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Morality on Trial: Structure and Intelligibility System of a Court Sentence Concerning Homosexuality

Abstract

This article analyses the structural organization of a ruling issued by an Egyptian court in the trial known as the "Queen Boat case", where several people were arrested on the ground of their alleged homosexuality. With the text, and only the text, as data, it aims at making explicit the possibilities open to potential readers of the ruling. The praxiological study of texts constitutes a relatively new domain of inquiry in which texts are considered as produced objects whose intelligibility is structured and organized in a way that provides instructions for the texts' reading and accounts for their author's worldview and purposes. The article briefly presents the Egyptian legal and judicial system. Then, through close observation of each of the constitutive elements and organizational features of the ruling, it shows how this text serves as a vehicle for a limited number of possible logical options. In other words, it describes aspects of the practical grammar of written legal adjudication. Finally, in conclusion, some remarks are formulated concerning rulings as instructed reading of cases submitted to judicial review.

Keywords

Law; ruling; praxiological study of texts; instructed action; intelligibility systems and ressources; institutional context; legal relevance; procedural correctness; legal characterization

Introduction: The legal text as an object of praxiological inquiry

This article analyses the structural organization of a ruling issued by the Egyptian summary court of misdemeanours (state of emergency) in case No 182 of the year 2001, Qasr al-Nîl, registered as No. 655 of the year 2001, High State Security. This trial, known as the "Queen Boat case," made the international media headlines. It followed a police search on a boat moored on the Nile in Cairo that was used as a nightclub. Several people were arrested on the ground of their alleged homosexuality. Two of them were also prosecuted for their alleged contempt of religion, an accusation that justified the referral of the case before a state security court. It is this ruling which is analysed here.

To paraphrase Paul Jalbert (1999): since we have the text, and only the text, as data, we aim at making explicit the possibilities open to potential readers of the ruling. The following analysis of the ruling's structural organization seeks to elucidate the range of possibilities that result from interaction between the text, the background commitments of the text's producers and addressees and the positions that result from them. "The analyst […] who restricts himself to that form of analysis which begins and ends with the *text*, which locates the *text* at the centre of his analytical attention, is *never* interested in criticizing producers or recipients, their background commitments or organizational affiliations. He is interested only in portraying as faithfully as possible the intelligibility structures and devices inhering in the text as well as the background commitments which interact with any such structures or devices so as to generate a given possible understanding and assessment of it" (Jalbert, 1999: 37).

From the inception of ethnomethodology and conversation analysis, law and courtrooms have been seen as a privileged standpoint from which to observe language and action in context. The goal is not to identify how far legal practices deviate from an ideal model or a formal rule, but to describe modalities of production and reproduction, intelligibility and understanding, structuring and public character of law and the many legal activities. From this point of view, law is neither the law of abstract rules nor the law of principles independent from the context of their use, but rather, the law of people involved in the daily practice of law, of legal rules and of their interpretive principles. According to Hester and Eglin (1992: 17), three sets of methods deserve special attention in the study of law: the methods by which legal settings and situations are socially organized; the methods by which legal and criminal identities are achieved in social interaction; and finally, "the methods by which particular legal actions such as legislating, accusing, complaining, identifying 'suspicious' persons, arresting, plea negotiating, (cross-)examining, judging, sentencing and appealing are produced and recognized." The ruling is such an action: it consists of the writing of a special kind of text that can compel facts to enter legal categories and that can therefore make them consequential. This article concentrates on one specific ruling and seeks to elucidate its structure and intelligibility system as the product of two related practices: that of writing and that of reading.

The praxiological study of texts constitutes a relatively new domain of inquiry, and has essentially taken the form of the ethnomethodological study of mediated communication. Texts are considered to include both written texts of literature, poetry or the press and filmed texts of cinema and television: in other words, produced objects whose intelligibility is structured and organized in a way that provides instructions for the texts' reading and accounts for their author's worldview and purposes. Engaging in the praxiological study of such texts means not only attending to its semantic dimensions, but also focusing on the categorisation, sequence, and context features within which any reading practice of the text is embedded. Instead of assuming what the text's author has in mind when writing or editing it, praxiology adopts the reader's natural attitude when confronted with a text. Because texts are meant to be read and understood, their complexity does not imply opacity, but on the contrary accessibility, albeit to competent readers, who read it with the means they use to understand the order and properties of the social and natural world (Jayyusi, 1984: 289).

Text coherence depends on the natural reader's intelligibility resources, among them the capacity for identification, categorisation, and inference. As Macbeth (1999: 148) puts it, when speaking of filmic texts, coherence "is not then a formal analytic coherence, but rather an organization of practical objectivities, found in the scenic

recognizability of things like courses of action, visible relationships, familiar routines, etc." A text offers a limited amount of possible readings, which will be understood by its reader according to the resources available to a given society's members. Reading a text is a social practice that both constrains and is constrained by the context of its reading. It is constrained by the reading context in the sense that no understanding of the text can take place outside some kind of shared language, and social and cultural background understanding and expectations. Reading, in turn, constrains context in the sense that it offers a specific interpretation of the facts under consideration and re-orients or at least affects the reader's gaze. It is precisely this attention to the practical dimension of the text and its reading that makes the ethnomethodological or praxiological study of texts different from semiotics or textual analysis, for instance.

In the case of law, the text is both performative and intertextual. Legal texts produce their own context and reality, in itself and for all future practical legal purposes: it is the ground on which an appeal can be filed (or not), and the basis on which many actions (search, arrest, imprisonment, fining, etc.) can be performed. In other words, legal texts are performative; they create new legal realities and renew the context of legal work. Or, to put it differently, legal texts are "epistemically objective," where "epistemically" means that they are the result of some subjective activity of meaning production and "objective" means that readers tend to orient to their statements, descriptions and categorisations as reified entities. Moreover, legal texts have the specificity of being embedded within a pre-existing textual framework, with the consequence that they depend not only on the resources available to competent members, but also on formal legal categories and the constraints they exert on the production of legal truth. This is what we call the intertextual dimension of legal texts: they are embedded in a web of pre-existing provisions, statements, voices and authorities, which they re-organize in a new coherent narrative that constantly drifts from one footing to another (cf. Matoesian, 2001; Goffman, 1981). They are also already part of forthcoming textual, legal uses, which they anticipate in many ways. Indeed, legal texts are procedurally and substantively oriented to their future reading and its potential consequences. That orientation reflects on their sensitivity to institutional context, procedural correctness, and legal relevance (Dupret, 2006).

Legal concepts and categories take on meaning only within the institutional context of their formulation. Institutional legal discourses and texts share different features (Drew & Heritage, 1992). First, their nature is informed by their orientation to goals pre-defined by the mere fact that they originate from within such context. In other words, legal texts most often explicitly express their purpose of accomplishing tasks specific to the legal institution. Second, legal texts acknowledge the existence of institutional constraints by which they must abide. Third, legal texts are organised within a specific inferential and procedural framework, which refers to particular modes of legal reasoning. While seeking to avoid investigating things that cannot be read from the ruling, we contend that some understandings can be arrived at perfectly well from the written ruling. Indeed, if the practice of written rulings exists, it is presumably based on the assumption that they are adequate for lawyers and others to understand for the practical purposes of submitting or deciding appeals. In other words, they are considered reliable by professionals engaged in legal practice. There is no reason the analyst cannot rely upon data accepted as appropriate by practicing lawyers.

Professionals who are engaged in the routine of their profession generally orient toward a public production of their correct professional performance. Such production reflects on the accomplishment of a double procedural correctness: the written

expression of their having followed the many required procedures, on the one hand, and the production of a written ruling, on the other. For a jurist, it may seem trivial to claim that procedures are important, but the cliché does not exempt us from close examination of the practical ways through which people manifest their understanding of such importance, partly through detailed description of the way in which written documents are produced. The procedural constraints to which the many people explicitly orient do not correspond to a set of abstract rules imported from some external, historical, and overhanging legal system, but to the routine bureaucratic performance of legal professions (Emerson, 1983). They are closely connected to the general sequence of the trial within which parties address people who are not necessarily physically present in the courtroom, but make an over-hearing or over-looking audience virtually capable of overruling the procedures on the basis of procedural flaws.

Besides the care it gives to procedural correctness, legal activity is very much oriented to the production of specifically legal relevance. The many particular facts that are submitted to the scrutiny of judicial institutions do not await them "already marked off from each other, and labelled as instances of the general rule, the application of which is in question; nor can the rule itself step forward to claim its own instances" (Hart, 1961: 123). This does not mean that interpretation is an issue of mere social convention; there is also an "internal viewpoint" that makes people routinely follow the rules, use them as the basis of their decisions, or even refer to them as a model for behaviour. Moreover, for the limited number of cases that require a real interpretation of the applicable rule, there is a vast array of situations where people do not interpret but simply follow the rule, because its meaning does not create any confusion. The open texture of law (Hart, 1961) does not mean the absence of any texture, but on the contrary, the existence of a constraining framework to which law practitioners orient. Facts are never raw facts, applicable law is a potential object of interpretation, and the legal characterization of facts is not a strictly objective operation. It does not follow, however, that law is pure construction. As stated above, law is epistemically objective (cf. Pollner, 1974), which means that, while sociologists and critical theorists consider the law as pure artefact, it is nevertheless conceived of, and lived by, members of society as a set of signifying and objective categories. People tend to reify facts and legal categories, the latter constituting "the basic conceptual equipment with which such people as judges, lawyers, policemen, and probation workers organize their everyday activities" (Sudnow, 1965: 255).

The attention to categories is a major feature of all ethnomethodological studies and has tremendous importance in the praxiological study of law in general and legal texts in particular. Membership categorization analysis is what Hester and Eglin (1997: 2) call one of the overlapping strands of inquiry in ethnomethodology (along with conversation analysis and the study of mundane reason). Membership categories are classifications or social types that may be used to describe persons, collectivities and non-personal objects. When linked together, they form what Harvey Sacks (1972) calls "natural collections" or "membership categorization devices," which he defines as "any collection of membership categories, containing at least a category, which may be applied to some population containing at least a member, so as to provide, by the use of some rules of application, for the pairing of at least a population member and a categorization device member. A device is then a collection plus rules of application." Many categories go together in what Sacks calls "standardized relational pairs." Classes of predicates can conventionally be imputed to membership categories. They include category-bound activities, rights,

expectations, obligations, knowledge, attributes and competences (Hester & Eglin, 1992: 122). In other words, categorisation work is morally and normatively organised.

The legal characterization of facts is the form that the process of categorization takes within the law. It is also known as judicial syllogism, according to which legal work consists of the mechanical application of a rule to facts presented in their natural objectivity. Jacques Lenoble and François Ost (1980) show that such a theory is grounded on a triple representation: the judge applies the law to facts presented in their 'reality'; legal language is appropriate for the reality presented to it and intelligible as such; there is no distortion in the process of relating facts to the law. However, law functions in a tautological manner: the rule operates on what it has already assimilated, and interpretation concerns a substance that is predetermined by legal language. Accordingly, there is no access to the mechanism of legal syllogism outside the context of practical legal interpretation. In other words, identifying legal categories is not sufficient. It remains necessary to describe how people orient to them in practice. Sudnow's study on plea bargaining (1976) shows that actual legal encounters often result in the co-selection of lesser offenses (in exchange for pleading guilty) that are neither statutorily nor even situationally included in the more encompassing offense, but that are routinely associated by professionals with the crime as it is normally committed according to prevalent social standards. In other words, "in searching an instant case to decide what to *reduce it to*, there is no analysis of the statutorily referable elements of the instant case; instead, its membership in a class of events, the features of which cannot be described by the penal code, must be decided (Sudnow, 1976: 162). The rule that can describe the transformation of the statutorily described offense to the reductions that are carried out as a matter of routine must be sought elsewhere, in the character of the non-statutorily defined class of offenses, which Sudnow calls "normal crimes." Such normal crimes correspond to the ways in which people typically characterize the offenses they encounter in the performance of their routine activities. These include "the knowledge of the typical manner in which offenses of given classes are committed, the social characteristics of the persons who regularly commit them, the features of the settings in which they occur, the types of victims often included, and the like (*ibid.*). The term "normal", in the expression "normal crimes", refers to the way people attend to a category of persons and events when dealing with a certain type of crime.

In the following sections, we first briefly present the Egyptian legal and judicial system. Then, through close observation of each of the constitutive elements and organizational features of the ruling, we show how this text serves as a vehicle for a limited number of possible logical options. In other words, we describe aspects of the practical grammar of written legal adjudication. Finally, in conclusion, we shall make some remarks concerning rulings as instructed reading of cases submitted to judicial review.

Egyptian Law and Judiciary

In Egypt, Mixed Courts (*mahâkim mukhtalita*) were established in 1875 to settle disputes to which foreign nationals were party, or in whose outcome they had an interest. These courts began to function in 1876, using codes modeled after those enforced in France at the time: civil, commercial, maritime, civil and criminal procedures and criminal codes. In 1883, the National Courts (*mahâkim ahliyya*, then known as *mahâkim wataniyya*) were established for Egyptian nationals. These courts

had specific codes in civil, commercial, penal and procedural matters, mainly inspired by French law through the codes of the Mixed Courts.

Mixed Courts were abolished in 1949 and their spheres of competence transferred to the National Courts, which became jurisdictions with general competence within a unified system of law. The Court of Cassation (*mahkamat al-naqd*) was created in 1931, the Council of State (*majlis al-dawla*), competent in administrative matters and based on the French model, in 1946, and the Supreme Constitutional Court (*al-mahkama al-dustûriyya al-'ulyâ*) in 1971. Several special jurisdictions were also instituted after the July 1952 Revolution and the creation of the Republic, among them Military Courts (*mahâkim 'askariyya*), State Security (emergency) Courts (*mahkâkim amn al-dawla tawâri'*), State Security Courts (*mahâkim amn al-dawla*), the Court of Values (*mahkamat al-qiyam*), and various other special courts and administrative committees.

The adoption by Mixed and National Courts of mainly French-inspired codes enduringly established the principle of codified legality decided upon and amended by a legislator. At the end of the Protectorate period, new criminal (1937), civil (1948), and criminal procedure (1950) codes were elaborated. Various laws were adopted to govern personal status (1920, 1929, 1979, 1985 and 2000). A new code of civil and commercial procedure was adopted in 1968 and a new commercial code in 1999. The current Constitution was promulgated in 1971 and was only amended twice, in 1980 and 2005.

Egyptian courts are organized by type of justice in pyramid form, capped by a paramount jurisdiction exercising control (the Court of Cassation for ordinary justice and the Supreme Administrative Court for administrative justice). The Supreme Constitutional Court is mainly competent to review the constitutionality of laws and regulations. Ordinary courts provide for most judicial activity. They are competent in civil, commercial and criminal matters as well as on questions of personal status. There are first degree, appellate, and cassation degrees of jurisdiction.

Law 105-1980 organizes the functioning of State Security Courts (*mahâkim amn al-dawla*). These jurisdictions are part of ordinary justice and their existence is foreseen by the Constitution of 1971 (Art. 171). Article 148 of the Constitution of 1971 authorizes the President to proclaim a state of emergency (*hâlat al-tawâri'*). In this case, Law 162-1958 on the State of Emergency foresees the establishment of State Security Courts (emergency). They are to examine any violation of the Law on the State of Emergency, as well as violations of ordinary legislation that the President of the Republic decides to refer to them. These courts judge without appeal, after a summary procedure, and their decisions are submitted to the President of the Republic for confirmation. The state of emergency has been in force in Egypt without interruption since 1981.

The Ruling

In the Queen Boat case, the court ruling follows a classical organization: (1) introduction; (2) enunciation of the accusation as formulated by the Public Prosecution; (3) facts and Public Prosecution's investigation; (4) hearing of the pleas; (5) grounds of defence of the accused; (6) examination of the grounds; (7) examination of the constitutive elements of the crime; (8) motive; (9) enunciation of the ruling. The next section follows this structure, scrutinizes the ruling in a detailed manner and analyses it from within the natural attitude of a competent reader of Egyptian law.

Introduction

We now turn to the Queen Boat case and the ruling issued by the Summary Court of Misdemeanours (State of Emergency)[i].

The ruling introduction has a totally standard form:

Excerpt 1 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

In the name of God the Compassionate the Merciful

Court of misdemeanours, State security – emergency

Qasr al-Nîl, summary

Ruling

In the name of the people

During the public session held at the palace of the court on Thursday 14/11/2001

Under the presidency of His Excellency Mr (…), president of the court

In the presence of His Excellency Mr (…), deputy of the State High security Prosecution

And of Mr (…), clerk of the court

Issued its ruling on

Misdemeanour No 182 of the year 2001, misdemeanours, State security – emergency, Qasr al-Nîl, reistered as No 655 of the year 2001 of the High State security

Against

1 (…) 2 (…)

51 (…) 52 (…) […]

The court

After the examination of the documents and the hearing of the pleas:

Considering that the Public Prosecution has introduced the criminal petition against the aforementioned accused for the reason that the latter, since the year 1996 and until 11/5/2001, in the district of the Qasr al-Nîl police station, Cairo governorate

1: The first and the second accused […]

2: All the accused […]

First, we must notice that this document begins with the statement that the ruling is issued in the name of God, which is not legally required, before stating that it is issued in the name of the people, which is required. It must not be concluded, however, that there is anything exceptional in the first of these two mentions, quite to the contrary: it is rare nowadays in Egypt for rulings not to start with these words. It

would be consequently wrong to ascribe to the judge, on this basis alone, the explicit will to situate his decision within any particular religious register.

The writing of this document manifests an obvious formalism. Under this standardised form, several pieces of information are made available to the intended recipient of the text: the referred institution's identity, the attestation of respect paid to different formal requirements, the running number of the case, and the identity of the accused. Moreover, the attention given to form expresses the professional nature of the person engaged in the act of writing, and thereby contributes to the production of his neutrality: a document that respects the rules of the genre proceeds from someone qualified in this respect and benefits by extension from the qualities generally attributed to this person. This neutrality effect is strengthened by the fact that the judge from whom the document originates places himself in the situation of a third party, between the accused and the Public Prosecution. Also, the precise use of honorific terms shows that the judge in charge of the case does not have the rank of counsellor, something normal for a misdemeanour court, even in the case of exceptional justice (State security – state of emergency). This indication produces, however, an effect of discrepancy between the jurisdiction type (one-judge court) and the volume of the ruling (56 pages written on a PC medium).

Furthermore, the ruling's introduction positions the protagonists of the case in categorical terms from the outset (see above). The statement of identity with regard to the capacity of the court president, the Public Prosecution representative, the court clerk and the accused allows for the projection of a categorization device: that device is made of the "parties to a criminal ruling" with, on the one hand, the victim (i.e. society as represented by the Public Prosecution) and the offenders (the 52 accused), who, together with the witnesses, form the categorization sub-system "parties to the offence;" and, on the other hand, the judge, the Prosecution and the clerk, who form the categorization sub-system "professionals in charge of the procedures resulting in the ruling." This categorization device stresses the double affiliation of the Prosecution, which acts as both the victim's proxy and the judicial apparatus's agent. By categorising the different parties involved in the criminal procedure, it is also possible to introduce, from the beginning, the bundle of rights, duties and typical activities that generally inhere in these categories: the judge must judge, the Prosecution must accuse, the accused must defend themselves, etc. As trivial as it may appear, it is worth emphasising that it is because of the rights, duties and activities typically attached to this or that category that a discrepancy (e.g., the judge accusing, or the accused accusing, or the victim defending) can emerge and is as such open to sanction or repair.

Finally, the introduction has the effect of an announcement: it projects the character of the text it introduces by specifying and calling for the activities (accusing, defending, proving, etc.) that are intertextually constitutive of it. In that sense, it is fundamental in allowing the text it introduces to be recognizable as a ruling by all the people who might be led to read it. The specific topic with which it is concerned, i.e. the alleged misdemeanour, is introduced in such a way that all the following textual steps appear as relevantly concurring to its judicial assessment.

Accusation

The judge presents the accusation as being a third party's doing, that of the Public Prosecution in this case.

Excerpt 2 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

Considering that the Public Prosecution filed the criminal petition against the abovementioned accused because these people, since the year 1996 and until 11/5/2001, in the district of the police office of Qasr al-Nîl, governorate of Cairo

1: [Concerning] the first and the second accused:

They both abused Islamic religion by propagating (*tarwîj*) and encouraging (*tahbîdh*) extremist thoughts (*afkâr mutatarrifa*) through speech, writing and other means, this insofar as they kept interpreting Koranic verses in a wicked (*fâsid*) way; calumniated revealed religions and one of the prophets; came to [commit] actions contrary to good manners (*âdâb*) while attributing these [actions] to religion; imposed a prayer that was contrary to established prayer; founded a place for prayer to perform it; ranked perverse (*shâdhdha*) sexual practices among its rites and the practices [bound] to these ideas and encouraged them among the other accused and other people, in order to denigrate revealed religions, to disdain them and to provoke sedition (*fitna*).

2: All the accused:

They practiced debauchery (*fujûr*) with men in the way indicated in the investigation.

It [viz. the Prosecution] required that they be condemned to [the penalty stipulated in] Article 98/7 of the Penal Code and at Articles 9/3 and 15 of the Law-Decree No.10 of the year 1961 on the repression of prostitution (*da`âra*).

In a thoroughly explicit and intentional manner, the text of the ruling incorporates a series of different voices, contextualized so as to adjust to the ongoing performance and to what is relevant within this framework (Matoesian, 2001: 108). The text is, following Bakhtin's expression, polyphonic; it organizes a kind of dialogue between reporting and reported text. In the accusation, the judge repeats what the Public Prosecution petitioned (and this petition is the object of a specific text incorporated within the case file).

By highlighting the intertextual dimension of the ruling, we can see how the judge can both formulate an accusation and disengage himself from it ("Considering that the Public Prosecution filed the criminal petition against the abovementioned accused"), stipulate a lexical repertoire without making himself its author (Public Prosecution's petition: "The first and the second accused […] both abused Islamic religion. […] All the accused […] practiced debauchery"), announce the membership categorization device (contempt of religion and debauchery) that will be ascribed to the accused (beyond their characterization as accused) while claiming not to have categorized them already, and present a question in a formally accusatory manner (prosecution *vs.* defence) while actually prefacing his ulterior alignment on one of the existing positions (duplicating the Prosecution's accusation).

The enunciation of the accusation formulated by the Prosecution also extends the announcement made in the introduction by fixing the document's object and therefore restricting the scope of the relevant interventions within the ruling accomplishment. Together, introduction and accusation constitute a formalized call for reactions and a positioning vis-à-vis the object specified. However, since it is a written exercise, intertextual but not interactional, this announcement must be taken not as the expression of emerging relevancies, but as the reflexive, justificatory and *ex post facto* formulation of the constitutive elements of the ruling as deliberately selected and organized by the judge.

Enunciation of the facts and of the investigation conducted by the Prosecution

The judge continues his description of the case by enunciating the different procedures followed by the police and then the Public Prosecution in order to constitute and investigate it. In so doing, he presents the facts of the case and the modalities of their establishment.

Excerpt 3 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

[The Prosecution] transferred the case to the State Security (emergency) summary court […], according to the law […] on the state of emergency […]

Considering the facts of the petition, upon which the court based its conviction and the veracity of which is not in doubt, regarding what the court deduced from the examination of the documents and the investigations […] as well as from the evidence that was submitted to it and from what was related to it during the trial sessions: [these facts] lead to what was consigned in the record […], according to which information came to [the Prosecution] from secret and reliable sources, confirmed by its careful investigations, and such information suffices [to show that the first accused] adopted deviant (*munharifa*) ideas inciting to hold revealed religions in contempt (*izdirâ'*) and to call to abject (*radhîla*) practices and to sexual acts contrary to revealed laws. […] He undertook to propagate these ideas among his acquaintances and those who are bound to him; he incited them to adopt [those ideas]. Such information also shows that he is afflicted with sexual perversion (*musâb bi'l-shudhûdh al-jinsî*) and practices it with people who are bound to him by considering [these practices] as one of its rituals; that he and his company set about organizing licentious celebrations (*hafalât mâjina*) at the domicile of some of them or on boats, among which the tourist boat "Nârîmân Queen" […] which many of his sexually perverse acquaintances attended, and this on a weekly basis, every Thursday evening […] He undertook to film these sexual meetings, to develop the pictures and to print them at a photo shop […], on the basis of his agreement with some of the studio employees, that is […]

[Considering that] he set about diffusing some sexual pictures of these meetings as well as his confused (*mushawwasha*) ideas through the global information network Internet […] Permission was requested to arrest the accused and the other regulars of the tourist boat "Nârîmân Queen".

Considering that, on the basis of the Public Prosecution's authorization […], the arrest of the first accused was carried out in the manner established in the record […] and that, during the arrest and the search, the following items were seized: (1) 10 books entitled "God's lieutenance on earth"; (2) numerous photographs showing sexually perverse practices of the accused with many people as well as the negatives [of these photographs]; (3) numerous Islamic, Christian, and Jewish books; (4) numerous photographs of areas around Cairo, churches, mosques and tourist places and one Cairo Jewish synagogue; (5) commentary papers on Military Unit No. 1057c; (6) one star of David; (7) a collection of hand-annotated documents; (8) a photograph of [His Excellency] the President of the Republic and his wife, (9) personal photographs of the accused in Jerusalem and in the Occupied Territories; (11) numerous photographs of the country's Jewish community and Basâtîn Jewish tombs; (12) the Israeli national anthem, a copy of the book […]; (13) two maps […]; (14) two maps of Cairo churches; (15) many maps of Cairo mosques.

When the accused was confronted […] with what the investigation and information revealed, he admitted that he had embraced certain religious thoughts […], had founded God's Lieutenance […], had used certain religious symbols according to his convictions […], had undertaken to spread these ideas of which he was convinced among the people who were bound to him, among whom the second accused […], so that the latter undertook to found a cell […], had practiced sexual perversion for a long time, and during his education at the German school in Dokki and had kept on practicing homosexuality (*liwât*) with numerous

people, had frequented certain hotels, public places and boats which sexually perverse people frequent, had collected numerous photographs of these perverse practices with certain people, had printed and circulated them, had circulated certain messages through the Internet containing his religious thoughts, notwithstanding the exchange of messages carrying sexual perversion.

Considering that, on the date of […], the second accused was arrested […] On the date of […], the accused from […] shop was arrested;

The remaining accused were arrested in the following way: […]

Considering that the General Prosecution conducted the investigation. When interrogated, Major (…) answered what is consigned in the report drawn up by (…) and added that the first accused (…) has long engaged in sexual perversion with men and practices it passively (*salban*) […] He added that he was convinced that the first accused hold the three revealed religions in contempt […] and that his goal was to provoke sedition and give rise to gossip among citizens until they are won over to sexual perversion and consider it as a normal thing. […]

When interrogated, (…), officer of the State Security inspectors, declared that he undertook to implement the General Prosecution's authorization to arrest 31 accused on the Nârîmân Queen boat when most of them were dancing in a strange and perverse way, and to arrest the employees of the place […]

When interrogated, (…) [the officer in charge of the second accused's arrest]

When interrogated, (…) [the owner of the boat, the manager of the boat, the owner of the shop]

When interrogated, the first accused, (…), answered in substance what is consigned in the report dated (…), previously cited in detail, and added (1) that he had accompanied the officer to his domicile in `Ayn al-Sîra et that he gave him the keys of his apartment willingly, just as he gave him his photos, the personal notes, the books and all the things on the list […]

(2) He had during his sleep a vision of the "Kurdish pageboy" […]

(3) He practiced sexual perversion passively and actively (*ijâban*) with people, most [of whom he met] in the streets and well known places like Tahrîr square, Ma`mûra Casino and cinemas, that his most important practice dates back to the year 1996 and that his last full (*kâmila*) practice took place in the year 1998. Then, he limited himself to incomplete "soft" practices, the last one […] being a mere frivolity (*`abath*) […] He was treating the perversion. His parents knew that. The practice of perversion began when he was a pupil at the Dutch school and intensified when he was at the engineering faculty at Cairo University. He took pictures of anything that gave him feelings of danger. He began to take pictures of naked boys in sexual positions and began to take pictures of himself with those with whom he practiced sexual perversion. He would attain [orgasm] by looking at these pictures. He has decided to repent since his arrest in this case. The goal of his charity project was to cleanse himself of his sins (*takfîr `an dhunûbihi*) in matters of sexual perversion.

(4) He practiced sexual perversion with three of the people arrested, namely (…)

(5) Confronted with the accused, he recognized the three aforementioned accused.

(6) Confronted with the pictures, he declared that three pictures of (…) belonged to him.

Considering that, after he was presented before the forensic physicians in order to establish whether he had practiced repeatedly and been accustomed to practicing debauchery (*fujûr*) or not, the report based on the medico-legal investigation [conducted] on the accused, (…) concluded that he exhibited no signs of having engaged in homosexuality, formerly or currently. It is well known that an adult man can engage in homosexuality without it leaving any trace, by using lubricants, by being very careful and with the two parties' consent […]

Interrogated, (…) [second accused + all the other accused]

First, one must stress that this section devoted to enunciation of the facts has an intertextually imbricated nature. Police records and Prosecution records, by reporting the speech of witnesses (police officers, owner and director of the boat, owner of the photo shop), are organized to produce the organized description of the accusation directed against the 52 accused. The narrative scheme is the following: information collected by the police; authorization to arrest and search; arrest and search (list of the compromising items that were seized); police interrogation; other interrogations and searches; General Prosecution's investigation (interrogation of witnesses); General Prosecution's investigation (interrogation of each of the accused and medico-legal report). Through someone else's voice, the judge provides a linear, non-contradictory presentation of the facts and the procedure constituting the facts, the veracity of which he claims to be convinced from the outset. Two properties of this intertextual organization must be highlighted. First, the capacity to import into the ruling the authority of the original document. This authority comes from the fact that this is allegedly a first-hand account of a reality presented as objective (secret though reliable information, probative documents, direct testimonies, accused people's confessions, medico-legal expertise) and reported, at least in part, by public (and therefore by definition not open to challenge) officials. The second property of intertextuality is its capacity to produce coherence from multiple sources. The deeds of many actors, who were mobilised on various legal bases, were interrogated on several accounts and produced different accounts is aligned with the production of a single master document enunciating the authorized version of the facts.

This master document is itself organized around a master narrative[ii] that of the first accused in this instance, while the other narratives follow thanks to an effect of inclusion, whether explicit (the testimony of the first accused implicates someone by name) or implicit (presence on the boat at the time of the roundup, for example, justifies arrest and appearance before the forensic physician, whose report will retrospectively establish whether or not their inclusion was justified). The production of the master document thus provides *ex post facto* coherence to a series of events otherwise partly, if not utterly, devoid of unity. Analysis of this master document's organization reveals the way in which, firstly, two cases that were technically different at the beginning – contempt of religion and debauchery – are merged and integrated in such a way that each reinforces the other. This analysis also shows how, secondly, retrospective unity can be attributed to facts bound by nothing save their concomitance in time and space. Under the effect of this sort of "impregnation by contiguity," several people find themselves in the dock, and this effect is produced in the ruling by the presentation of a single structure of causality, organized as a series: (1) someone who is first accused designates some person or place; (2) the said person is arrested or the said place is searched; (3) any person found in this place becomes liable to be arrested, by definition and for the same reasons that justified the initial search and the arrest. Since these reasons do not apply to all the people who were on the boat at the time of the police roundup, it is legitimate to think that the mechanism of impregnation by contiguity functions on the basis of background expectations and spontaneous categorizations made by police officers (for instance: considering his physical appearance and clothing, a given individual presents all the same characteristics as those whose arrest were ordered; he must consequently be included within the roundup). The ruling gives all this a retrospective coherence, the cogency of which is not questioned. It thus turns impregnation by contiguity into a legitimate basis for the presumption of guilt, and thereby transforms the medic-legal

examination conducted on that basis alone into a means of confirming or reversing the presumption.

One of the most manifest consequences of this intertextual, linear, homogenous enunciation of facts, organized as a matrix (i.e., around a master narrative), is the judge's alignment with a factuality established at the plaintiff's initiative. This holds true when it comes to choosing the categories used to describe the facts (see below). It also holds true at the level of narrative organization. In other words, the ruling is structured in such a way that only the judge can ratify different presentations of the facts, which, although they originate from other authorities, are conceived for his benefit and integrated within a master narrative precisely for this ratifying purpose. The study of this structure shows that the ruling, although its official task is to adjudicate on a legal issue, actually constitutes the formalised justification of a previously taken decision.

At different levels, we noted that the ruling based itself on an authoritative argument exterior to the courtroom. This is the case of evidence that takes its probative character from its organization in categories. For our present purposes, it is sufficient to emphasize the fact that the list of exhibits (the items seized by the police in the domicile of the first accused) clearly shows the selective character of its constitution – why mention the picture of the President and his spouse and not the contents of the wardrobe, for instance? This reflects the tautological nature of the evidence in supplying conclusive proof; a given item is seized because it is considered conclusive and it is considered conclusive because it was seized[iii]. Ultimately, proof becomes conclusive because it was seized in circumstances giving it that authority. Such authority also derives from the fact that the person who seized the item was endowed with the necessary power to act under the circumstances, or even to generate those circumstances (the police officer is entitled to conduct the search and therefore to create the circumstances that endow an item with its status as proof). This is the second type of authoritative argument external to the courtroom on which the ruling is based. The official character of the function not only allows a person to do what he did, it also gives his action a weight that leads to the assumption that it was right and correct. Whoever wants to contest the resulting version of the facts will bear the onus of proving the contrary. Naturally, authority's function does not proceed from a spell, but from the entwining of a multiplicity of mentions that systematically recall the official nature of the agent's status, the formal conditions of his performing different actions, his institutional engagement and individual disengagement, etc. This holds true – and this is a third authoritative argument external to the courtroom – for the expert report produced by the forensic physician. The production of technical formulas, devoid of any emotional dimension and presenting an essentially clinical, descriptive gloss, brings to the fore an impression of objectivity that puts human agency to the background, whether in the decision to criminalize homosexuality or in the decision to condemn only passive homosexuality (as the only allegedly identifiable sort). In other words, through his reliance on the authority of expert reports alleging the objective existence of something, the judge spares himself the task of finding out whether this "thing" can be classified as criminal in the first place.

Procedure and pleas

Following this introduction, the court begins its formal description of the series of sessions held to hear the pleas. Here, we refer directly to the constraining effects of procedure on judicial activity and to the different parties' prospective-retrospective orientation to the procedural constraint (Dupret, 2005). As mentioned above, the

specificity of procedure before State Security jurisdictions is that it brooks no appeal to sentences and requires ratification from the Military Governor (i.e. the President of the Republic)[iv].

Grounds for defence and court argumentation

After having enumerated the different steps of the trial, the ruling returns to the grounds presented by counsels in defence of their clients.

Excerpt 4 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

Considering that, during the sessions and the pleas, the accused's representatives presented several defences and formulated several requests. The accused's representatives claimed:

1- The unconstitutional character of Law No.162 of the year 1958 concerning the state of emergency […] and the President of the Republic's Order No.1 of the year 1981 concerning the transfer of certain crimes to State Security courts (emergency); as well as the unconstitutional character of the creation of the State Security Prosecution Office.

2- The unconstitutional character of the text of Article 98/7 of the Penal Code and of Decree-Law No.10 of the year 1961 on the repression of prostitution.

3- The court's incompetence to examine the petition.

4- The null and void character of the Prosecution's authorization for arresting and searching since it was delivered on the basis of non-substantive investigations.

5- The null and void character of the confession, since it was obtained under duress (*ikrâh*).

6- The null and void character of forensic medicine's reports, given that the physician failed to abide by the rules of the profession (*al-usûl al-fanniyya*).

7- The prescription of the criminal petition against the crime of habitual practice of debauchery.

8- The null and void character of the proof established on the basis of an accused's declarations concerning another.

9- The null and void character of proof established on the basis of declarations made by officers of State Security.

10- The null and void character of proof established on the basis of additional investigations regarding the accuracy of the names of some of the accused.

11- The null and void character of the proof established on the basis of the seized booklet because of the lack of any link tying it to the first accused.

In the same way, the defence requested:

1- That press reports referring to the case be suspended.

2- That the forensic physician be subjected to cross-examination.

3- That the accused be transferred before a tripartite commission.

The judge then undertakes to discuss "with perspicacity and discernment" each of the defence's grounds. The answers he gives contribute to the textual production

of his professionalism, which Jackson (1988) describes, in semiotic terms, as the "narrativization of pragmatics." His rejection of the grounds invoked by the incriminated parties (through their representatives) is founded on a legal argumentation foregrounding law, case-law and medical expertise, taken as objective criteria, and relegating to the background the judge as a subjective instance of evaluation. In this way, on the issue of confession obtained under duress, the judge can invoke the Court of Cassation and the medico-legal report as external elements objectively justifying his subjective feeling:

Excerpt 5 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

Considering that it is established in case-law that it is the right of the court [competent in] substantive issues to divide the proof and, in the case of a confession, to take what it believes in and to leave aside what it excludes […] (Petition No.12712 of judicial year 64, session of 23/5/1996). […] The court is strengthened [in its conviction] that the defence's claim, according to which the accused's deposition resulted from constraint, is an unfounded statement that no proof in the documents supports. On the contrary, when the accused were presented before the forensic physician, nothing appeared to indicate the existence of constraint. [The court] is convinced that the accused's depositions establish the truth and nothing but the truth, and that the information thus obtained is reliable and proceeds from their freedom and free will.

The same mechanism works with regard to the validity of medico-legal reports. The Court of Cassation's objective authority is invoked to justify the judge's right to adjudicate according to his subjective conviction, without any necessity of proceeding further with the examination of the defence's arguments. The defence's grounds, according to which the penal action instigated against the accused for practice of debauchery was prescribed, is dismissed in an identical way, as are the grounds concerning the nullity of proof based on the declarations of one accused concerning another, or on declarations made by State Security officers. Each time, the external authoritative argument grounds the court's subjective interpretation, without the need for any further form of argumentation.

Excerpt 6 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

This is not contradicted by what the depositions of certain accused establish, according to which they abstained from practicing perversion for a certain time, or for five years, or since the year 1995. The court places no credence in the deposition of certain accused to the effect that they had desisted from the practice of the aforementioned perversion. Therefore, it dismisses these statements; furthermore, the grounds thereof […], because they are not based on facts or rights, must be rejected.

The way the judge deals with the additional ground concerning the accuracy of the names of some of the accused deserves special attention. The defence invokes an error concerning the identity of the four accused individuals. This is not a marginal argument. The first two accused were arrested on the grounds of contempt for

religion, which implied homosexual activities with partners accustomed to attending parties on the boat. These initial arrests motivated the police roundup on the Nârîmân Queen and the arrest of several other accused. Logic, therefore, would require that these arrests be carried out on the basis of the list of people designated by the two first accused as their homosexual partners. If one assumes that the accused were arrested on the boat on the basis of a list established through a preliminary investigation, and if the identity of the accused did not correspond to the identity of those arrested, it seems legitimate to doubt the existence of a preliminary list and to think that, on the contrary, the list was established subsequently to the police roundup. It is true that the text of the ruling does not explicitly mention a list drawn up before the arrests, but neither does it give the reasons for these arrests (as opposed to those that took place outside the boat) and only states "the arrest of 31 accused while they were present on the boat Nârîmân Queen". The sequential analysis of the narrative reveals that the roundup on the boat followed the discovery of a sect practicing debauchery among other things; therefore, it is only as individuals mentioned on the list of this sect's members that the Prosecution's narrative, taken up by the judge, can justify the accused's arrest. In other words, the close examination of this issue of identity makes it possible to show that the whole case is the product of the police's amalgamation of two different files: the constitution of a religious sect, on the one hand, and the repression of prostitution, on the other. Obviously, the effect of this amalgamation is to cause each file to take its importance and credibility from the other. However, the ruling, in its treatment of the issue of names, contents itself with enunciating the existence of a discrepancy between actual names and "inaccurate names, which they assumed during their practice of sexually perverse acts for fear of being exposed to scandal (*khashyatan iftidâh amrihim*)". The judge simply makes the rectification and dismisses the defence's grounds, which, by indicating this type of error, sought to invalidate the whole procedure.

Finally, the judge dismisses the three petitions formulated by the defence requiring that press coverage of the case be prohibited, that the forensic physician be subjected to cross-examination, and that the accused undergo another medico-legal examination by a tripartite commission. The dismissal follows the same pattern: i.e. the reiteration of general legal principles and their application to the facts of the case at hand with no other motivation than the court's conviction. Generally speaking, then, the judge's argumentation is organized in such a way as to give his subjectivity (i.e. what he is convinced of) a very broad scope, allowing him to dismiss all the defence's grounds and requests by bringing the objective authority of the law and the Court of Cassation's case-law to the foreground, while underplaying the relevance of the said law and case-law to the facts of the case submitted to his scrutiny.

Crimes and their constitutive elements

As we know, the ruling concerns two crimes: contempt of religion and habitual practice of debauchery. At this stage, the judge initiates the study of each of these two crimes' constitutive elements. Jurisprudence and Court of Cassation case-law have formally identified the legal element (a text of the law), the material element (the facts of the case) and the moral element (criminal intention) as the crime's constitutive elements (Dupret, 2006). For our present purposes, we shall limit the analysis to debauchery.

Legal doctrine classically considers that the task of the judge is to apply legal provisions to facts: after he has established the facts of the case, the judge identifies the law that is applicable; then, in a third stage, he applies that provision to the facts. Through the emphasis it places on claiming to respect these three steps, the ruling in

the present case clearly produces a self-ratifying effect. In other words, the writing process appears here as the ultimate means of ratification, not only of the reasoning followed in the case under scrutiny, but also of the authority conducting the procedure. Moreover, the legalistic formalism of the ruling is especially remarkable if one bears in mind the level of jurisdiction cited in the introduction (a one-judge misdemeanour court). It clearly reflects the importance of this precise case: first, clearly, because of the sheer number of defendants; secondly, because of the nature of the accusation (contempt of religion and homosexuality); and, lastly, because of the publicity the case received outside its judicial setting. In that sense, legalistic formalism is the judge's public response to the attention of which he knows he is the object.

The legal element of the crime of habitual practice of debauchery (*jarîmat al-i`tiyâd `alâ mumârasat al-fujûr*) is constituted by Article 9 of Law No.10 of 1961 on the repression of prostitution (*di`âra*),[v] which stipulates that a sentence of "imprisonment for a period of no less than three months and no more than three years, and payment of a fine of no less than five [Egyptian] pounds and no more than 10, or either of these two penalties, applies to (a) any person who hires or offers in any possible way a house or other place that abets debauchery or prostitution […]; (b) any person who owns or manages furnished housing or a furnished room or a place open to the public that facilitates the practice of debauchery or prostitution […]; (c) any person who habitually practices debauchery or prostitution. When the person is arrested in this last situation, it is permitted to submit him or her to a medical examination and, if it appears that he or she suffers from an ordinary venereal disease, to confine him or her in a medical institution until his or her recovery. […]". The material element of the crime is constituted, under the terms of the ruling, by "a man undertak[ing] to practice debauchery with another man". Concerning the moral element of the crime, the judge considers that it is constituted by the fact that "the guilty person committed debauchery, while he knew the absence of the legal bound [i.e., in the knowledge of its illegality], indiscriminately (*dûna tamyîz*) and with no consideration for financial compensation (*ujr*)". With regard to the notion of habitual practice, the judge adds that it occurs when debauchery is committed more than once.

One is justified in wondering how the moral element can be derived from knowledge of the action's illegal character. It is important to note that criminal intent can only be established by situating legality in the realm of normality and common sense. Indeed, it is hardly possible to assume that the defendants knew the interpretation given by the Court of Cassation, in an unpublished ruling, to legislative provisions devoid of an explicit formulation (Egyptian law contains no text formally condemning homosexuality). It is in fact for this reason that the judge attempts to demonstrate that the 1961 law is applicable to homosexuality. To this end, he refers to a report presented by the Senate (*majlis al-shuyûkh*) in 1951 to document a draft law on the repression of prostitution.

Excerpt 7 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

The crime designated in [this text] is only committed by fornicating (*mubâsharat al-fahshâ'*) with people indiscriminately and habitually, whether [the prostitute in question is] male or female. Once a [woman] has fornicated and sold her virtue indiscriminately to whomever asks for it, we are in the presence of *di`âra* […]; on the other hand, the term *fujûr* applies to a man who sells his virtue to other men indiscriminately.

The judge then cites a 1988 ruling of the Court of cassation that confirms this definition: "Jurisprudential custom has used the word *di`âra* to [designate] female prostitution (*baghâ' al-unthâ*) and the word '*fujûr*' to [designate] male prostitution (*baghâ' al-rajul*)."

The ruling therefore legally demonstrates that prostitution in general, and male prostitution in particular, is condemned in Egyptian law. Moreover, it shows that repeated sexual relationships are assimilated to prostitution (which is explicitly not defined by the existence of a financial transaction), insofar as they occur indiscriminately. On the other hand, it does not specify the criteria on which the notions of repetition and lack of discrimination are based. Indeed, if this absence of criteria is related to the fact that many accused are only condemned on the basis of a subsequent medico-legal report, the text of the ruling indicates that it constitutes the one-off, ad hoc construction of an argument that has a legal shape of sorts but is devoid, at least in part, of any legal basis.

The application of law to facts

After having enunciated the facts and stipulated the letter of the law, the judge has only to draw the formal conclusion of his syllogism.

Excerpt 8 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

Considering that the General Prosecution has accused all the accused of habitual practice of debauchery/prostitution (*fujûr*). After having scrutinized the documents, the forensic physician's reports, the photographs and what occurred during the sessions, the court is convinced that the accused […] have committed the crime of habitual practice of debauchery/prostitution, on the ground of: […]

Clearly, the use of this logical form allows the ruling to be presented as the necessary conclusion of an objective situation that did not need to be interpreted but simply to be exposed. In this formally ineluctable way, the judge then undertakes the detailed application of criminal law to the defendants, who are organized in different categories.

Excerpt 9 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

(1) As for the first accused, the 34th, the 35th, the 36th and the 37th, because their explicit statements, given during the Prosecution's aforementioned investigation, reveal that they have committed the crime of which they are accused, beside the first accused's statement on the fact that he practiced sexual perversion with the 36th accused and the statement of both of them on the fact that they have obscene (*fâdiha*) photographs.

(2) As for the third accused, the 4th and the 40th, besides their explicit statements during the General Prosecution's aforementioned investigation, the medico-legal report concludes that each of them irrefutably showed signs of repeated homosexual activity by the rear.

That the aforementioned accused, during the trial sessions, denied for what they were accused of does not change anything, insofar as the court is convinced of what appears in their statements, made during the General Prosecution's investigation […]

(3) As for the 47th accused, the first accused testified against him during the investigation [by claiming] that he works as a masseur in […] gymnasium. […] (He began by massaging his body normally and after [the first accused] said that he did sexual things with many people, girls and boys, in the gymnasium and that those who had experienced [it] kept on wanting it. He asked him whether he wanted it or not and he replied: "Do whatever is good," and [the masseur] did so with his hand on surface, approximately one month ago). The [masseur] also established that the first accused presented himself at the gymnasium and accomplished only one session. He denied the allegations against him.

(4) As for the 49th accused, the first accused testified against him [by claiming] that he practiced sexual perversion with him, that he had three photographs with him, and that he had penetrated him by the rear. The accused himself also established that he had 12 obscene photographs among the photos [that were] seized. Eight of them [show] him naked and four [show him] practicing sexual perversion with another person.

The fact that the aforementioned accused, during the trial sessions, denied the allegations against them does not change anything, since the court is convinced […]

(5) As for the 4th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 38th, 39th, 41st, and 42nd accused, the medico-legal reports concluded irrefutably that each of them showed signs of repeated homosexual usage by the rear. This is what [the court] is convinced of and it carries the authority of complete evidence sustaining what appears from the investigation, by considering it as a consolidation of incomplete evidence.

Insofar as the court is convinced of the establishment of the fact that the accused […] committed the crime of habitual debauchery/prostitution, it finds it necessary to condemn them to the [penalties stipulated by] articles 9c and 15 of Law No. 10 of the year 1961 regarding the practice of prostitution for the reason that they habitually practiced debauchery/prostitution in the aforementioned manner.

This enunciation of the reasons leading the court to condemn some of the accused corroborates our previous analysis of the document: that the ruling, although it organizes the penalty for debauchery/prostitution in formal legal terms, in fact results in the (legally unfounded) punishment of homosexuality as such. It is henceforth in an *ad hoc* manner that each of the accused was dealt with, according to any element tending to prove his homosexual inclination and not through the systematic collection of the elements that constitute what Egyptian law condemns under the title of debauchery/prostitution (i.e. repeated and indiscriminate sexual activity). In other words, the characterization of the facts for which the accused are blamed represents the conclusion of a syllogism whose invoked major (the law repressing debauchery) does not correspond to its underlying major (the condemnation of homosexuality) and whose minor (the facts of which the defendants are accused) refers to the underlying major while resulting in a conclusion referring to the invoked major. This is confirmed by the fact that the court clears all those for whom there is no evidence of homosexual practice (but not those for whom there is no evidence of debauchery/prostitution).

Excerpt 10 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

Considering that, as for the rest of the accused […], the court examined the documents with shrewdness and proper judgment and looked into the circumstances with the evidence [available]; it appeared that there is insufficient evidence to justify a ruling condemning the accused. The accused defended themselves by denying, at all the steps of the procedure, for the allegations against them. Nobody testified to committing the practices of which they were accused, and none of them was caught red-handed. As a result, [the court finds it] necessary

to [issue] a ruling clearing them of the allegations against them […]. What appears in detail from the aforementioned investigation does not change anything since the investigation, [the veracity] of which the court is convinced, does not stand alone as long as it is a simple presumption and does not constitute evidence. Criminal rulings that condemn must be grounded on evidence and not only on presumption, a fact established by the Court of Cassation […]

Considering that the court indicates that, with regard to the accused whom it condemned, it stipulated the penalty that it estimated as corresponding to each of them according to the circumstances and the conditions of the request it examined, in the limits established by the law when it exists and according to what appears from the Court of Cassation's case-law […]

In sum, the ruling discloses that the judge, in order to condemn homosexuality without speaking its name, made use of the law repressing debauchery/prostitution and that, in order to establish the latter, he took into consideration all the tokens tending to establish the former, while foregrounding his legalistic care for the identification of the penal-law text. The facts were characterized on the basis of that text, while condemnation of criminal behavior was made conditional upon the production of material evidence.

Sentence

At the end of this highly structured journey, the sentence is formulated as the necessary and unsurprising outcome of a reasoning that suggested its own conclusion from the outset. In this regard, one must recall the retrospective nature of such a written document: although it is presented as a demonstration progressively unfolding before the reader's eyes, this text is actually the formalized justification of a previously taken decision. This part of the ruling is concise and precise, in the sense that a hasty reader (or the audience hearing the verdict before the publication of its conclusions) can quickly find the main point: the formulation of an acquittal or a condemnation and, eventually, its term and/or amount. Contrary to what the written organization of the ruling might lead us to assume, the sentence generally constitutes the starting point of the reading. What comes before it has little chance of ever being read by laypeople. On the other hand, this is precisely where professionals will find the data on which to base their work (and especially the basis for an appeal). Thus, whereas the analytical reading of the ruling spoils the suspense of the sentence, the usual practice makes this sentence the impatiently awaited element[vi]. It reads:

Excerpt 11 (Summary court of misdemeanours (state of emergency), Case No 182 of the year 2001, Qasr al-Nîl)

For these reasons

The Court of Misdemeanours / State Security (Emergency) rules:

1°) That the first accused serve […] [a prison sentence] of five years, with labour, effective immediately, for the two accusations simultaneously; and that he be placed under police control for a term of three years, beginning upon the date of the end of the prison sentence and the expenses.

2°) That the second accused […] [serve a term] of three years with hard labour, effective immediately, and expenses, for the crime sanctioned by Art.98/7 of the Penal Code;

and that he be cleared of the second crime sanctioned by Articles 9c and 15 of Law No 10 of the year 1961 regarding the repression of prostitution.

3°) That the [3rd, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 49th accused] [serve a prison term] of two years with hard labour, effective immediately; and that they be placed on parole for a term equivalent to the stipulated penalty, beginning upon the date of the end of the prison sentence and expenses.

4°) That the 47th accused […] [serve a term] of one year with hard labour, effective immediately; and that he be placed under police control for a term equivalent to the stipulated penalty, beginning at the end of the prison sentence, and expenses.

5°) That the items seized be confiscated.

6°) That the [9th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 43rd, 44th, 45th, 46th, 48th, 50th, 51st, 52nd accused] be acquitted of the allegations against them.

The clerk The court's president

Conclusion: The Ruling as Instructed Reading

A court ruling resembles an instructed reading of the case at hand: it tells the reader how people, procedures and facts must be understood properly, and directs the reading to what must be taken as relevant, while leaving aside alternative readings of the case, its circumstances, its social and moral framework, and the law that can be applied to it.

Indeed, all texts provide their reader with some kind of instructed reading. As Livingston (1995: 15) puts it, "a text provides an 'account' of its own reading; the text is a 'reading account,' a story about how its own reading should be done." Reading in action unfolds within, and as, the transparency, ambiguity, intelligibility, grammatical sense and non-sense of the text. As reading progresses, it finds the practical clues to proceed further in the direction in which it made its first steps. Reading is an ongoing accomplishment that leans on underlying competences, but not an *a priori* knowledge. It continuously accomplishes itself through the relationship between the text and the reading of the text.

A competent reader will have no difficulty identifying the genre to which this text belongs (i.e., court rulings) and what makes it different from other texts (e.g., literary, pedagogical, comic). The distinction it makes proceeds from the Gestalt texture of the reading work. Indeed, every text provides the reader with the semantic elements of its understanding, but also with contextual clues about its genre and therefore the reading that can be made of it (Livingston, 1995: 13-15). Children's literature often multiplies contextual clues and does not seek to avoid redundancies; it overdetermines the way that the story should be read. Technical texts multiply contextual clues but seek to avoid redundancies; they are adequate to their reading. Poetic texts, while multiplying clues, may seek to fragment them, to obscure their relationships; they underdetermine their reading. "The interrelatedness of these clues does not lie in the text, but in the activity of reading that uncovers them." (Livingston, 1995: 14) Court rulings multiply contextual clues, which are related to the production of procedural correctness and legal relevance (Dupret, 2006); they offer the reader a legally over-determined reading of the case. In other words, adjudication consists of issuing a compelling, instructed reading of facts as submitted to the judge's review. Such a text instructs the reader about how to read the facts of the case at hand. At the same time, this text displays its structure and grammar in a more or less

transparent way. It provides the means of describing its own organization and production.

The ruling as instructed reading is only one of several possible readings of the case at hand. The analyst is not necessarily the accomplice of that particular account. On the contrary, it seems perfectly reasonable to consider that "given a text *T*, its analysis and a description of background commitment(s) *B*, position *P* can be found as generatable by *T* in its interaction with *B*, where *B* may very well be defensible, conventional knowledge (or indefensible, conventional ignorance) of a particular sort, or where *P* may well be indefensible (or defensible) from other points of view" (Jalbert, 1999: 37). What makes the specificity of the particular reading embodied in the ruling is its endowment with an authority that does not depend on the pervasiveness of its argumentation, but mainly on the locus of its production.

When looking at legal texts, we always miss the context of their production. Legal documents are written for legal purposes and, therefore, tend to hide the conditions of their own constitution. In other words, legal documents are polished versions that occult the performance that led to their production. From an action to an account of that action, from a verbal exchange to a written narrative, from a record to a report and from a report to a ruling, a huge transformation is achieved, creating a gap between what occurred, what is recorded, and what is made into law. Like any text of the legal genre, the ruling issued in the Queen Boat case displays a structure that offers the reader the means for its instructed understanding. It is sequentially and categorically organized in a way that smoothly proceeds from the facts presented before the judge to the sentence as the logical outcome of the syllogistic application of law. It offers a polished version of the work carried out by the judge, who struggled with conflicting factual narratives and slippery legal provisions and definitions. Detailed analysis, however, can retrieve structural, sequential, grammatical and categorical practical usages that presided over the judge's writing, its retrospective and prospective dimensions, its dialogical constitution, its contested nature and the ways in which some of these narratives became dominant. It can show how mundane events are transformed into legal facts, how evasive terms evolve into compelling statutory provisions, how ordinary characters become parties to a case, and, in this specific case, how commonsense morality acquired the status of law.

Endnotes

i We must point to the specific problem arising from translated data. One aspect of the difficulty is that any translation would have us run the risk of losing the original words used by the judge, whereas sticking to the original text often results in awkward turns of phrase. We tried to find a balanced solution, considering the tremendous importance of categorization devices in such a praxiological study of adjudication. Note also that dots between round brackets correspond to the omission of names for the sake of privacy, while words between square brackets correspond to words inserted by the translator for the sake of clarity and dots between square brackets to fragments omitted for the sake of conciseness.

ii On this notion of a master narrative, cf. Lynch & Bogen, 1995: "a master narrative is the plain and practical version (or limited range of versions) that is rapidly and progressively disseminated throughout a relevant community" (p.

71). The two authors show how facts and legal truth are intertwined with the methods of their narrative assembly: “Factual information (e.g. documents and other archival materials, oral histories, firsthand testimonies, etc.) is collected and assembled categorically, with an eye to its inclusion (or exclusion) within a developing narrative.” (p. 76)

iii Lists are associations of items that “seem to have ‘something to tie them together’, some organizational principle that can accountably be seen as having informed the selection of the different items for *this* list.” (Jayyusi, 1984: 75) Lists can be organized around internal principles (family resemblance, common denominator, normative tolerance) or external principles (instrumental or task-related list). The list of evidence collected by the police is organized around an internal principle: the features of all these items make them indicative of the criminal nature of the accused’s activities. However, it seems that this list is also organized around an external principle, although in a manner that remains discreet since it cannot be avowed: the list associates different items related to the task of accusing and convicting the accused. In that sense, this specific list functions in a circular way, the internal principle being that the items share a family resemblance by virtue of their blame-implicative potential, and this potential is linked to the external principle by virtue of the task (i.e. conviction) that must be accomplished.

iv Incidentally, the ruling concerning the persons only accused of practice of debauchery, to the exception of contempt of religion, was overruled in May 2002 by the Military Governor (i.e. the President of the Republic), who transferred the whole case to an ordinary court. This court, in its ruling of 15 March 2003, condemned the accused to more severe sentences than those issued by the State Security court. However, in its ruling of 4 June 2003, the Appellate Criminal Court reduced the sentence concerning the accused who appeared before it to a term equal to the time they already spent in prison, which theoretically made it possible to release them.

v In Arabic, the word *di`âra* also refers to the notion of debauchery. However, it seems that in the case of this law, it directly targeted prostitution, even though the law gives no definition of the terms.

vi The ruling condemning people on the ground of alleged debauchery, with the exception of those who were condemned because of their supposed contempt for religion, was overruled in May 2002 by the military governor (i.e., the President of the Republic), who referred the case before an ordinary jurisdiction. This court issued a ruling in March 2003 that condemned the accused to even more severe sentences. However, in a ruling issued in June 2003, an appellate court reduced the sentences of those who appeared before it to a term equivalent to the time they already spent in prison (which meant that they were theoretically released).

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