-‘Arabī] at the hospital and understood [from him] that he would take his revenge on the victim. I have heard this from the rumors of people. (Here the accused Muḥammad said: “I went to the hospital to give him money, and I gave him ten piasters. That was eight days ago, and Muḥammad Ḥigāzī was not accused in the beating of my brother-in-law ‘Abd al-Salām.”)

Q.: Do you know if the accused owns a pistol?

A.: He has a weapon but I don’t know what kind. Of course if I had seen it with him, I would have arrested him.

His Excellency’s statements ended and he signed

The ‘Umda:
(Signature)
The deputy prosecutor
(Signature)
The court clerk
(Signature)
Appendix 20:

[Reference of the case:

al-niyāba al-'umūmiyya raqam 343 li-sanat 1912 – ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād wa ākhar

Public Prosecutor’s Office Number 343 for the year 1912 – ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād and other

Series: “i’dām” (death penalty) - Film: 2/14004 – Frames: 3176-3343]

[Photo Frames 3178-3180]

[Transcription]

[First interrogation of Quṭb ‘Alī Mu‘ṭī, the chief of the village guards (shaykh al-ghafar) – Interrogator and kātib: Al-Sayyid Fu’ād al-Khūlī, police officer of the Talā district in charge of the investigation (ma’mūr markaz Talā) – July 25th 1912]

سألنا شيخ الخفر فقال

اسمي قطب علي مولدي 32 سنة صناعتي شيحي خفر مولدي كفر العرب المغرب يشتري، ومقيم به وأيول الليلة بعد المغرب بساعة تقريبا كنت غربي البلد حيث كنت امر على الخفري فسمعت عيار ناري بوسط البلد وعقب العيار حصل صباح فأسرعت إلى محل الصياح وجددته أمام منزل صاحب حماد ووجدت الشيخ صباح حماد مصاب بعيار ناري بصدغه اليمين وحاضنه عطية مكرم الله ووجوهه حارب زلم فسألت السيد حماد عن الضارب له فقال لي أن الذي ضربه عبد الحارس عطية حماد وطلب مني ضبطه [...] [و] حارب زلم [قال لي أنه] جري خلفه عقب أن ضربه ودخل منزله هو وأخواته عبد العظيم عطية حماد ومحمد عطية حماد فقصدت منزلهم القريب جدا لماحة الحادثة وناديت على عبد الحارس وأخواته وفرضوا الخرج وكانوا قادرين عليهم فكروا فكروا فكرتة منزل التعاون وهذا قولي وأخبرت فقام معني في الحال وعندنا لمحل الحادثة فالعمة الصبية السيد حماد أمامي [...] عن كيفية أصابته قال أن كان جالس مع عبد الحارس عبد العظيم عطية حماد ومحمد عطية حماد [و] عبد الحارس أخوه [...] وكانوا [...] يتكلمون مع بعضهم فك ربط محمد لأنه مرتبط عن الحرج ومعتقدين أنه هو الرابط له وممن هو حاله قال لهم أنه لم يربطه ولا يعرف في ذلك قوم بعد عبد الحارس وجواب البندقية وضربه بها وبدءا العمة راح منزل المتهمين وذكرت هكذا للمحافظة عليه وراح على التليفون يبلغ المركز وعاد أخذ المتهمين من منزلهم على الدوار وهذا قول

[...]

س: وهل توجد ضغائن بين عبد الحارس المذكور وبين المجني عليه توجب ضربه

ج: ما في ضغائن خلاف كون محمد أبو عبد الحارس متزوج من مدة أربعة شهور تقريبا ومن وقتها وهو مرتبط وهم معتقدن بأن السيد حماد (القتيل) له دراية بذلك الرابط وأتوا عليه كثيرا ليفكوه فلم ينجح فلم يصدقوا منه ذلك لاعتقادهم إنه مكنه ذلك ولا يريد فيكه فاغتاظوا منه لهذا السبب

س: وهل حقيقة الشيخ السيد حماد القتيل كان لا يريد فكه
ليس أعرف أن الشيخ سيد حماد كان يريد فكه وذات مرة أخذ طنطا لمحلات المومسات ودخل معه عند مومسة ليجربه فوجده محلول فعاد به وعمل له بعض أدوية لم تنجح ولكنهم كانوا لا يزالوا معتقدين أن ممكنه حله ومتوقف

س: ولأي سبب يعتقدون أن الشيخ سيد حماد القتيل ممكنه فك رباط محمد عطية حماد ومتوقف

ج: المشاع بالبلد أن الشيخ سيد القتيل عرشه شخص اسمه عقب معروف حماد مزارع طرفه وأبى عم محمد عطية حماد وأن القتيل يريد طلاق زوجة محمد عطية حماد منه ليزوجها بعاقب حماد المذكور

س: ومن سمعت هذه الإشاعة

ج: الإشاعة في البلد كلها وحتى عبد العظيم عطية حماد أخ محمد عطية حماد المربوط قال لي هذه الرواية وطلب متي التكلم مع الشيخ سيد حماد في هذا الموضوع فكلمته فقله أنه لم يعمل هذا العمل وأنه لو كان ممكنه حله لحله لأنه ابن عمه

س: وهل تظن بأن هذا السبب كافي لكون عبد الحارس يقتل السيد حماد لهذا السبب

ج: نعم أظن ذلك خصوصا وأنهم كانوا مكسوفين من ربط أخيهم لأن البنت زوجة محمد حماد كانت متزوجة من يدعى شعبان ابن عبد الحميد فودة وطلقوها منه وزوجوها لأخيهم محمد وخلاف ذلك فإن عبد الحارس حماد المذكور رجل شرير وأخلاءه رديئة ولا يبعد عليه هذا الفعل

س: هل لم تسألوا المتهم عبد الحارس

ج: سأثناء فقال أن أخيه محمد عطية حماد المربوط هو الضارب للمجني عليه وكذلك قال اخيهم عبد العظيم عطية حماد الخفري ولما سألهما محمد عطية حماد فوافقهما على ذلك وقال أنه هو الضارب بالعيار للقتيل نظرًا لكونه لم يحل رباطه ولكن كل الشهود والمصاب قالوا أن الضارب هو عبد الحارس ودي حيلة أتوا بها لكي يوقعوا أخيهم الصغير محمد لأنه مرتبط وليس لأولاد ومحمد اعترف بذلك لأنه هو السبب في كل ما حصل خصوصا وأنه صغير السن ولا يمكنه أن يضرب البنضدية

س: وكيف توصل المتهم عقيداً السيلا على سلاح الخفري

ج: لا أعرف

س: هل تظن أن الخفري له يد في هذه الحادثة

ج: لا أعرف ولكنه كان مهتم جدا بربط أخيه وترجاني جملة مرات لأكمل الشيخ سيد ليتبناه ولا يعد أنهم يكونوا متفقين على هذا العمل

[...]

س: كيف توصل المتهم حتى تحصل على سلاح الخفري

ج: لا أعرف

س: هل تظن أن الخفري له يد في هذه الحادثة

ج: لا أعرف ولكنه كان مهتم جدا بربط أخيه وترجاني جملة مرات لأكمل الشيخ سيد ليتبناه ولا يعد أنهم يكونوا متفقين على هذا العمل

[...]

تيلى عليه اقواله وختم

شيخ الخفري: (ختم).
We questioned shaykh al-ghafar and he said

My name is Quṭb ‘Alī Mu‘ṭī. [My age is] 32 years old. My profession is a shaykh ghafar. My birthplace is Kafr al-‘Arab al-Baḥrī, and I reside there. I say that this night about an hour after sunset, I was in the west of the village where I was inspecting the ghafar. I heard a gunshot in the middle of the village, after which there was screaming. So I rushed to the place of the screaming, and I found it to be in front of Jāhīn Ḥammād's house. I found al-Shaykh Sayyid Ḥammād injured by a gunshot in his right temple. ‘Aṭiyya Makram Allah was holding him and Gābir Zalaṭ was beside him. I asked al-Sayyid Ḥammād about who shot him, and he told me that ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād is the one who shot him and he asked me to arrest him [...] [and] Gābir Zalaṭ [told me that he] ran after him [i.e. the accused] after he shot him [i.e. the victim], and he [i.e. the accused] entered his house along with his brothers’Abd al-‘Azīm ‘Aṭiyya Ḥammād and Muḥammad ‘Aṭiyya Ḥammād. I went to their house, which is very close to the place of the incident. I called out to ‘Abd al-Ḥāris and his brothers but they refused to go out. They had locked the door up on themselves. I left them and went to the ’umda's house. I told him and he immediately came with me and we returned to the place of the incident. The ’umda asked the injured al-Sayyid Ḥammād in front of me [...] about how he was injured. He said that he was sitting with ‘Abd al-‘Azīm ‘Aṭiyya Ḥammād, his brother Muḥammad and his brother ‘Abd al-Ḥāris and they were [...] talking to him regarding breaking Muḥammad’s spell since he is under a spell that deprives him of women. They believe that he [i.e. the victim] is the one who cast the spell on him and he can break the spell. He told them that he didn't cast the spell on him and doesn't know how to do this. Later, ‘Abd al-Ḥāris got the rifle, and shot him. Afterwards, the ’umda went to the accused’s house and left me here to protect him [i.e. the victim] and he [i.e. the ’umda] used the phone to inform the markaz and [then] he returned to take the accused from their house to the dawwār. This is my statement.

[...]

Q.: Are there any grudges between the above-mentioned ‘Abd al-Ḥāris and the victim for which he would shoot him?

A.: No grudges except that Muḥammad, ‘Abd al-Ḥāris’s brother, has been married for about four months and he has been under the spell since then. They believe that al-Sayyid Ḥammād (the victim) had knowledge of how to undo the spell. They came to him many times to break the spell but he didn't succeed. They didn't believe this from him [i.e. that he can't break the spell] because they thought that he can do it but that he doesn't want to, so they were angry with him for this reason.

Q.: Did al-Shaykh Sayyid Ḥammād, the victim, in fact not want to break the spell?

A.: My knowledge is that al-Shaykh Sayyid Ḥammād wanted to break the spell, he [even] took him once to Ṭanṭā to brothels and went with him to a prostitute to test him, and he found him impotent. He returned with him and made some remedies for him but they didn't work. Still, they believed that he could break the spell but that he abstained.
Q.: For what reason do they believe that al-Shaykh Sayyid Ḥammād, the victim, could break Muḥammad ‘Aṭiyya Ḥammād’s spell but that he abstained?

A.: It is rumored in the village that al-Shaykh Sayyid, the victim, has [in his service] someone whose name is ‘Uqqāb Ma’rūf Ḥammād, a peasant that he knows and a cousin of Muḥammad ‘Aṭiyya Ḥammād. The victim wanted Muḥammad ‘Aṭiyya Ḥammād’s wife to divorce him, so that he would marry her to the above-mentioned ‘Uqqāb Ḥammād.

Q.: From whom did you hear this rumor?

A.: The rumor is [spread] in the whole village. Even the bewitched Muḥammad ‘Aṭiyya Ḥammād's brother, ‘Abd al-‘Aẓīm ‘Aṭiyya Ḥammād the ghafīr, told me this story and asked me to speak with al-Shaykh Sayyid Ḥammād about this subject. I talked to him and he swore to me that he didn't [cast the spell] and that if he could break the spell, he would have freed him because he is his cousin.

Q.: Do you think that this reason is enough for ‘Abd al-Ḥāris to kill al-Sayyid Ḥammād?

A.: Yes, I think so, especially that they were very ashamed of their brother's spell because the girl, Muḥammad Ḥammād's wife, was married to someone called Sha‘bān, the son of ‘Abd al-Ḥamīd Fūda. They divorced her from him [i.e. Sha‘bān] and married her to their brother Muḥammad. Aside from that, the above-mentioned ‘Abd al-Ḥāris Ḥammād is an evil man and his morals are bad, and it is not unlikely that he would do such an act.

Q.: Didn’t you question the accused ‘Abd al-Ḥāris?

A.: We questioned him and he said that his brother Muḥammad ‘Aṭiyya Ḥammād the bewitched is the one who shot the victim and their brother ‘Abd al-‘Aẓīm ‘Aṭiyya Ḥammād, the ghafīr, said that as well. When we asked Muḥammad ‘Aṭiyya Ḥammād, he agreed with them on this. He said that he is the one who shot the victim because he [i.e. the victim] didn't break his spell. But all the witnesses and the injured said that the shooter is ‘Abd al-Ḥāris and this is a trick they made up to implicate their younger brother Muḥammad because he is bewitched and doesn't have children. Muḥammad confessed this because he is the motive behind everything that happened, and he is young and can’t shoot a rifle. [...]
Appendix 21:

[Reference of the case:

al-niyya al-‘umūmiyya raqam 343 li-sanat 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād wa ākhar

Public Prosecutor’s Office Number 343 for the year 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād and other

Series: “i’dām” (death penalty) - Film: 2/14004 – Frames: 3176-3343]

[Photo Frames 3199-3202]

[Transcription]

[First interrogation of Muhammad ‘Atiyya Ḥammād, one of the three brothers accused – Interrogator and kātib: Al-Sayyid Fu’ād al-Khūlī, police officer of the Talā district in charge of the investigation (ma’mūr markaz Talā) – July 25th 1912]

استحضرنا محمد عطية حماد وسئل فقال:

اسمي محمد عطية حماد 19 سنة صناعتي فلاح مولدي كفر العرب البحري ومقيم بها وأقول أنا زوجت

بالحرم صديقة من مدة أربعة شهور وكان قايل عليها قبل عقاب متروك عمي السيد حماد ولما تزوجت بها إنجاب عقاب الذاكر وكذلذو والدته رحمة وخلو عم السيد ربطني عن الحريم وما أنا

غليبت وكلما كنت أروح لواحد يقول لي أن اللي ربطوك من جنسك فعرفت أنه عم السيد لأن الراجل اللي

فتح لي الرمل قال لي اللي عملك العمل ده راجل أسمر وغليظ الشفايف (...) فتأكدت أنه هو عم السيد وأكثر

من واحد قالوا لي ذلك بعد فتح الرمل على أوصافه بعينها ويعدها عدت لعم السيد وصرت أتحايل وأثيرج

لكي يفك رباطي فكان يحاولني وأخذني مرة وتوهج معي عند الفرح وصل وتحمل (...) فتأكدت أنه قصد

رباطي فتفتيظته منه ونويت على قتله وذلك من ثلاثين يوم لما خاصمني وقال لي أنا ما لي دعوة ومعش

عازر أشوف ولك، وليلة أمر لما حضر أي عبد العزيز حماد الخبير ومعه بنديقته وتركها في المدرسة

الكائنة على باب الدار وخرج ووقع مع نسيبنا إبراهيم شنيس حماد كما أخذت البنديقة وظرف جيب خان

ورحبت على عم السيد حماد الذي كان جالسا أمام منزل عم ياهين حماد مع خمسة أشخاص وقفت منه

على بعد قصبة ووضعته بالوش ثم أخدت بهم وجريت على دارنا ففتحني أخي عبد العزيز حماد الذي كان

جالسا مع عم السيد القتيل ومسك مي البنديقة في دارنا وبعد شوية حضر العدة وشيخ الخفر والخفراء

وخذوني للدوار أنا وأخواتي وهذا قولتي:

[...]

س: جميع من ذكرتهم عدا جاهين حماد وكان معهم أيضا جابر زلط وعطية مكرم الله قرروا بأن عبد الحارس

أخيه هو الضارب للسيد حماد وكنى أنت جالسا معهم وقت ضربه بالعيار وكذا قررت زوجتك الحرمة
صديقتي بأن عبد الحارس أخيك هو الذي أخذ البنادقية وخرج بها من الدار وعاد بها بعد طلق العيار ووفق ذلك، فإن أخيك عبد العظيم حماد قرر أيضا بأن عبد الحارس أخيك هو الضارب للعابر فأولا ما قولك في ذلك?

ج: الحقيقة أن الضارب للعابر هو أخيك عبد الحارس عطية حماد وأننا قاعد مع شوية جدعان عند الجامع المجاور لمنازلنا قصدنا محل جلوس عم السيد حماد ومن معه وشفته لما أخذ البنادقية وخرج بها وبعد أن أطلق العابر نظرته عائدا يجري ومعه البنادقية ودخل الدار ووراه اخونا عبد العظيم وأننا الآخر خفتم ودغنا أجري وراهم ووقفلنا الدار علينا ووقفنا في وسطه وقلنا للوجودين صح وقال أخيك عبد الحارس للحارس للحريم اللي في البيت أنا ضربت السيد حماد وش وبعد ذلك أنتما على أني أقول بأنني أنا الضارب للعابر حيث أني أنا السبب قفنت ذلك وقت كلامي الأول الذي اتفقنا عليه.

س: من هم الجدعان الذين كانوا جالسين معك وقت أن خرج أخوك بالبنادقية؟

ج: الحقيقة أننا ما كنت قاعد معجدعان بجوار الجامع واننا كنت قاعد مع عم السيد حماد القتيل وأخى عبد العظيم والكومي جاهين حماد وإبراهيم أبو شنيشن وجابر زلط وعطية مكرم الله.

س: هل أخوك عبد الحارس كلم القتيل قبل إطلاق العابر عليه؟

ج: قال إنت ليه ما بتفش محمد أخكي أحنا ما طلعش فيها واحد محلول أبدا عاوز تخلينا نسوان في الكفر فعم السيد قال له معنديش ((...)) صح أيوب غريب كدة فروع دور على غيري فأخى عبد الحارس جاوبه بالعابر وجري فقمنا أنا وأخى عبد العظيم ودخلنا كنا الدار ووقفنا الدار.

س: وما الداعي لكونك لم تقرر الحقيقة في الأول.

ج: علشان أخي عبد الحارس يتبأر وانا أروح فيها ما دمت أنا السبب زي ما اتفقنا.

س: هل لك دراية في استعمال السلاح والتنتشين؟

ج: أنا لم امسك سلاح في عمري ولا أعرف أنشن.

س: وهل أخوك عبد الحارس أفعالك بتصميحك على قتل عم السيد ومتي كان ذلك.

ج: أنا وأخو الحارس أخني كان نروح لعم السيد ونترجا فيه في كفي وكان ينطلاه وعبد الحارس أخني كان زعلان ومهموم عشانى خالص قال لي مادام مش راضي يفكك أهني تخذ لها ((...)) باكدة ياكدة وصمم له على اللي جرى وذلذ من مرده عنصري وخمسة وعشرين يوم وقال لي ان لم يحل رباطه أوقفته أنا على ذلك ولم يحدد لي وقت لقتله.

س: هل لك سوابق؟

ج: لا أبدا.

س: هل لم تنت في قضايا.
We summoned Muḥammad ‘Aṭiyya Ḥammād. He was questioned and he said:

My name is Muḥammad ‘Aṭiyya Ḥammād, 19 years old. My profession is fallāḥ. My birthplace is Kafr al-‘Arab al-Bahrī, and I reside there. I state that I got married to the woman Ṣiddīqa four months ago. ‘Uqqāb Ma‘rūf Ḥammād, the peasant working for my uncle al-Sayyīd Ḥammād, spoke about her [for marriage] before me. When I got married to her, the above-mentioned ‘Uqqāb got angry, and so did his mother Raḥma. They made uncle al-Sayyid render me impotent with women. I got frustrated, because every time I went to any man [i.e. fortune teller], he tells me that “whoever cast a spell on you is from your bloodline.” I knew that it is uncle al-Sayyid, because the man who has read in the sand for me told me that "the one who did this deed is a dark-skinned man with thick lips (...)." Thus, I was sure that it is uncle al-Sayyid. More than one [fortune-teller] told me this after looking into the sand [and told me] his precise description. Later, I returned to my uncle al-Sayyid and began urging him and begging him to break my spell. He was testing me, and took me once and went with me to the prostitutes, but (...) didn't happen. Thus, I was sure that he sought to cast a spell on me, so I got angry and intended to kill him. That was thirty days ago when he quarrelled with me and told me "I have nothing to do [with this] and I don't want to see your face again." Last night, when my brother ‘Abd al-‘Aẓīm Ḥammād, the ghafīr came with his rifle, he left it in the mandara, which is by the house door. [Then] he went out and sat with our in-law Ibrāhīm Shinaysh Ḥammād I took the rifle and a bullet (...) and went to my uncle al-Sayyīd Ḥammād who was sitting in front of my uncle Jāhīn Ḥammād's house along with five or six people. I stood a qaṣaba away from him, and I shot him in the face. Then, I took to my heels and ran to our house. My brother ‘Abd al-‘Aẓīm Ḥammād, who was sitting with uncle al-Sayyid the victim, caught up with me and took the rifle from me in our house. After a while the ‘unda and shaykh al-ghafar and the ghafar came and took me and my brothers to the dawwār, and this is my statement.

[...]
The truth is that my brother, ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād is the shooter of the bullet. At that moment I was sitting with some guys by the mosque which is next to our house and across from the place where uncle al-Sayyid Ḥammād and others sat. I saw him when he took the rifle and went out with it. After he shot the bullet, I saw him retuning with the rifle, running. He entered the house with our brother ‘Abd al-‘Azīm behind him and myself last. I got afraid and entered running after them. We locked ourselves in the house and we stood in the middle of it. We told the people present – corrected – and my brother ‘Abd al-Ḥāris, the shooter, told the women in the house: "I shot a bullet into al-Sayyid Ḥammād." After this, we agreed that I say that I am the one who shot the bullet since I am the reason [behind all this]. Thus, I said this, and said my first statement upon which we [i.e. the family] have agreed.

Q.: Who are the guys with whom you were sitting when your brother went out with the rifle?

A.: The truth is that I wasn't sitting with guys next to the mosque. I was sitting with uncle al-Sayyid Ḥammād, the victim, my brother ‘Abd al-‘Azīm, al-Kūmī Jāhīn Ḥammād, Ibrūhīm Abū Shinaysh, Gābir Zalaṭ and ‘Aṭiyya Makram Allah

[...]

Q.: Did your brother ‘Abd al-Ḥāris speak with the victim before shooting the bullet into him?

A.: He told him: "You, why don't you free Muḥammad, my brother, [from the spell]? No impotent man ever came out of us! You want to make us [like] women in the kafr?" Uncle al-Sayyid told him: "I don't have (...) – corrected – methods other than this, go and search for someone other than myself." My brother ‘Abd al-Ḥāris responded to him with the bullet and ran away. My brother ‘Abd al-‘Azīm and I got up and we all entered the house and locked it up.

Q.: Why didn't you confess the truth from the beginning?

A.: So that my brother ‘Abd al-Ḥāris is not convicted, and I get [convicted] in [the crime] since I am the reason [for it] as we [i.e. the family] have agreed.

Q.: Are you capable of using weapons and aiming?

A.: I have never held a weapon in my life and I don't know how to aim.

Q.: Did your brother ‘Abd al-Ḥāris inform you of his plan to kill your uncle al-Sayyid, and when was that?

A.: My brother ‘Abd al-Ḥāris and I used to go to uncle al-Sayyid and beg him to break my spell, but he was delaying. My brother ‘Abd al-Ḥāris was upset and very concerned for me. He told me: "As long as he doesn't want to break your spell, let it take (...) one way or the other." He planned to do to him what happened. That was 20 or 25 days ago. He told me: "If he doesn't break your spell, I will kill him." I agreed with him, but he didn't determine the time of his murder.

Q.: Do you have any antecedents?
A.: No, not at all.

Q.: Weren’t you accused in some cases?

A.: No, not at all.

His statements were read aloud to him, and he doesn't have a seal.

The *ma’mūr*: (Signature)
Appendix 22:

[Reference of the case:

al-niyāba al-‘umūmiyya raqam 343 li-sanat 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād wa ākhar

Public Prosecutor’s Office Number 343 for the year 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād and other

Series: “i’dām” (death penalty) - Film: 2/14004 – Frames: 3176-3343]

[Photo Frames 3185-3196]

[Transcription]

[First interrogation of Ḥasan Muḥammad Abū Shinayshin, one of witnesses – Interrogator and kātib: Al-Sayyid Fu‘ād al-Khūlī, police officer of the Talā district in charge of the investigation (ma’mūr markaz Talā) – July 25th 1912]

اسمي حسن أبو شنيشن 50 سنة صناعي فلاح مولدي كفر العرب البحري ومقيم بها

أقول الليلة قبل العشاء بحومة كنت قاعد أمام أمام منزللي فسمعت طلق عيار ناري وبعد صباح فرحت عليه وجدت السيد حماد مصاب بعيار ناري في صدعه اليهيم ووجدته مسنود على عطية مكرم ووجوه جابر زلف فسألته عن الضارب له قال لي بأن الذي ضربه هو عبد الحارس عطية حماد أمام جابر زلف وعطية مكرم والكوني جاهين حماد وإبراهيم شنيشن حماد وكان يوجد معهم أخوات عبد الحارس وهم عبد العظيم محمد وسبب ضربه هو أنهم طلبوا منه أن يفك محمد عطية حماد فقال لهم معرفشي فقام عبد الحارس ورجع ضربه بالعيار وهذا قول

س: ما الذي تعلمته في مسألة ربط محمد عطية حماد

ج: محمد عطية حماد عقب أن تزوج من أربعة شهر وهو مرتبط ومعتقد هو واخواته عبد الحارس وعبد العظيم أن الشيخ سيد حماد هو الرابط له لكونه يريد طلاق زوجته منه لكي يزوجهها بخدامه معروف ومثل عاون يفكه ودانما مكسوفين من ذلك وقد قال عبد الحارس لابني محمد حسن محمد شنيشن أنه يقول للشيخ سيد حماد بأنه أن لم يفك أخيه يعمل في البلد حادثة في حداثة طوح النبي عملها على بلال

س: وما الذي يقصده عبد الحارس من كونه يعمل حادثة كحادثة طوح أن لم يفك أخيه
يعني يموت له اثنين ثلاثة من عائلة السيد حماد كما قتل على بلال في اهله بناحية طوخ دلكة من مدة ثلاث سنوات تقريبا حيث قتل اثنين من أقاربه وأصاب سبعة بعيارات نارية ببنديقته الميري حيث كان على بلال المذكور وقدنت شيخ خفر بطوخ دلكه

(ختم)

[Translation]

We interrogated Ḥasan Abū Shinayshin [and] he answered

My name is Ḥasan Muḥammad Abū Shinayshin, 50 years old, and my profession is fallāḥ. My birthplace is Kafr al-ʿArab al-Baḥrī, and I reside there.

I state that, tonight a little bit before the evening prayer, I was sitting in front of my house and [then] I heard a gunshot and [afterwards] screaming. So, I went towards it [i.e. the screaming], and I found al-Sayyid Ḥammād struck by a bullet in his right temple. I found him leaning on ‘Atīyya Makram with Gābir Zalaṭ next to him. I asked him about the shooter, and he told me that ‘Abd al-Ḥāris ‘Atīyya Ḥammād is the one who shot him in front of Gābir Zalaṭ, ‘Atīyya Makram, al-Kūmī Jāḥīn Ḥammād, and Ibrāhīm Shinayshin Ḥammād. ‘Abd al-Ḥāris’s brothers were with them. They are ‘Abd al-ʿAẓīm and Muḥammad. The motive for shooting was that they asked him to break Muḥammad ‘Atīyya Ḥammād’s spell. He told them: "I don't know how to," and [then] ‘Abd al-Ḥāris ‘Atīyya Ḥammād got up and [then] returned to shoot him with the bullet, and this is my statement.

Q: What do you know about the issue of Muḥammad ‘Atīyya Ḥammād's spell?

A.: Since four months after Muḥammad ‘Atīyya got married, he has been under the spell. He and his brothers, ‘Abd al-Ḥāris and ‘Abd al-ʿAẓīm, believe that al-Shaykh Sayyid Ḥammād is the one who cast a spell on him, because he [i.e. al-Shaykh] wanted to divorce [Muḥammad ‘Atīyya]’s wife from him to marry her to his servant ‘Uqqāb Ma'rūf and [therefore] he doesn't want to break his spell. They are always ashamed of that. ‘Abd al-Ḥāris told my son Muḥammad Hasan Muḥammad Shinayshin that he is to tell al-Shaykh Sayyid Ḥammād that if he doesn't break his brother’s spell, he will cause an affair in the village like the Ṭūkh affair that ‘Alī Bilāl committed.

Q: What does ‘Abd al-Ḥāris mean by causing an affair like the Ṭūkh affair, if he doesn't break the spell of his brother?

A.: He means that he would kill two or three members from al-Sayyid Ḥammād's family, like what ‘Alī Bilāl did with his family in the area of Ṭūkh Dalka about three years ago. He killed two of his relatives and injured seven with bullets from his service rifle, since the above-mentioned ‘Alī Bilāl was a shaykh ghafar in Ṭūkh Dalka.

(Seal)
Appendix 23:

**Reference of the case:**

*al-niyāba al-ʿumūmiyya raqam 343 li-sanat 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād wa ākhar*

Public Prosecutor’s Office Number 343 for the year 1912 – ‘Abd al-Ḥāris ‘Atiyya Ḥammād and other

Series: “iʿdām” (death penalty) - Film: 2/14004 – Frames: 3176-3343]

**Photo Frames 3269-3272**

**Transcription**


= باسم الجناب الأفخم عباس حلمي باشا خديوي مصر =

يجوز للمحكمة جنايات طنطا

المشكلة علنا تحت رئاسة حضرة عبد العزيز كحيل بك

وحضور حضرات امين علي بك ومحمد توفيق نسيم بك مسئولي محاكمة الاستئناف الأهلية والسيد أفندي

مصطفى وكيل النيابة وحسين سلمان أفندي كاتب المحكمة

أصدرت الحكم الآتي

في قضية النيابة العمومية نمرة 343 سنة 6160

عبد الحارس عطية حماد عمره 00 سنة وصناعته فلاح ومسكنه كفر العرب البحري

محمد عطية حماد عمره 00 سنة وصناعته فلاح ومسكنه كفر العرب البحري

وحضر مع الأول حبيب زين بك ومع الثاني أحمد أفندي المشد

بعد سماع امر الإحالة وطلبات النيابة العمومية وأقوال المدعين بالحق المدني وسماع شهادة الشهود وأقوال

المتهمين والمحامي عنهما بالإطلاع على الأوراق والمداولة قانونا

[...]
وجحيث أنه ثابت من تحققات هذه الدعوى وشهادة الشهود أمام الجلسة أن محمد عطية هو أحد المتهمين في تزوج بحجة تدعى صديقة ولكنه بسبب ضعف بنيته لم يمكنه الاقتراب منها. وكان محمد عطية حماد أحد المتهمين في هذه الاعتقاد، وعثر على كتابة ذكرت أن السيد حماد المذكور هو الذي "الرب" وكان آخرون عدو الحرس حماد مشاركا له في هذا الاعتقاد، وعثر على كتابة ذكرت أنه كان من معاونين من السيد حماد، ويذكر أن ذلك التالي:

وجحيث أنه ثابت أيضا، أن هذا القتل حصل بسبق الأصرار وذلك من شهادة محمد عطية حماد. وكان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد، وتمايزت اهتماماتهما بالحالة التي تعيش عليها جماعة من شهداء الشهود. ولكن السيد حماد المذكور كان يريد زواج هذه الحالةbecue على شروطهم واعتقادهم، وهو إبراهيم شنجين حماد والسيد حماد المذكور وسياسهم جابر زلط وعطية مكرم الله، وقد دار الكلام على حالة محمد حماد قبل زواجه، وكان الأثنان يطلبان بالحالة، وأن يفيق من ربطه وربطه بسفينة أخرى. وقد استمر الحال على ذلك، رغم توقعاتهم. وعثر على كتابة ذكرت أن السيد حماد المذكور هو الذي "ربطه" عند الناس، وكان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد.

وجحيث أنه ثابت أيضا، أن هذا القتل حصل بسبق الأصرار وذلك من شهادة محمد عطية حماد. وكان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد، وتمايزت اهتماماتهما بالحالة التي تعيش عليها جماعة من شهداء الشهود. ولكن السيد حماد المذكور كان يريد زواج هذه الحالة barbecue على شروطهم واعتقادهم، وهو إبراهيم شنجين حماد والسيد حماد المذكور وسياسهم جابر زلط وعطية مكرم الله، وقد دار الكلام على حالة محمد حماد قبل زواجه، وكان الأثنان يطلبان بالحالة، وأن يفيق من ربطه وربطه بسفينة أخرى. وقد استمر الحال على ذلك، رغم توقعاتهم. وعثر على كتابة ذكرت أن السيد حماد المذكور هو الذي "ربطه" عند الناس، وكان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد.

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وجحيث أنه ثابت أيضا، أن هذا القتل حصل بسبق الأصرار وذلك من شهادة محمد عطية حماد. كان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد، وتمايزت اهتماماتهما بالحالة التي تعيش عليها جماعة من شهداء الشهود. ولكن السيد حماد المذكور كان يريد زواج هذه الحالة barbecue على شروطهم واعتقادهم، وهو إبراهيم شنجين حماد والسيد حماد المذكور وسياسهم جابر زلط وعطية مكرم الله، وقد دار الكلام على حالة محمد حماد قبل زواجه، كان الأثنان يطلبان بالحالة، وأن يفيق من ربطه وربطه بسفينة أخرى. وقد استمر الحال على ذلك، رغم توقعاتهم. وعثر على كتابة ذكرت أن السيد حماد المذكور هو الذي "ربطه" عند الناس، كان أخوه عبد الحارس حماد مشاركا له في هذا الاعتقاد.
يعترف بارتكاب جريمة قتل لم يرتكبها فموافقته لأخيه إذن ليست هي الاتفاق الناشيء عن أراده حرة المكونة
للاتفاق الجنائي

[...] فبناء على ما ذكر

وبعد الاطلاع على المادة 194 عقوبات والمادة 50 من قانون تشكيل محاكم الجنايات وعلى ما قررته هذه المحكمة بإحالة أوراق هذه الدعوى على فضيلة مفتي مديرية الغربية لأخذ رأيه فيها وعلى ما ورد من فضيلة المفتي بتاريخ 25 سبتمبر سنة 1912 نمرة 2170

[Translation]

In the name of His Majesty ‘Abbās Ḥilmī Pasha, the Khedive of Egypt

The Ṭanṭā Criminal Court

Formed publicly under the presidency of his Excellency ‘Abd al-‘Azīz Kuḥayl Bey

And in the presence of Their Excellencies Amīn ‘Alī Bey and Muḥammad Tawfīq Nasīm, counselors to the Native Court of Appeal, al-Sayyid Afandī Muṣṭafā, the deputy prosecutor, and Ḥusayn Salmān Afandī the court clerk

Issued the following ruling

In the case of the Public Prosecutor’s Office number 343 [for] the year 1912 […]

‘Abd al-Ḥāris ‘Aṭiyya Ḥammād is 25 years old. His profession is fallāḥ, and his place of residence is Kafr al-‘Arabī al-Baḥrī.

Muḥammad ‘Aṭiyya Ḥammād is 25 years old. His profession is fallāḥ, and his place of residence is Kafr al-‘Arabī al-Baḥrī.

Ḥabīb Zayn Bey represented the first one [i.e. accused] and Aḥmad Afandī al-Mashadd represented the second

After hearing the transfer order, the demands of the public prosecution, and the statements of the civil plaintiffs in the case, and [after] hearing the testimony of the witnesses, the statements of the accused and their lawyers, and [after] reviewing the documents and [after] deliberating according to the law

[...]

And whereas, it is established from the investigations of this case and the testimony of the witnesses before this session that Muḥammad ‘Aṭiyya Ḥammād, one of the accused, got married to a woman called Ṣiddīqa. But due to the weakness of his constitution, he was unable to approach her [sexually]. Since he was told that one of the elders of his family, who is called al-Sayyid Ḥammād, wanted to marry this woman to one of his servants, who is called ‘Uqqāb Ḥammād, before his marriage to her, he believed that the above-mentioned al-Sayyid Ḥammād was the one who had “cast a spell on him.” His brother ‘Abd al-Ḥāris Ḥammād shared the same belief with him, and he was very much affected by the condition of his brother, as he saw that it [i.e. the condition] is a disgrace to his family. They both asked al-Sayyid Ḥammād urgently to break his spell and they asked some acquaintances to mediate. This continued for about four months, i.e. until July 25th, 1912. After sunset that day, the two brothers met in front of their house in Kafr al-‘Arabī al-Baḥrī in the markaz of Talā, with their third brother ‘Abd al-‘Azīm Ḥammād, the above-mentioned al-Sayyid Ḥammād, and other people. Those [people] are Ibrāhīm Shinayshin Ḥammād, al-Kūmī Shāḥīn Ḥammād, Gābir Zalaṭ, and ‘Aṭiyya Makram Allah. A conversation took place regarding Muḥammad's condition. ‘Abd al-Ḥāris repeated his
request to al-Sayyid that he break [Muḥammad’s] spell. Al-Sayyid apologized for his inability to do this. ‘Abd al-Ḥāris left the meeting, entered his house, took his rifle, and put a bullet in it. He went out and stood in front of al-Sayyid Ḥammād and told him: "You made us like women in this village." He shot him, and [al-Sayyid] fell dead.

[...]

And whereas it is established that the murder was perpetrated with premeditation. And that is [firstly] from the testimony of Muḥammad Ḥasan Shinayshin, which is “supported by other testimonies,” that ‘Abd al-Ḥāris entrusted him [i.e. the witness] to inform al-Sayyid that if he didn’t break the spell of his brother, “he [would] cause an incident like the one Bilāl committed in Ṭūkh,” that is an act of public murder. However, Ḥasan didn’t inform him [i.e. the victim] of this because he didn’t meet him. And [that is secondly] from the statement of Muḥammad ‘Aṭiyya Ḥammād in the investigations that his brother told him that he would kill al-Sayyid Ḥammād if he didn’t break the spell. [And that is thirdly] from the circumstances in which the murder occurred, i.e. the state of calmness of the murderer when entering his home to get the rifle, [when] taking it, putting the bullet in it, leaving with it, and shooting the victim. [This happened] without [the victim] doing or saying anything that would make [the murderer] angry, aside from refusing to do something beyond his capacity. All of this indicates that what he did was based upon premeditation.

And whereas, with the establishment of the murder with premeditation against ‘Abd al-Ḥāris ‘Aṭiyya Hammād, it is clear that he is convicted according to the article 194 of the Penal Code. There is no value in what Muḥammad ‘Aṭiyya Hammād, the second accused, has claimed in some places of the investigation and in this session [which is] that he is the murderer of al-Sayyid Ḥammād. First: because all the witnesses of the incident unanimously agreed that the murderer is his brother, ‘Abd al-Ḥāris. Second: The victim himself told the elders of the village who asked him after his injury that the murderer is ‘Abd al-Ḥāris. Third: Muḥammad Ḥammād himself, his wife Ṣiddīqa, and his brother ‘Abd al-‘Aẓīm said in the investigation that after shooting the bullet, ‘Abd al-Ḥāris entered his house and his brother Muḥammad followed him. In [the house] they agreed in front of their mother that Muḥammad was to confess for himself [that he is the murderer] because he is the main reason behind this crime and because he is a young boy. The contradiction of Ṣiddīqa's testimony in this session with her testimony in the investigation is not to be considered, because it is clear that it is due to the influence of family who are seeking to rescue ‘Abd al-Ḥāris from this serious accusation by sacrificing Muḥammad, who is a useless member [of the family] in addition to his being the primary reason behind the perpetration of the crime.

And whereas the accusations directed by the Public Prosecutor’s Office against the above-mentioned Muḥammad Ḥammād are the participation with his brother, ‘Abd al-Ḥāris, in the crime of murder by agreeing to commit it

And whereas, there is no evidence in the investigations for this agreement except for the above-mentioned Muḥammad's statement that his brother told him: "If al-Sayyid doesn't break your spell, I will kill him and he [i.e. Muḥammad] agreed to this."
And whereas, the court can't give this word the same power that the Public Prosecutor’s Office gives it, because Muḥammad ‘Aṭiyya, as weak as he is in physical constitution, is weak in will power. The investigations in this case showed him led by his brother and his family to the extent that he confesses a murder crime he didn’t commit. Thus, his agreement with his brother is not the agreement resulting from free will that constitutes criminal agreement.

[...]

Based on what was stated

And after reviewing article 194 of the penal code and article 50 of the law organizing the criminal courts, and based on what this court has decided by transferring the documents of this case to His Eminence the Muftī of al-Gharbiyya Governorate to request his opinion, and based on what came from His Eminence the Muftī on September 25, 1912, number 2170,

The court ruled – in the presence [of the accused] – the death sentence against ‘Abd al-Ḥāris ‘Aṭiyya Ḥammād and the obligation to pay the civil plaintiffs in the case, as their names are presented above in this verdict, an amount of 200 Egyptian Pounds and the expenses of the civil case. [The court] ruled Muḥammad ‘Aṭiyya Ḥammād not guilty.

This is the verdict of the court in its public session held on Thursday, September 26, 1912. Shawwāl 15, 1330

The President of the Court (Signature)

The court clerk (Signature)
Appendix 24:

[Four original postcards (from a set of 15) on the Dinshawāy trial]


Postcard No. 2: “The Special Court Sitting. Chebin-El-Kom”

Postcard No. 3: “Chebin-El-Kom. Prisoners First Day”

Postcard No. 4: “Chebin-El-Kom. Last Day of Trial”

Appendix 25:

[Reference of the case:

al-niyāba al-‘umūmiya raqam 2207 li-sanat 1898 – Aḥmad ‘Abd al-Ḥaqq Yūnis –

PublicProsecutor’s Office Number 2207 for the year 1898 - Aḥmad ‘Abd al-Ḥaqq Yūnis

Series: “i’dām” (death penalty) - Film: 3/14002 – Frames: 5689-5723]

[Photo Frames 5709-5711]

[Transcription]

[Petition addressed to the President of the Cairo Court of Appeal by Aḥmad ‘Abd al-Ḥaqq Yūnis (sentenced by the Ṭanṭā tribunal of first instance to hard labor for life for the premeditated murder of his brother’s wife and son) - December 31st 1898]

رئيس محكمة استئناف مصر الكلية سعادتلوافندم

مقدمه أحمد عبد الحق يونس من ناحية دمليج مركز منوف منشور منفو Noah خم في قضت نفرين بالاختن من بلدنا

ومحكم علي مؤيده وما اعرض لسعادتكم افندم

(موضوع القضية)

افندم أعرض لسعادتكم أن الذي تاهمني بخلق هذا النفرين هوالعمدة واخى محمد بالنسبة للضغاين بينهم وهى كانت في سنة 1896 حصل تواقيق ما بين محمد اخي ومسعدة اخته مع حواش افدي منتصر عمة

الملاحية بلدنا في مشترى 80 قيراط مضمى [...] منهم بحوض الراك 17 قيراط على مسته نحن 12 قيراط والتالي 5 قيراط داخله ضمن سكن الناحية وانا لي استحقاق فيهم عما يخصني بالمرات الشرعي

الإيل الي عن والدي عبد الحق يونس وفا كان من العدم المحتكر سجل حجة المبايعة الذي مع من

اخواتي وارد ان يوضع يده على تلك الأرضي فان توقفت معه عن اعطاء تلك الأرضي المباحا إلى من

اخواتي حيث انه لم يخصهم في تلك الحوض هذا الفرد ولما نظرت منه المضارعه [ ...] فتوجهت محكمة منوف ورفعت قضية ضد اخوتى والعمدة فيما كاه من العمدة خلاني في غيابي وتزل اخويا محمد في تلك

الارض لاجل يسبخها فنزلت حرمتي لاجل تمتعه فيما كان من العمدة اجري ضربيا وبمتص وي حكم

عليه مخالفين باير محكمة منوف والمقادة حكمت لي 19 قرش و9 مليم وجبا المحضر ومسينى تلك

الارض سلمتني الشمس قراريط مشترى العمدة المحتكر مضمن ما حكمت لي المحكمة وسلمتني 200 قيراط مضمى مساحة [ ...] وسلمتني 114 قيراط بحوض فرجا وفينا كان من لدب العمدة ترضع الي

وقال لي الأرض الذي نحن مشتريناها لم تزلها قط فقلت له الأرض الذي حكمت لي فيها المحكمة عن والذي

قيمة استحقاقى فانها اختتى فيما كان من اجري ضربيا وعلى مقتضيى ذلك قدمت في حق شكرى وقد حكمت

عليه المحكمة بمختلفة وفينا بعد نزلت الأرض لاجر اروبا طفي شرافي تفرض لي العدمت فتوجهت

 المحكمة والمحبوب في حق فالحكومة عرفتى اني ارفع قضية قدمة على اخواتي مساعدة ومحمد اخيها

الباحثين للعدم وينا على ذلك حكمت لي المحكمة بالقصمة وعينت لي على افدي حمدي من الخبرة المقيم

بناحية طنطا وتوجه للناحية بلدنا وقاس الأرض وقسمها فطلع الشمس قراريط الذي كان مشترى فيهم العمة
بداخل البلد جابتهم المحكمة جميعهم من استحقاقه وأقر على الأوراق وارسلها محل لزومها وفيها ثبت أنه
سلمني حقوقي فله الآن صارت ضغينة بيني وبين العدة وأخويا محمد.
وحيث أن العدة وأخويا محمد يريدون هلاكي نسباً للضغينة التي عرفت عنها فقالوا علي أنقلت هذا
النفرين.
وحيث لم كان بسيق لي حائدة ولا كان يصدر في حق احكم كليتا فالتمس من عدالتكم فشم شهادتهم علي
حيث أن أخويا محمد خلال العدة هو وحرمته فعملت أغراء بابه يقول ان أخويا أحمد عبد الحق هو
الذي قتل حرمتي عني ومنشيا ولهذا تمثل هذا الأمر لا يتصور (ويا سعادتي القضاة لا يصح أن أجري
على قتل نفسين في واحد وفي الظهر نهاراً كما عرضوا.
وحيث أنه الآن حياني في الغيط مستشهد بهم وطول الظهر موجود معهم وهو نظروني وفيما كان من
معاون البوليس والملاحظ والمأمور اهانوه نسباً على شهادته الحقيقة وعرفوه بأنهم ينكرون
وحيث أن جملي كان موجود في السبخ عند عبد الرحمن عرفه نتيجة بهواتي والمدعين يعرفوا أنني قتلته
ذلك النفرين وشتمتهم على الجمل في الحمل وأفرؤهم في بحر القرايين وأنه هذا الأمر لا يتصور بعقل أحداً
اني أقتل نفرين في أن واحد في الظهر وأشيلهم على جمل وأفرؤهم في البحر.
وحيث أنهم حضروا عبد الرحمن عرفه وقالوا له أنه يشهد بأنه جمل كان عندك في السبخ تعلقلته تتم
وتصير قاتل منه فقوه انك شهادة الحق وحرمتي هانيه وقوقمع ملته في المركز وقروا له قول أنه
زوجي هو الذي قتل هذا النفرين فطلته من أضره بالهدوم ونقول كما يعرفوه ووليدي عبد الغفار
أحنا شدة الآهانة وعرفوه بان يقول والذي أحد هو الذي قتلته من شدة الآهانة له قال كما يعرفوه
وحضروا نبت علي [هذا عيسى] وعبرة سنها يبلغ 6 سنوات تقريباً وأمين ولد العدة ومعاون البوليس خوفوهوا
بديح المطوة وقالوا لنا وليد وليد وليد قتلهم.
وحيث أنهم مدعون على بنخنقهم على المصطبة في الظهر وسالم منهم دم في الحيط في هذا الأمر لا يتصور
أن المخلوق يسيل منه دم فضلاً عن كونه الدار على الشارع وبحجا العدة ودرك الغفر إذا كان حصل
مني خنقهم فلم يكن أحد يسمع صيح أحدهم أو الغفر ينظروني وأنا محملهم على الجمل لأجل قيمتهم في
بحر القرايين وجرح منفوف إذا كان لم أحد ينظرني في بلدها فهل لم حد ينظرني وأنا متوجه بهم في طريق
منفوف وقعدنا بلد هودروين وكو كورين وعمر مريح وقعدنا بعد بلد تسمى سدر وقينا
غرفة فهل لم حد ينظرني فهذا وهذا ودامشي سكة الحديد وبها كتبت مرفو في لم حد ينظرني وقام في
الطريق منفوف وبها في الطريق [...] وهم بنغمس بكترة فهل لم حد ينظرني من هذا جميعهم واذا
رابح أفرؤهم في البحر بما يعرفوه المدعون.
وحيث أنهم مدعون بدم سأل منهم في الحمل فلاأنا كان حصل كذلك فكان صار تحويل الحمل على العديل
الكيميائي وظهور الحقيدة لأنهم جادوا الحمل في المركز مدة يومين وعلى العدي والعدة وصراوا يفتشوا في
العدة والحمل فلم يلبقو أثر دم مطلقاً ولا شبها وهم كان من المركز أجري تكليعي [...] ويفتش في
وفي هامسي على اثر وبربخ قلم كان يجد (وحيث أن هذا وهذا لم يثبت على شباية مطلقاً يتصرف
الذي سعادتكنا اتخنق نفرين في أن واحد ولم أحد يسمع صياحهم والعدة وأخويا محمد ضغايهم ظاهرة
هي مرحلة لإظهار سعادتككم عليها.
وحيث أعلم أن سعادتكتم ال عدل و [...] ومضبطة الظلم
وبناه عليه.
تجارة بتوجه لمعدتكتم وبه النمس من عائدة [...] تحق ما [...] على المدعون من الظلم والقدر والعدوان
ومع كل ذلك دعي لمعدتكتم بدؤادم دعاءكم بالخير وامال افندم
31 ديسمبر 1898
أحمد عبد الحق قونس
[Translation]

Your Excellency the President of the Cairo Court of Appeal

Presenting this is Aḥmad Abd al-Haq Yūnis from the region of Damlīg, markaz Minūf, Minūfiyya, [who was] accused in the murder by suffocation of two people from our village, and [who was] sentenced to [hard labor] for life. What I present to your Excellency [is the following]:

(The subject of the case)

I present to Your Excellency that those who accuse me of strangling these two people are the ʿumda and my brother Muḥammad because of grudges between them [and me]. In 1896, an agreement was reached between Muhammad my brother, Misʿida his sister, and Ḥawāsh Afandī Muntaṣir the ʿumda of our village regarding the purchase of 80 qīrāṭ including [...] 17 qīrāṭ in Ḥūḍ al-Rukn [that are divided] into two areas, one is 12 qīrāṭ [and] the other is 5 qīrāṭ within the residential area of the neighborhood. I am entitled to these by what concerns me in the legally sanctioned inheritance that [I received] from my father ʿAbd al-Ḥaq Yūnis. The above-mentioned ʿumda registered the sale contract that he had from my brother and sister, and he wanted to put his hand on those lands. So, I stopped him from giving him this land [that was] sold to him by my brother and sister. And whereas they do not have, in this [area of] Hūḍ, such an amount [of land], and when I saw his opposition [...], then I headed to the Court of Minūf, and I raised a case against my brother, sister, and the ʿumda. Then, the ʿumda kept me [away,] and in my absence, my brother Muḥammad went down in this land to fertilize it with sībākh. So my wife went down to prevent them [from doing that], and suddenly the ʿumda began beating her, and as a result of this, he was sentenced [for] misdemeanors by order of the Court of Minūf. The Court also ordered [to give] me 19 piasters and 9 pennies, and the bailiff came and he handed this land over to me. He handed the five qārārīṭ bought by the above-mentioned ʿumda over to me, among what the Court ruled in my favor. [The latter] handed 200 qīrāṭ over to me, [a piece of land] included within the area […], and 114 qīrāṭ in Ḥūḍ Farrāġ. Amīn, the ʿumda’s son, confronted me, and told me “the land we bought, never go down on it!” I told him: “The land that was granted to me by the court, [comes] from my father, [and has] a value I am entitled to, so I took it. [Then,] he started beating me. As a result I presented a complaint against him, and the court sentenced him [for] a misdemeanor. Later, I went to the field to irrigate it, [because it was] dying of thirst, and the ʿumda opposed me. So, I headed to the Court, and petitioned against him. So, the authorities informed me that I [should] raise a case of qisma [i.e. inheritance sharing] against my sister Misʿida and Muḥammad her brother, the ones who sold [my land] to the ʿumda. And on this basis, the Court issued a judgment of [re]division [of the inheritance] in my favor. The Court appointed for me ʿAli Afandī Ḥamdī, one of the experts, who lives in the area of Ṭanṭā. So, he came to our village, measured the land, and divided it. So, the five qarārīṭ that the ʿumda had purchased within the village, the Court made them all part of my entitlement. [The bailiff] established [it] on the papers, and sent them where they should be sent. In them, he
established that he granted me my rights back. And up till now, there is a grudge between me and the 'umda and my brother Muḥammad.

And whereas the 'umda and my brother Muḥammad want my end because of the grudge that I made known, they said that I killed these two people.

And whereas I was not involved in any incident before and no judgment was ever issued against me, I petition your justice to dismiss their testimony against me. Whereas my brother Muḥammad is a servant for the 'umda, he and his wife, the 'umda incited him to say that “my brother Aḥmad ‘Abd al-Ḥaqq is the one who killed my wife ‘Aysha and her son ‘Abd Allah by suffocating them. This is something inconceivable (Your Excellencies the Judges, it is not true that I dared to kill two souls in a single moment and at mid-day as they presented.

And whereas the people who are my neighbors in the field, I cited them as witnesses, and for the whole day I was present with them and they saw me. The police mu‘āwin (i.e. assistant), the mulāḥiz (i.e. superintendent), and the ma’mūr (i.e. sheriff) humiliated them because they were giving the testimony of truth about me, and they told them to deny my presence with them during the day. And indeed, they answered as they had told them to due to the extent of humiliation that occurred.

And whereas my camel was present in the sibākh at ‘Abd al-Raḥmān ‘Arafa’s place in the area of Bahwātī, the plaintiffs say that I killed these two people, I carried them on the camel in the saddle bag, and I threw them in the water of al-Fārā‘īn. This is something inconceivable by reason, that I kill two souls in a single moment at mid-day, I carry them on my camel, and I throw them in the water.

And whereas they brought ‘Abd al-Raḥmān ‘Arafa, and they told him: “if you testified that the camel was at your place in the sibākh that belongs to you, you will be accused and you will be a killer with him.” So, out of his fear, he denied the true testimony. And my wife, they humiliated her, and they completely stripped her of her clothes at the police station (markaz). They told her to say that “my husband” Aḥmad is the one who killed these two people, so she requested from them that they cover her with clothes, and she would say what they tell her to say. And my son ‘Abd al-Ghaффār, they severely humiliated him, and they told him to say: “my father Aḥmad is the one who killed them,” and from the intensity of his humiliation, he said what they told him. And they brought my daughter […] ‘Aysha. She is about 6 years old, and Amīn the son of the ‘umda and the police mu‘āwin frightened her with a butcher’s knife, and told her: “say ‘my father is the one who killed them.’

And whereas they claim against me that I suffocated them on the bench at mid-day and that blood went down from them on the wall, this is something inconceivable that blood flows from someone who has been suffocated, in addition to the fact that the house is on the street and next to the ‘umda and the shack of the ghafar. So if I had suffocated them, then why did no one hear one of them shouting, or why didn’t the ghafara see me while I was carrying them on the camel in order to throw them in the water of al-Fārā‘īn next to Minūf. So if no one saw me in our village, so is it that nobody saw me while I was going with them on the way to Minūf? In front of us, there is a village called Bahwātīn in which there is a bridge, and there are ghafar of the government on it. In front of us after that, there is the village of Sudūd in which there are
ghafara. So is it that no one saw me in this [place] and that [place]? In front of me, there is a railway and there are ghafara there. Is it that no one saw me? In front of me, there is the way to Minūf and there are on the way [...] [...] and there are many merchants there. So is it that no one saw me [while I was in] all these [situations], and while I was going to throw them in the water as the plaintiffs claim.

And whereas they claim that blood flowed from them in the saddle bag, if it happened in this way, then the saddle bag would have been sent to a chemical laboratory and the truth would emerge, because they brought the camel to the police station (markaz) for two days and the harness and the saddle were on it. They began to search through the saddle and the saddle bag, but they did not find any trace of blood at all and nothing suspicious. Then, the markaz stripped me of my clothes [...] [...] He searched me and my clothes to find traces of blood or scratches, but did not find any (And whereas this and that did not establish anything at all against me, and it is [not] conceivable, your Excellency, that I suffocate two people in a single moment and no one hears their shouting. The 'umda and my brother Muḥammad, their grudges are obvious, and they are recorded so that your Excellency can study them.

And whereas I know that your Excellency is a person of justice and [...] and the suppression of tyranny.

On this basis

I dare to address your Excellency, and with it, I petition from your Justice [...] the verification of what [...] against me the plaintiffs of injustice, treason and enmity. And with all this, I call God’s benediction on your Excellency for your mission to continue well and with hopes.”

31.12.1898
Aḥmad Abd al-Ḥaqq Yūnis
Appendix 26:

[Reference of the case:


Public Prosecutor’s Office Number 2 for the year 1910 - Sayyid Aḥmad Basyunī al-Haynī

Series: “i’dām” (death penalty) - Film: 13/14003 – Frames: 18949-19108]

[Photo Frames 19034-19035]

[Transcription]

[Petition sent to the Cassation Court, on April 16th, 1910, by Sayyid Aḥmad Basyunī al-Haynī, who is accused of poisoning and has been sentenced to death by the Ṭanṭā Court of Assizes four days earlier]

= تقرير عن اوجه نقض =

مقدم من المسجون نمرة 1007 دوسيه سيد احمد بسيوني الهيني المتهم في قتل اخر بالسم عمدا ومحكوم عليه بالاعدام في هذه القضية بجلسة جنابات يوم 12 ابريل سنة 910

تقبل أن تكون ذلك وبما أن الحرم المذكورة كانت تزوجت بمحمد بركات أولا وطلقتها وأيضا تزوجت بآخر
خلافه اسمه الشامى المزين ثم طلقتها المذكورة وقعتت بعدها سنة سنتين بدون زواج وقامت محمد بركات
بشيره تزوجها ثانيا - فإذا كان لي غرض لها كنت تزوجت بها بدلا من أن أطلب منها الفاحشة ولا هناك
ضحايا بيني وبين محمد بركات الولد ذكر حتى اسمه كما لا ينك بيني آفة معاملة

ثانيًا: لما وكني نبابة شبلين حضر إلى نقطة طنوب قام وفتشني فأخذ من جيب الجلابية بعض من التراب
المخلف فيه وارسل إلى العمل الكيميائي وقام بالبحث اليدلي وفتش منزلي فقلت لحضره النائب أن
أتوجه مع ملاحظ البوليس للمنزل لأن لي اختصام وهو محروس ابن العمة إذ ربما وضع بيني شيء
 فمنعني عن ذلك وقم بالبحث اليدلي لوحدهما هذا كان من ملاحظ البوليس الا أن أخذ محروس ابن العمة
بندون أمر من النبابة وبعدها عادنا ومعهم سلطانية داخلنا بعض من الأرز فحضرت النائب سلتني وقال
أنا وجدنا في الدولاب لسم مال فقلت له ليس هناك متهم آخر ضميري مسووم ويبطغ البلي فمه
بالدبلوم ولم يخفف من التفتيش فتقدم ملعولة من ابن العمة لينبي وبين ولده هوقوما لملاحظ البوليس
قال أنه وجد الدبلوم مفتوح وفمه المفتوح فغير معقول أن يكون بالدبلوم فليروي مسووم ثم أتركه مفتوح
وبالباب المفتوح

تابع الوه لثانية كما كان ملاحظ البوليس قال أنني دخل منزللي فضتيه هو وابن العمة والخفرة واين العمة
قال أنه فتش المنزل مع الملاحظ وعسكري فهنا اختلاف بين مقاله الملاحظ ومالك ابن العمة والحقيقة أن
ابن العمة محروس هو الذي وضع لسم البلي بالدبلوم مساوية لسبي أن قدمت في حق العمة والده
عبرية للداخلية واقتصر على المعزز سنة 909 بخصوص حوادث وقعت منهم في البلد وتبسم عن ذلك الحكم
على العمة بالايلهاف من وظيفته سنة شهور وغراية ألف غرش فانتهى هذه الفقرة وعمل هذه المكدة
فيما وكني سبق شهدت شهادة ضد العمة المذكورة في قضية محمود محمد العطار وحكم عليه فيها بغرامة
خمسملة عرش وشيدت عليه في قضية عيداء الشمرون محمد بن أحمد البيائي أمام المحكمة المركزية فيدلا وحكم
عليه فيها بغرامة ثلاثملة عرش كما وحثته مع الآهلیة [...] بعدم لياقتة لميساوية البلد وشهدت على
محروس ابن العمة المذكور الذي أجرى في منزل منزلي ملاحظ البلي في قضية نقض منزل حسن البجري
باللاحية سقطة جاموسا منه وأن هذه الجاموس خرجت من منزل العمة المذكور بعد حصول القبض وتبسم
من ذلك الحكم على محروس ابن العمة بغرامة ثلاثملة عرش من محكمة شبلين من مدعة أربعة سنوات

كما وكني سيق تبتيش على ملاحظ البوليس النقطة الذي اجرى تفتشي منزلية في قضية تفتيش وحكم عليها فيها
بغرامة مايقوان عرش من محكمة تلا المركزية في أكتوبر سنة 909

وهذه الاحوال كانت سبب في ان ابن العمة والمحروس مفصلي وبيوساوي ارتكاب هذا الجريمة ظلما
ثم وان محروس حسن يوسف أحد شهود الآتي في هذه القضية سيق أن شهدت على ابنه محمد حسن
يوسف في قضية سقارة وحكم عليه فيها من محكمة شبلين الكور بالحبس ثلاثة شهور في سنة 908

وهذه هي اقوالى ارتج النظر في الأوجه المدونة بمحكمة النقض والأبراق
المسجون:

1007 سيد احمد بسيوني الهيني

-) توقيع ()

نظر ويرسل للنيابة 13/4/1910 م
ورد للقلم الجنائي بمحكمة طنطا الاهلية بإغادة من سجن طنطا في 16 ابريل سنة 1910 SOMEBE 361

رئيس القلم الجنائي بطنطا:

-) توقيع ()

-) ختم ()
A report on the points of cassation

Presented by the prisoner number 1007 dossier Sayyid Aḥmad Basyūnī al-Haynī, accused of premeditated murder by poison and who has received the verdict of execution in this case in the session of the criminal [court] on April 12th, 1910.

First: On Tuesday, Dhū al-Ḥijja 18, 1327, I was on my way out passing from our neighborhood outside Dāyir al-Nāḥiyya street, when Muḥammad Muḥammad Barakāt and Ahmad al-Ṣawwāf met me. Muḥammad Barakāt said: "You are going to the market?" I told him: "yes." He told me: "Let's go together." I told him: "I will return home and get the scale." Then I returned home and got the scale. Afterwards, I went out to the neighborhood [but] I didn't find them. I walked to the market alone, and [when I was] half way [to the market], i.e. around ‘Izbat al-Kūm, I met [individuals] called Mūsa Abū Ṭāgin, ‘Aql Abū Yūsuf, and Mursī Abū Aḥmad. They said to me: "Why are you walking alone?" I told them: "I left the village alone, and [I am] walking alone." They told me: "May your brother rest in peace." I told them: "May God reward you [for your condolences]." Then, we walked together until we arrived at the market. In the afternoon, the police mulāḥiẓ came to me in the market, and said to me: "come with me to the police station." I said to him: "For what reason?" He said to me: "Don't you know?" I said: "Know, what?" Then, he took me to the police station, [where] I found Muḥammad Barakāt and the ‘umda’s son Maḥrūs. The police mulāḥiẓ told me: "You poisoned Muḥammad Barakāt." I said: "[This] didn't happen." Then, I talked to Muḥammad Barakāt, and told him: "don't treat me unjustly, Muḥammad. Shame on you!" The police mulāḥiẓ threatened me, and put me in the room. I asked His Excellency the mūlāḥiẓ to let me confront the above-mentioned Muḥammad Barakāt, but he refused. Then Muḥammad Barakāt died in the police station, without [the mūlāḥiẓ] taking any statements from him in front of me. Then, Muḥammad Barakāt's wife Amna, the daughter of ‘Alī al-Haynī, came. The police mulāḥiẓ said to her: "Say that Sayyid Aḥmad al-Haynī asked you to have extramarital sexual relations with him.” The ‘umda’s son told her this, and she didn't accept to say that. Given that the above-mentioned woman had first been married to Muḥammad Barakāt, and [that] he divorced her; [and given that] she then got married to another [man] called al-Shāmī al-Mizayyin, and [that] the latter divorced her; [and given that] she then stayed without marriage for two years; [and given that] she then married Muḥammad Barakāt again two months prior to his death; if I had any desire for her, I would have married her, instead of asking her to have extramarital relations. And there are no grudges between me and the above-mentioned Muḥammad Barakāt that would lead me to poison him. There wasn't even any interaction between us.

Second: When the deputy prosecutor of Shibīn came to the police station of Ṭanūb. He searched me, and took some remaining dust from the pocket of the galabīyya, and sent it to the chemical laboratory. The police mulāḥiẓ went and searched my house. I told His Excellency the deputy:
"Give an order for me to go with the police mulāḥiẓ to the house, because I have adversaries among whom Maḥrūs, the ‘umda’s son. He might put something in my house.” He prevented me, and the police mulāḥiẓ went alone. He suddenly took Maḥrūs with him without an order from the prosecution. Then they returned with a bowl which had some rice in it. His Excellency the deputy questioned me and said: "We found a piece of faṭīr [i.e. pancake]." I told him: "It is not reasonable that a person would give another [person] a poisoned faṭīr, and keep the rest of it in his wardrobe, without being afraid of investigation. This is the deed of the ‘umda’s son, because there are disputes between me and his father.” The police mulāḥiẓ said that he found the wardrobe opened with the keys in it. It is not reasonable that the wardrobe would have poisoned faṭīr in it, and I would leave it open with the keys in it.

The rest of the second point: Also, the police mulāḥiẓ said that he entered my house, and searched it with the ‘umda’s son and the ghafar. The ‘umda’s son said that he has searched the house, with the múlāḥiz and a soldier. This is a contradiction between what The múlāḥiz said and what the ‘umda’s son said. The truth is that Maḥrūs, the ‘umda’s son, is the one who put the piece of faṭīr in my wardrobe, because I presented a petition against the ‘umda, his father, to the interior [ministry] and another [petition] to the administration in 1909 regarding incidents that were committed by them in the village. This resulted in a verdict against the ‘umda to be suspended from his job for 6 months and [to pay] a fine of 1,000 piasters. And thus, he took advantage of this opportunity, and made this plot for me. I have previously testified against the testimony of the ‘umda in the case of Maḥmūd Muḥammad al-‘Aṭṭār, and the verdict against him was a fine of 500 piasters. I testified against him in the case of Abd al-‘Azīz Muḥammad Ibrāhīm al-Ḥaynī before the district court of Talā. The verdict against him was a fine of 300 piasters. I also affixed my seal [on a petition] with the people [of the village] [...] [saying] that [the ‘umda] is not suitable for being the village ‘umda. I testified against Maḥrūs the son of the above-mentioned ‘Umda. [Maḥrūs] who has searched my house with the Mūlāḥiz in the case of robbing Ḥassan Al-Baḥarī’s house in the village and stealing a buffalo from it, and that this buffalo was taken out of the house of the above-mentioned ‘Umda after the robbery. This resulted that Maḥrūs, the son of al’Umda received a verdict of a fine of 300pt. by Shibīn court, 4 years ago.

Furthermore, I have previously assaulted the police mulāḥiz of the station, the one who inspected my house, in an assault case in which I was sentenced to a fine of 200 piasters by the Talā district court in October 1909.

All these incidents were the reason why the ‘umda’s son and the mulāḥiz oppress me and falsely attribute the perpetration of this crime to me.

Also, I have previously testified against Muḥammad Ḥasan Yūsuf (i.e. Maḥrūs Ḥasan Yūsuf’s brother and one of the prosecution witnesses in this case), in the case of stealing a nūrag, and he was sentenced to three months in prison by the Shibīn court in 1908.

These are my statements. I beg that you look into the registered elements in the court of cassation.
The prisoner:

1007 Sayyid Aḥmad Basyūnī al-Haynī

-(Signature)-

Was reviewed and to be sent to the Public Prosecution’s Office on 13/4/910

Arrived at the criminal section of the Ṭanṭā Native Court with a notification from the Ṭanṭā prison on April 16th, 1910, number 361

The president of the criminal section in Ṭanṭā

-(Signature)-(Seal)
Appendix 27:

[Reference of the case:

al-niāba al-‘umūmiyya raqam 651 li-sanat 1905 – Kīlānī Muḥammad al-Gindī wa ākhar –

Public Prosecutor’s Office Number 651 for the year 1905 - Kīlānī Muḥammad al-Gindī and other

Series: “i’dām” (death penalty) - Film: 4/14003 – Frames: 6183-6255]

[Photo Frames 6225-6226]

[Transcription]

[First petition of al-Sayyida Bint ‘Alī Yasīn (wife of Kīlānī, the main accused) addressed to the Public Prosecutor to the Native Courts - March 25th 1905]

جناب النائب العمومي لدى عموم المحاكم الأهلية
سعادتلو أفندم

مقدمة هذه لسعادتكم السيدة بنت علي يسين من مسجد الخضر مركز قويسنا منوفية

تشرف بعرضه لسعادتكم أفندم

وهو أنا بالنظرية كوننا متبعين خطة الأصول في جميع إجراءتنا ونحن نحصل على أي شيء ما نحاكم عليه ما كان من أهلية الناحية بلبدا إلا أنهم لما نظروا منا فرمنا بتهم باطلة بدون أن نحصل منا شيء، والدليل على ذلك هو

أولا: بالنسبة لسابقة تهمة زوجي المدعو كيلاني الجندي بسرقة جاموس محمد منصور حضر من أهالي الناحية أيضا شخص يسمى حسين سالم السلاف فهذا الشخص متهم من زوجي كيلاني الجندي وعند نظر المحكمة لهذه القضية المحكمة برأى زوجي من هذه القضية لعلمها أنه بريئ من قبل من ثبت من شهادة الشاهد أنها زورا

ثانيا: رضوان الغول سبق شهد في تهمة الليسي أبو العين بسيرة أسلحة نارية [sic] وعند نظر المحكمة اللاحقة علم أنها حكمة شهادة زور حكم ببرائة [المتهم]

ثالثا: محمد عفيفي بالنسبة لكوني أخذت منه أطيان استحققتها عن والدي بصفةimerات لكيلاني المتهم المذكور شهد في قضية كيلاني زور لسابقة الضغائع

رابعا: أن محمود رضوان لسابقة أخذ أطيان بصفة الميرات أيضا قدرها 10 فدان و12 قيراط رجع ضد كيلاني زور لهذا الغرض

خامسا: الحرممة خدرية شقيقة أحمد رضوان سبق كيلاني أخذ منها أطيان بقدرها 6

تنلمس الإفراج عن زوجها المتهم ظلما بناء على شهادة أشخاص شدوا وزورا لضغاين بينما

معلومات

معلومات

5 مارس سنة 1905

نتوقع

(توقيع)
فدان بنوع الميراث وضعها عند [...] بالساقية وجميع المنقولات

سادس: محمد المعداوي والدة سبق اتهموا بسرقة نصف فدان قطن وتبلغ

عليهم وظبطت واقعة وحكم فيها

 سابعا: موجود كل من حسانين المعداوي وعمر عبد الله. محمد المعداوي كانوا متهمين في سرقة القطن الموضحة بهذا الطلب وأن عدمة [...] المدعو خليفة سلام الذي عمل المعاينة عن سرقة القطن وأنه عبدالرحمن الجندي طلبي لألضمائه لم كنت أقبلها شهد ضدي زور بالنسبة لذلك

وأن محمود الغول له عندي مبلغ 70 صاغ وكلاني توقف عن دفعهم شهد في هذه القضية زورا. وأن إبراهيم مطاعن له طرف كيلاني اثنين جنيه توقف عن دفعهم شهد ضد زورا. وأن عيدالعال ابوليلة قد ضر كيلاني دعوى زورا لسابقة طلاقه زوجته. وأن محمد أبوخيل لسابقة ضغايين حررت صاغ سبعة جنيه ضده وانه بحري حسن علي بالنسبة كون كيلاني عنده له مبلغ 97,20 صاغ توقف عن دفعهم.

وحيث أن المذكورين بالنسبة لهذه الضغاين جميعها شهدوا ضد زوجي في هذه التهمة

لأجل محاكماته

وحيث أن جميع هذه القضايا ضبط لها وقائع بمعرفة مركز قويسنا وبنيابة محكمة شبين الكوم وسبوت [sic] ذلك رسميا من الأوراق الموجودة ببنيابة شبين الكوم والحكمة أرغم الكشف عن ذلك وفي سبب أنه أقولي هذه في محلها لا مكان من رفض شهادتهم رفضا باتا لهذه الأدلة

وحيث يجوز بتظلمي للخفيف ذلك والإفراج عن زوجي كيلاني المذكور بناء عليه

التمس من جناكم صدور الأمر لمن بلغت للتحقيق في أقوالي عنهم وبعدها يفرج عن زوجي ومحاكمة الشهود الزور أقدم تحريرا في 25 مارس سنة 1905

السيدة بنت علي يسبر

١٠٠٥ / ١٠٢٥ (ختم)
[Translation]

The Honorable Public Prosecutor for all the Native Courts,

Your Excellency, Afandim.

This [document is] presented to your Excellency by al-Sayyida, the daughter of ‘Alī Yaṣīn, from Masjid al-Khiḍr, markaz Quwaysnā, Minūfiyya.

She is honored to present it to your Excellency.

Seeing that we follow the righteous path in all our actions and have never done anything for which we could be prosecuted, the people of our village suddenly directed false accusations at us without us doing anything [wrong]. The evidence for this is:

First: As for the previous accusation against my husband called Kīlānī al-Gindi for stealing Muḥammad Manṣūr's buffalo, one of the villagers from the neighborhood who testified was someone called Ḥusayn Sālim al-Sallāf, and this person is accused by my husband Kīlānī al-Gindi [in another case]. And upon looking into [the] case [of the buffalo], the court found my husband not guilty of the charge, due to [the court’s] knowledge that he is not guilty of it. It was established that the testimony of the witness is false.

Second: Riḍwān al-Ghūl has previously testified in the accusation [against] al-Laysī Abū al-‘Ayn for stealing fire arms and […] , and upon looking into it, it became known to the court that the testimony of the witness is false. The accused was found not guilty. [The witness] returned to give a false testimony in this case.

Third: As for Muḥammad ‘Afīfī, given that I have taken land from him, [land] that I am entitled to as inheritance from my father [and that I have given] to Kīlānī the above-mentioned accused, he falsely testified in Kīlānī’s case because of previous grudges (between them).

Fourth: As for Maḥmūd Riḍwān, since he previously took land amounting to 10 faddān and 12 qīrāṭ [probably from Kīlānī] as inheritance, he falsely testified against Kīlānī for that reason.

Fifth: [As for] the woman Khaḍra, the sister of Aḥmad Riḍwān, Kīlānī has previously taken land amounting to 6 faddān from her as inheritance, and he put it at […] by the water wheel and all the furniture.

Sixth: Muḥammad al-Ma‘addāwī and his son Ismā‘īl were previously accused of stealing half a faddān of cotton. They were reported, the incident was officially registered, and it was tried.

She petitions for the release of her husband, unjustly accused on the basis of the testimony of people who falsely testified because of grudges between them.

Information
March 5th, 1905 to be placed with the petitions.

-(Signature)-
Seventh: Each of Ḥasānayn al-Ma‘addāwī, ʿUmar ʿAbd Allah, and Ismā‘īl Muḥammad al-Ma‘addāwī were accused of the cotton robbery presented in this request, and the ʿumda [...] the one called Khalīfa Sallām who did the inspection of the cotton robbery. And ʿAbd al-Raḥmān al-Gindī asked me to bail him out, and because I didn’t accept that, he falsely testified against me with respect to this.

As for Maḥmūd al-Ghūl, I owe him 70 piasters and Kīlānī stopped paying them, and thus he falsely testified in this case. As for Ibrāhīm Muṭāwi‘, he is owed two pounds by Kīlānī, [money] that [the latter] stopped paying, and he falsely testified against him. As for ʿAbd al-‘Āl Abū Layla, he presented a false case against Kīlānī for the previous divorce of his wife. As for Muḥammad Abū Khalīl, for previous women-related grudges from which a divorce resulted, (thus) he falsely testified against Kīlānī. As for Biḥayrī Hasan ʿAlī, Kīlānī owes him 97.20 piasters that he stopped paying, and thus he falsely testified against him.

And whereas the above-mentioned people, because of all these grudges, testified against my husband in this accusation in order to put him on trial;

And whereas the incidents of all these cases were registered by the police station of Quwaysnā and by the prosecutor’s office at the court of Shibīn al-Kūm, and this is proved officially by the files available at the prosecutor’s office of Shibīn al-Kūm and the court, I would like these [documents] to be examined, and [since] it is proven in [them] that my statements are true, there will no objection to the complete rejection of [the witnesses’] testimony due to this evidence;

And whereas it is possible due to my grievance to lighten this [sentence] and release my husband Kīlānī the above-mentioned;

Based on this:

I petition your Honor to issue the order to whomever within your reach to investigate my statements about [the people I have mentioned], and after that my husband is to be released, and the false witnesses are to be tried. Afandim. Written on March 25th, 1905.
Al-Sayyida daughter of ‘Alī Yasīn
-(Seal)-
Appendix 28:

[Reference of the case:

al-niyyāba al-’umūmiyya raqm 651 li-sanat 1905 – Kīlānī Muḥammad al-Gindī wa ākhar –

Public Prosecutor’s Office Number 651 for the year 1905 - Kīlānī Muḥammad al-Gindī and other

Series: “i’dām” (death penalty) - Film: 4/14003 – Frames: 6183-6255]

[Photo Frames 6228]

[Transcription]

[First petition of Khaḍra bint Riḍwān (ex-wife of ‘Abd al-‘Azīz al-Maḥallawī, the second accused) addressed to the Prosecutor of the Native Court of Appeal - March 27th 1905]

النائب لنيابة محكمة الاستئناف الأهلية سعادتنو أفندي

مقدمة هذه الحزمة خضرة بنت رضوان من ناحية مسجد الخضر التابعة لمركز قويسنا منوفية

وما [...] عنه أفندي

وهو أنني شاهدة في قضية حسن المعداوي الذي قتل بناحية مسجد الخضر ومتهمين فيه كيلاني الجندى وعبدالعزيز المحلاوي من الناحية وأخوين رضوان ومحمد علي كناوا

أغورني بالشهادة على أنني نظرت الكيلاني المذكور قبل العدة هو ومن معه الفاعلين بقتل

العمدة ولكوني ساكنة مع كيلاني في منزل واحد وقد حلف على محمد المعداوي ومصطفى أخو

بالطلاق ثلاثة (3) إذا لم تشهدي في هذه القضية لكوني معهم في منزل واحد لا يعذموني أما

بيتهموني ومن خوتي منهم شهدت وأعطيوني 5 جنيه أفرنكي [...] وصرفت على عيالي

وحيث أنني الآن في الدنيا في وسع وبعده يفرج أجيء واجداني بالقر ضبق فأشاروا أن قولي

الأول بخلاف الحق وأما الحقيقة لم ننظرت شيء والسجون مظلومين ولم نظرت أحدا منهم

نظرا فعل شيء [...] كانة إما شهودني دفعني لصالح أخوات العمدة أما كيلاني وأخيه

مظلومين ولم نظرتهم فعلا شيء ومن كونهم خوفوني شهدت دفعني ضد الكيلاني وأخيه بالذب

وهذا قولي المعتبر بالحقيقة الذي أبديه لمناقدتنمو أفندي

تقول أنها أكرهت على

الشهادة في قضية قتل

وتقول أن المسجونين

مظلومين وهي لم ترا

شيئا

27 مارس سنة 1905

محرها

(توقيع).

خضرة بنت رضوان

من مسجد الخضر منوفية

(ختم).
The Prosecutor to the Native Court of Appeal, Your Excellency,

This [document is] presented by the woman Khaḍra the daughter of Riḍwān from the village of Masjid al-Khiḍr, markaz Quwaysnā, Minūfiyya, and what [...] about it, Afandim.

I am a witness in the case of Ḥasan al-Maʿaddāwī who was killed in the area of Maṣjid al-Khiḍr. Kīlānī al-Gindī and ‘Abd al-ʿAzīz al-Maḥallāwī from the area are accused in [this case]. My brother who is called Ahmad Riḍwān and Muḥammad ‘Afīfī have incited me to testify that I have seen the above-mentioned al-Kīlānī killing the ‘umda, him [i.e. Kīlānī] and the perpetrators of the ‘umda’s murder [who were] with him, and [that] I live with Kīlānī in the same house. Muḥammad al-Maʿaddāwī and Muṣṭafā, his brother, had sworn against me by the divorce three times (3) [that] if [I] don’t testify in this case that I was with [the accused] in one [and the same] house, they either kill me or accuse me. And out of my fear from them, I testified and they gave me 5 pounds afrānktī [...] and I spent [them] on the kids.

And whereas I am now in the world, in the vast space, and after it, my time [will] come to an end, and I [will] find myself in the grave, narrow, I see that my first statement is contrary to the truth. As for the truth, it is that I did not see anything and that the prisoners are being unjustly treated. I did not see any of them do anything [...] sufficient. But they made me testify twice in favor of the ‘umda’s brothers. As for Kīlānī and his brother, they are unjustly treated. I did not see them do anything. And since they [i.e. Ahmad Riḍwān and Muḥammad ‘Afīfī] have scared me, I falsely testified twice against Kīlānī and his brother. This is my statement that is to be considered the truth and that I am presenting it to your Excellency. Afandim.

March 27th, 1905

Written by
-(Signature)-

Khaḍra the daughter of Riḍwān
from Maṣjid al-Khiḍr, Minūfiyya

-(Seal)-

[Translation]

She says that she was forced to testify in a murder case. She says that the prisoners are not guilty, and that she did not see anything.
Appendix 29:

[Reference of the case:

"al-niyāba al-ʿumūmiya raqam 651 li-sanat 1905 – Kīlānī Muḥammad al-Gindī wa ākhar –

Public Prosecutor’s Office Number 651 for the year 1905 - Kīlānī Muḥammad al-Gindī and other

Series: “iʿdām” (death penalty) - Film: 4/14003 – Frames: 6183-6255

[Photo Frames 6238-6239]

[Transcription]

[Third petition of Khaḍra Bint Riḍwān (ex-wife of ‘Abd al-ʿAzīz al-Maḥallāwī, the second accused) addressed to Yaḥya Bey Ibrāhīm, President of the Cairo Native Court of Appeal - May 7th 1905]

مذكرة

مادة لعدل ورحمة عزتكم بالآتي

سعادتلو أفندي يحي بك إبراهيم القاضي بمحكمة استناف مصر الأهلية

مادة الحرمة خضرة أم رضوان من أهالي مسجد الخضر مركز قويسنا

وما أعرض أفندي

وهو ان الدعوى المنظورة أمام رئاستكم بخصوص الحكم الإبتدائي الجار بالإعدام الى كيلاني الجندي

وعبدالعزيز المحلاوي في الناحية المذكورة وصدر الحكم من محكمة طنطا الأهلية

وحيث أنى أول شاهدة في هذه الدعوى بأعراض من كانوا سيعدلونه إذا توقفت على أداء الشهادة لصالح

محمد المعداوي أخوة حسن المعداوي العمدة والآن يا سعادة القاضي عندي أقوال أبيها على مسامع سعادتكم

لكي تنور المحكمة وتحكم بالعدل

فهو من ضمن الشهود الذين شهدوا في هذه الدعوى وهم شهود زور وسأظهر لسعادتكم بعض أدلة تنفي

أقوال المدعين وهي أن المدعرين حسن_signed أخذ الشهود في هذه الدعوى شهد في قضية سرقة محمد منصور

من الناحية وذلك في سرقة جاموسا الآخير وكان أمام محكمة شبين الكوم ومثبتة رسميا لأن شهادة المذكور

مقابل انتقاده وسيطرة لسعادتكم صدق ما تدون بعد البحث واما الشاهد الثاني المدععون عبديل أبليلى أخذ

أربد دره و2 جنيه عندي وذلك بعد عودتنا في أول جلسة بطبيعا وأما الشاهد الثاني فهو المدعون محمد عفيفي

ابن أخت العمدة المتوفى أن كيلاني المذكور أخذ منه ثلث في الدار وربع فدان نظر شهادة أيضا وأيضا ابن

الشاهد الرابع المدعون محمد سيد خليل أخذ نصف فدان أطيان في أطيان العمدة نظر أداء الشهادة أمام محكمة

طنطا مع أن المذكور قفيت الحال ولم يمثلني أدنى شيء عنده
وأما بخصوص المدعو بحيري حسن أبو علي الشاهد الخامس أخذ نصف فدان طين في اطيان العمدة نظير أداء الشهادة اللازمة ضد المتهمين. وفي خصوص الدعوى عبد الرحمن الجندي الشاهد السادس أخذ 3 جنيه من محمد المدعاو民间 ولد وخير الناحية نظير الشهادة أيضاً وسابق كان طلب ضمانة من كيلاني المذكور توقف عن ضمانه كيلاني المذكور لذلك وشهد زوراً. أما بخصوص رضوان الغول الشاهد السابع ف فهو سابق أدى شهادة أمام محكمة شبين الكوم لصالح الليسي إبوعنين نظير تهمة ومثبوت في دفاتر ودوسيه الدعوى المحفوظة بسجلات المحكمة. أما في خصوصي أنا خضرة أم رضوان أطعنتي محمد المدعاواني 8 كيلات درهم جنوب كوني أرملة أرملة ومستحقة وكلفني بأخذ الشهادة زوراً وبهتانا،

وحيث أن هذا الشهود الموضح أعلاه فهم زور [ ... ] كلاً حصل في هذه الدعوى في شهادة هؤلاء الشهود فهو تلفيق وسيظهر لسعودكم جلي هذا الدعوى عند حصول التحقيق بالأثر.

وحيث إن شهادة المذكورين مثبوته رسمياً لحصول ضغابين وسابق أيضاً أن اسماعيل المدعاواني ابن أخوه المتوفي وحسن المدعاواني سابق تعود على سرقة نصف فدان قطن في طنطا مقابل دفع خمس جنود والذي من سعادتهم بإعادة هذه الدعوى إلى محكمة طنطا لإيصال التحقيق بالأثر لبأجل يظهر للمحكمة المقدسة حقيقة ما حصل والعدل أساساً للملك أقدم [sic]

7 مايو سنة 1905
خطيرة أم رضوان
- (ختم)
Memorandum

Presented to the justice and mercy of your Honor as follows:

Your Excellency Yaḥya Bey Ibrāhīm the judge of the Cairo Native Court of Appeal

[This document is] presented by the woman Khaḍra the mother of Riḍwān one of the villagers of Maṣjid al-Khiḍr, markaz Quwaysnā

What I am presenting, Afandim,

is the case pending before of your supervision, regarding the ruling of first instance that involves the execution of Kīlānī al-Gindī and ‘Abd al-‘Azīz Maḥallāwī in the above-mentioned area, and the ruling was issued by the Ṭanṭā Native Court.

And whereas I am the first witness in this case, as wanted by those who were to execute me if I refused to testify in favor of Muḥammad al-Ma‘addāwī, the brother of Ḥasan al-Ma‘addāwī the ‘umda. And now, your Excellency the Judge, I have statements to utter, for your Excellency to hear so that the court be enlightened and rule with justice.

That is: among the witnesses who testified in this case, there are some false witnesses. I will reveal to your Excellency some evidence that refutes the statements of the allegers [i.e. the witnesses]. That is: the one called Ḥasānayn Sālim, one of the witnesses in this case, testified in the case of the theft of Muḥammad Manṣūr from the area, and that was in the robbery of the latter’s buffalo. This was before the court of Shibīn al-Kūm, and it is officially established that the testimony of the above-mentioned [was] in exchange for a favor. The truth of what is recorded [above] will appear to your Excellency after investigation. As for the second witness called ‘Abd al-‘Āl Abū Layla, he took an irdab (i.e. a unit of measurement) of corn and 2 pounds at my place, and this is after we returned from the first session in Ṭanṭā. As for the second witness, he is called Muḥammad ‘Afīfī and is the nephew of the deceased ‘umda. The above-mentioned Kīlānī took from him one third of the house and a quarter of a faddān in exchange for a testimony as well. In addition, the son of the fourth witness called Muḥammad Sayyid Khalīl took half a faddān from the ‘umda’s land in exchange for his testimony before the tribunal of Ṭanṭā, even though the above mentioned is poor and did not own anything.
As for the one called Biḥayrī Ḥasan Abū ‘Alī, the fifth witness, he took half a faddān from the ‘umda’s land in exchange for the necessary testimony against the accused. As for the claim of ‘Abd al-Raḥmān al-Gindī, the sixth witness, he took 3 pounds from Muḥammad al-Maʿaddāwī the brother of the deceased and the ghafīr of the area in exchange for the testimony as well. Previously, he had asked the above-mentioned Kīlānī for a bail, and the above-mentioned Kīlānī refused to bail him out, and hence he falsely testified. As for Riḍwān al-Ghūl, the seventh witness, he has previously given a testimony before the Shibīn al-Kūm court in favor of al-Laysī Abū al-ʿAynayn in exchange for not accusing him, and [that] is established in the registers and dossiers of the lawsuit that are preserved in the archives of the tribunal. As for myself, I am Khaḍra the mother of Riḍwan. Muḥammad al-Maʿaddāwī gave me 8 kīlāt (i.e. another unit of measurement) of corn and a pound afrankī, since I am a widow and I am entitled to [this payment], and he entrusted me to make a testimony falsely and slanderously.

And whereas the witnesses specified above are false witnesses [...] , all the testimonies of those witnesses in this case are fabricated. The case will be very clear to your Excellency when investigations are to be conducted in what follows;

And whereas the testimony of the above-mentioned people is officially recorded because of grudges; and [whereas] Ismāʿīl al-Maʿaddāwī, the nephew of the deceased, and Ḥasan al-Maʿaddāwī previously led the theft of half a faddān of cotton that belongs to Kīlānī al-Gindī, [a fact] that is officially established in the markaz of Quwaysnā, in exchange for the payment of 5 pounds; I petition your Excellency to return this case to the tribunal of Ṭanṭā to complete the investigations again so that the truth of what happened appears to the sacred court and [because] justice is the foundation of power. Afandim.

May 7th, 1905

Khaḍra the mother of Riḍwān

-(Seal)-
Appendix 30:

[Reference of the case:]

al-niyāba al-‘umūmiya raqam 651 li-sanat 1905 – Kīlānī Muḥammad al-Gīndī wa ākhar –

Public Prosecutor’s Office Number 651 for the year 1905 - Kīlānī Muḥammad al-Gīndī and other

Series: “iʿdām” (death penalty) - Film: 4/14003 – Frames: 6183-6255]

[Photo Frames 6211-6212]

[Transcription]

[Interrogation of Khaḍra Bint Riḍwān (ex-wife of ‘Abd al-ʿAzīz al-Maḥallāwī, the second accused) by Yaḥya Bey Ibrāhīm, President of the Cairo Native Court of Appeal – In an exceptional session of the court held at the Ṭanṭā native tribunal of first instance – May 18th 1905]

[Transcription]

س: انت قدمت عرضحلات بالتلغراف

ج: واحد في مصر وأحد في بنها

س: لمين بعت التلغراف

ج: القاضي الكبير وانا ضمت له بالعريضة

س: لمين بعت كمان

ج: أنا كتبت أربع عرايض بعتهم للقاضي

س: من قال لك ابعتي

ج: أنا من نفسي

س: بعت لمين ومين

ج: بعت للقاضي وكمان [...] و[...] له
س: من كتب لك عرضحال
ج: واحد من بنها اسمه مصطفى عرضحالجي
س: واللي في مصر مين كتبه
ج: اللي قاعد بره جنب المحكمة
س: من الذي كتب اسم القاضي الكبير
ج: واحد
س: ما تعريفيش لمين بعته
ج: أنه كنت بعته
س: هل رحت معه لوحدك
ج: أيوه
النيابة
س: ما حدش طلب [ ... ] له
ج: عشان أخلص زمي من الله
س: هل بعت تلغراف وكم دفعتي
ج: دفعت تسعة صاغ وأجرة العرضحالات تكلف بين ثلاثة قروش وأربعة [ ... ]
س: حضرة الريس أظهر لها الجواب الذي أرسلته في البوسطة
ج: أيوه هو ده وأنا حطيته في البوسطة وهو [ ... ]
س: لمين إذن بعتي [ ... ] الجواب
ج: بعته للقاضي العمومي وهو قال لي جالي تلغراف في الصبح وانزلني ما ليش دعوة
Q.: You presented petitions by telegraph?
A.: One in Cairo and one in Banhā.

Q.: To who [sic] did you send the telegraph?
A.: To the great judge, and I attached the petition to it.

Q.: To who [sic] did you send [it] as well?
A.: I wrote four petitions that I sent to the judge.

Q.: Who told you [to] send [them]?
A.: Me, by myself.

Q.: You sent [them] to who [sic] and who [sic]?
A.: I sent it to the judge and also to […].

Q.: Who wrote [the] petition for you?
A.: One [man] from Banhā, his name is Muṣṭafā, a petition-writer.

Q.: And the one in Cairo, who wrote it?
A.: The [man] who sits outside, next to the tribunal.

Q.: Who is the one who wrote the name of the great judge.
A.: Someone.
Q.: You don’t know to who [sic] you sent it?
A.: Oh! [expression of exasperation] I was sending it!

Q.: Did you go with him [i.e. the petition-writer] alone?
A.: Yes.

Q.: Nobody asked […], why?
A.: Because I clear my conscience before God.

[Questions from the prosecution:]
Q.: Did you send a telegraph and how much did you pay?
A.: I paid nine ṣāgh and the price of the petitions [that] costs between three piasters and four […].

Q.: His Excellency the President showed her the letter that was sent to him in the mail.
A.: Yes, this is the one, and I’m the one who put it in the mail, and it is […].

Q.: To who [sic] then did you send the […] of the letter?
A.: I sent it to the public judge, and he told me: ‘I got a telegram in the morning, so get out, it’s none of your business.’”
Appendix 31:

Map of the Nile Delta – Lower Egypt – Engraved and printed by Wagner & Debes, Leipzig, 1914

Limits of the Minūfiyya province added in orange
Appendix 32: