

# The Judge, the Spirits and the Law: Devil Possession, Personal Agency and Mind/Body Dichotomy in an Egyptian Courtroom

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In this presentation, I am interested in the notion of the person and the way it is formulated in law on the books and practised in law in action. The notion of the legal person is closely associated with the concept of legal capacity and its opposite, incapacity. The presentation analyzes the legal and judicial uses of the category of the person as a normal and/or natural artifact.

The type of approach I am engaged in can be called “praxiological ethnography”, that is, the description of intelligibility practices specific to some group’s members. These practices potentially concern the infinity of the objects of the social world and, in particular, what Collingwood (1940: 47) calls “absolute presuppositions”, i.e. notions of a metaphysical nature (e.g. birth, death, love, time, personhood) common to all “cultures”, despite their differentiated treatment.<sup>1</sup> The job of the inquirer into these practical methods, either present or historical, consists of a kind of re-enactment of these ways of culturally and/or historically alien ways of thinking. It requires accepting the common humanity of the observer and the observed and the commensurability of the many human societies. It leads to the re-activation of the intelligibility conditions of the many groups observed, while accepting that it is possible only from the observer’s specific knowledge (Collingwood, 1936: 15).

A category like the person, which is historically contingent, is at the same time necessarily shaped by the context of its mobilization. It is also on this constraining effect of the context that this presentation focuses. First, I make some developments on the notions of norm and normality, arguing that it is through these notions that the

category of the person takes its local and contextual meaning. Second, I examine the notion of institutional context. Turning to a case in which a person is accused of having intentionally killed a woman, though he claims to have been possessed by spirits, I document the influence of the legal setting in the production of meaningful categories like the person.

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Let us first focus on the notion of the person as manifested in its legal treatment. Using examples taken from Egyptian criminal law, I stress the idea that this category is both normative and contextual. The person, in the specific context of Egyptian legal practice, does not correspond to something whose characters can *a priori* be identified. It is a category and it normatively functions as such.

The idea of the normal person constitutes the point of reference of practical legal reasoning. As such, the person, far from being an abstract and a non-accessible category, is made public through the culturally methodic deployment of public resources, i.e. linguistic resources, in social interaction. As Douglas Maynard (1984: 138) puts it, in his study of plea bargaining, “when persons are talked about in any conversation, descriptions are selected and produced according to what activity is being done (...) Who a person officially is, for others, depends on what activity is being accomplished in their talk.” The person is constituted in the public domain and is a thoroughly public phenomenon. In other words, there is no natural person as such, but only naturalized persons, and this category is normative because people are confronted with the naturalized, normalized person so as to assess his/her conformity to the type.

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<sup>1</sup> M. Marion (same volume) stresses the analogy with Kuhn’s paradigms, Goodman’s world versions, or Wittgenstein’s hinge propositions.

Several conclusions can be drawn regarding the concept of the person from a case which is related to an alleged attempt at indecently assaulting a mentally backward boy (excerpt 1).

## 1.

### Prosecution of al-Sahil

Considering that (...) informed [the police officer] that the aforementioned Ayyub ... tried to assault sexually the aforementioned Ayman ..., who is mentally backward (*mutakhallif ‘aqliyyan*) and lives in the same building. (...) On today's date, with the opportunity of the presence of the accused outside the room of investigation, we asked him to enter it and we asked him verbally about the accusation directed against him, after having informed him of it, of its punishment, and of the responsibility of Public Prosecution in conducting an investigation with him. He denied them and we asked him whether he had an advocate representing him in the investigation proceedings ??? and he answered negatively. Then, we proceeded to hear the testimony of the police sergeant ... and we put him to the side, inside the investigation room. We asked for the aforementioned Ayman ..., the victim, inside the investigation room. He was introduced to us, with his mother Rasmiya ... accompanying him. We asked her to stay outside the investigation room and we kept the victim with us. He appeared to us like an adolescent (*sibî yâfi‘*) exhibiting the signs of mental backwardness (*al-takhalluf al-‘aqlî*). We asked him about what happened and we could not understand anything, except that he pointed with his middle finger and pronounced the sound ‘s’ (*sîn*), he pointed with his finger to his neck, i.e. he had a knife on his throat. We asked him another time about what happened and he pointed to the accused inside the investigation room and then he pointed to his rear and he pointed to him another time with his middle finger and pronounced the sound ‘s’ another time, and we found difficulties in understanding the rest of his answer.

First, the victim is never characterized by the technical legal terms, ‘insanity’ (*junûn*) or ‘mental disorder’ (*âha ‘aqliyya*). These terms are devised so as to characterize the liability of the offender, not the person of the victim's. The only circumstances that aggravate the punishment for sexual assault are the use of force (Penal Code, Art. 268) and the minority of the victim (Penal Code, Art. 269), which is defined here as eighteen years of age. Hence,

the mental backwardness of the victim should not play any role in this case, though his age and the use of constraint are very much relevant. However, the victim's mental backwardness (*takhalluf ‘aqlî*) is systematically mentioned by the parties and by the prosecutor.

The implications of the characterization of the victim as mentally backward clearly emerge from the next excerpt (excerpt 2), corresponding to the interview of the victim's mother. Firstly, the characterization is directly associated with his age (“He's 17 or 18, and he has been mentally backward since his birth onward”). Second, the characterization is invoked so as to assess his consent to the alleged sexual relations (“My son is mentally backward and he doesn't know anything and he stood silent”). In other words, being mentally backward allows for a presumption of the absence of consent.

## 2.

Then, we asked his mother to enter the investigation room another time and we asked her the question as follows. She answered:

A: My name is Rasmiya Muhammad Nubhan (...)

- oath -

Q: What information do you have

A: What happened is that I was sitting in my flat on the third floor and my son Ayman went out to go to the workshop he is working in at 10:00 in the morning a few minutes after he left a girl whose name is Wazza Muhammad ‘Abd al-Razzaq and whose actual name is Umm Hashim who lives with us in the house came and said help me auntie Umm ‘Aziza it's Magdi he made Ayman enter in the room and he locked the door I feared and I said ??? I went down immediately to Magdi's room which is under the stairs I found the door closed then I broke the door and I entered I found Magdi tearing away my son Ayman's clothes and bunching up the gown he wore lying down on my son I screamed and Magdi stood up from Ayman the neighbors gathered when the heard my voice and he began to insult the neighbors and he went to inform the police when the police came to know about it I went to the police station afterward he denied this is what happened

(...)

Q: What's your relationship with the victim

A: He's my son

Q: What's his age approximately (*tahdîdan*)

A: He's 17 or 18, and he has been mentally backward since his birth onward

(...)

Q: From the facts you witnessed was your son submissive to the assault or was he resisting

A: My son is mentally backward and he doesn't know anything and he stood silent

(...)

All these consequences are more evident when we contrast the former excerpt with the following, which is from the offender's interview (excerpt 3). This excerpt can be considered at different levels. First, we note that the prosecutor uses another term for characterizing the state of the victim ("At first glance, is he an understanding person?"). Then, we can observe the manner in which the offender avoids using damaging characterizations. On the one hand, he engages in rhetorical understatement or euphemism ("He speaks in a jerky way"). On the other hand, he refuses to adopt the characterization provided by the prosecutor ("Q: Is he mentally backward? A: I don't know"). Finally, the prosecutor's last question raises many fundamental points and gives us very interesting clues about the understanding of the role of background assumptions, consequential inferences, and institutional settings in the construction of the category of the person in Egyptian law.

### 3.

Q: How long have you known the victim

A: I have known him since the first time I lived in the house in 1978

Q: At first glance is he an understanding person (*shakhs mudrik*)

A: He speaks in a jerky way

Q: Is he mentally backward

A: I don't know

Q: You have seen the victim since 1978 and you don't know whether he's mentally backward or not despite the fact that it is obvious that he's mentally backward

A: I don't know

These excerpts point to the goal-oriented nature of all these activities that together make up a judicial setting. These teleological activities are consequential for the definition of the person in the sense that the goals which people seek to define the strategies that are

used so as to achieve these goals, and these strategies, in turn, imply the characterization of the person in specific ways.

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Any categorization or characterization of the person is context-sensitive, and that this context proves very constraining when it is of an institutional nature. Institutional activities assign particular roles, classes of intentions, to people participating in them and this in turn allows for consequential inferences.

In Cairo Criminal Court's narrative of the facts in its ruling of 15 October 1997, we note the presence of conflicting conceptions of the person (excerpt 4). On the one hand, the judiciary's conception seeks to establish the criminal liability of the accused for his premeditated wilful homicide (excerpt 5). On the other hand, the accused claimed neither to have been acting wilfully, nor to have been mad, but to have been possessed by a devil (excerpt 6).

### 4.

Considering that the facts of the claim, to the extent of the conviction of the court and the maintenance of their existence, indicate that the accused, Twingir ..., knew the victim, Qiddisa ..., who was bound by marriage relationship to the widow of the brother of the accused and who lived in the same building; after visiting her, he advised her that a devil had inhabited her and he declared that he had knowledge of these things and that he knew that the devil, who was dressing in her clothes, would harm her children; their life was exposed to danger because of this devil; the victim lived in anxiety and she feared for her children; when the accused convinced her to address her case to him and she had become obedient to his will, he convinced her that he could extract this devil from her; he gave her an appointment for his confronting him, when he would accompany her to one of the places and would keep on extracting the devil from her; he warned her not to mention anything to anybody about this appointment; the victim was overcome and she accepted it so as to ward off from her children the alleged danger which the accused had suggested to her; on the day of the appointment, she went out of her house, after having informed her grand-daughter of this appointment, and she warned her not to mention anything to anybody

about it; she met the accused, who accompanied her to the city of the 10<sup>th</sup> of Ramadan, and he went with her in a house in a building which was in an uninhabited area in a remote zone; he had decided in his self and had persevered in his conscience to isolate himself with her in this distant place to get rid of her so as to dispose of what she had with her as money and jewels and what he would find on her in this place, until he put a handkerchief on her mouth and her nose and pressed hard on her; he suffocated her and he did not let anything but an inanimate corpse; then, he put the corpse in plastic bags he had prepared before and he put them in a carpet that was in the house; he dragged her downstairs and threw her in the bag in a deep pit close to the house in which he had killed her; then, he went back to his lodging in the district of Zaytun and he stayed entrenched and quiet as if he had not done anything; later that night, when the victim's children realized her absence all the day, they feared for her when her grand-daughter informed them about what she had told her of her going to the appointment with the accused; they contacted him so as to ask him about her, but he denied having seen her or met her; he persevered in his denial from the day of her murder, on August, the 8<sup>th</sup>, 1996, till the 19<sup>th</sup> of August, 1996, when he went to the police station of Zaytun and acknowledged that he had accompanied the victim to a flat in the city of the 10<sup>th</sup> of Ramadan, claiming to extract the devil from her, and that while he was performing some prayers the victim fell on the ground, and then he realized that she had died; he found some plastic bags and he put her corpse in them, then he threw it in a pit; he indicated the place where the corpse was. ...

## 5.

Considering that Public Prosecution accused the aforementioned of having, on 17 August 1996, District of Zaytun, Governorate of Cairo, killed willfully (*qatal 'amdan*) Qiddisa ... with premeditation (*ma'a sabaq al-isrâr*); he acted with resolution and carefully so as to kill her, and consequently he inveigled her into his son's house and he succeeded in murdering her intentionally. She was injured in the way described in the forensic report, and it led to her death in the manner documented in the file.

## 6.

It emerges from the statements of the accused during the investigations and in his cross-examination during the session that he and his defense agree that he accompanied the victim to a

flat owned by his son in the city of the 10<sup>th</sup> of Ramadan whose design is not finished in an uninhabited area in a remote zone, and this so as to extract from her the devil that lived in her and who caused her some sufferings ...

... the accused went to the police station and informed them that the victim suffered from headaches and nightmares, that he had accompanied her to his son's housing in the 10<sup>th</sup> of Ramadan, that he had begun to pray on her to clear her from what she suffered from, claiming that a devil was inhabiting her, that she was injured during this, that she had spasms and that she quit the life...

What the defense means is that it is the devil who killed her because of the incapacity of the accused to extract him from her, since he was more powerful than the accused.

Actually, these are not so much conflicting conceptions of the person, but common conceptions to which people orient differently. Indeed, the Court never negates the possibility of the existence of spirits or devils and of being possessed by them. On the contrary, it explicitly acknowledges them, though contesting the consequentiality the defense would like to attach to such recognition (excerpt 7).

## 7.

The attempt of the defense to attribute the crime to the devil by claiming that it is the latter who killed the victim when the accused tried to extract him from her, because of the devil's power superceding the power of the accused, is contradicted by what is revealed by all the divine revelations, according to which the devil, while being able to harm human beings in their body, cannot harm their soul and make an attempt at their life because, as revealed in the Holy Koran, "They will ask you about your soul. Say: The Soul is among my Lord's matters" (xvii, 85), and as also revealed in the Holy Gospels, "Do not fear people who kill the bodies, they cannot kill the souls, but fear those who can consume both the soul and the body", and as revealed in the Torah, in Job's journey, first part, "God the Very High permitted to the devil to tempt our lord Job, but He ordered him not to extend his hand on his soul".

In other words, the position of each part within the organization of adjudication has strong procedural consequences on the

definition of the person. This has much to do with assumptions as to what behavior is considered as normal or not. Consider the following excerpt (excerpt 8). Here we find an attempt to show that there is a discrepancy between normal criminal behavior and the actual behavior of the accused. The disjunction between criminal abnormality and the normal and natural behavior of the accused suggests that he must be innocent. This categorization gives us important clues for understanding what the concept of the person represents in Egyptian law. It is a category whose normality is continuously produced and reproduced by interacting people, such normality bearing normative consequences and being used as a yardstick in the evaluation of any situation. At the same time, the context here contributes greatly to the definition of normality, in the sense that people look for characteristics that seem to be more significant and more relevant in this precise frame. This can be deduced from the cross-examination of the accused by the judge (excerpt 9).

## 8.

Present with the accused, Mr. Nabil ..., advocate,

He said that the death of the victim was a natural death in which the accused had no role ... Is it natural that people, if they face a crime whose penalty is strengthened in such a way, surrender after having prayed on the Muqattam mountain? ... If the accused had wanted to steal from or rape the victim, he would have chosen a young girl or a rich one.

## 9.

The Court considered the cross-examination of the accused. The defense of the accused, the accused and the people claiming damages agreed to the Court's cross-examination of the accused.

Q: Why did you take Qiddisa ... to the 10<sup>th</sup> of Ramadan

A: At the request of the victim because nobody knew that she was possessed by a devil's spirit and she feared that people would find out

Q: How did you know that the victim had a devil (*shaytân*) or wicked spirits (*arwâh najsâ*) inside her

A: She told me that that she had headache (*sudâ'*) and nightmares (*kawâbîs*) and I told her that you have a devil

Q: Did you observe that she had other symptoms

A: She told me that she got suffocations (*khunaq*) and headache

Q: What clothes was the victim wearing

A: A black gown (*jâlbâb*) and a shawl and a veil (*tarha*) under the shawl and shoes

Q: What happened to the victim when you prayed for her

A: I got shocked (*hasal liyya dhuhûl*) and in a state of utter confusion (*irtibâk*) and I removed the veil she was (unclear) and she did not answer I didn't know what to do

Q: Did you move the corpse by yourself to its position below the building

A: There was nobody to help me and I don't know how I left her

Q: The forensic physician established that the victim was in her underwear

A: She had all her clothes

Q: How was her nightdress torn

A: I don't know

Q: Describe the veil she wore on her head

A: It was black and I don't know whether it was tied or not

Q: What was the position in which you placed her in the pit

A: I don't know

Q: What's your opinion about the forensic physician's report according to which the victim died as a result of asphyxiation

A: I don't know

Q: Was there anybody with you during the prayer on the victim

A: No there was nobody during the prayer and she died alone

Q: Did the victim wear any gold jewels on her ears or on her breast

A: No

Q: The victim wore gold jewels on her ears and her breast

A: She had no jewels on her

Q: Was it made possible through prayer to know the wicked spirit she had inside her

A: She didn't speak nor did the wicked spirit

Q: For how long have you known the victim

A: My sister's daughter is married to her son

Q: Was there any other relationship

A: No there's no relationship except kinship

Q: How much time elapsed from the time of the prayer over her

A: Approximately five minutes

Q: What conversation took place between you and the victim before the prayer

A: There was no conversation

Q: What means of transportation did the victim take to the 10<sup>th</sup> of Ramadan

A: (unclear)

Q: Is the housing unit completed

A: It's the door of the flat and the structure of cement and there are interior walls the flat is not completed

Q: On what did she sit and what was her position before the prayer

A: She sat

Q: You mentioned in the investigation that she was standing

A: I didn't mention it

Q: Have you ever prayed and extracted wicked spirits from anyone before

A: Yes

Q: Did you suggest to the victim that she had a wicked spirit

A: Yes

Q: The victim's son says that she was sound (*tabî'iyya*)

A: No she didn't speak to anybody else

Q: Was there any material compensation in exchange for this

A: No this was crazy

Q: The forensic physician says that you strangled her

A: No she died naturally

We can stress different points in this excerpt. There is, firstly the frequent use of the "I don't know" pattern of response. As shown by Drew, this is clearly used as a way to avoid confirming. The accused may be anticipating that what he is being asked to state will turn out to be prejudicial to his situation. A claim of ignorance may be interpreted as a strategic avoidance of potentially damaging information. But, at the same time, claiming not to know or remember makes it unnecessary to disconfirm what is proposed in the question, i.e. one avoids a direct challenge to the interpretation of the judge. Finally, claiming not to know or not to remember is a strategy to highlight the unimportance of a detail. It appears to be much more beneficial for the accused to rebut the judge's versions of events, "not by directly challenging his versions, but by implying a different characterization of events." (Q: The forensic physician says that you strangled her. A: No, she died naturally). Following Komter (Komter, 1998: 129), we can argue that "the dilemma of suspects is to produce defenses that are not heard as defenses but as cooperation and to show cooperation without foregoing opportunities for mitigation. (...) Suspects manage their dilemma by offering

partial admissions or qualified versions that downplay or camouflage their participation in the events or by confirming the morals while dissociating themselves from negative inferences about their guilt and moral character." The description of the person in terms of his moral character seems to be of great importance in the process. This is why, as shown previously, one advocate stresses the normal, hence moral, character of the accused who went on praying in the Moqattam hills. This also explains why the accused denied receiving any material compensation for performing the exorcism (Q: Was there any material compensation in exchange of this? A: No, this was crazy).

Parties are oriented to the specificities of the setting in which they are embedded. This can lead them to many anticipations with regard to the possible blame-implicative nature of some of the judge's questions. For instance, in response to the question about his relationship with the victim, the accused emphasizes that he has only kinship bonds, thereby implying that there were no sexual relations between the victim and himself (Q: How long have you known the victim? A: My sister's daughter is married to her son. Q: Was there any other relationship? A: No, there's no relationship except kinship). This is confirmed in his denial that the victim was in her underwear (Q: The forensic physician established that the victim was in her underwear. A: She had all her clothes). Another example is his denying that the victim had any jewelry on her; the question clearly anticipates the possibility that he will be accused of stealing from the victim (Q: Did the victim wear any gold jewels on her ears or on her breast? A: No. Q: The victim wore gold jewels on her ears and her breast. A: She had no jewels on her). Obviously, the accused is aware that he may be accused of stealing (as in fact happened).

The goal orientation of the parties vis-à-vis the setting and its procedural implications (the trial) means that the parties are sensitive to the issue of personal involvement and intentions. One of my main points in this article is precisely to show that the definition of intention must be inferred from actual

interactional circumstances and data and do not necessarily emerge from theoretical treatises. The meaning of intention emerges from actual judicial settings and interactions, not from the logic of motives, for instance in the work of the famous Egyptian jurist Sanhuri. In the case that we used to exemplify the argument, we observe a complex game of intention, purpose, personal participation, etc. I maintain that it is from these precise data that we can infer the contextual, local, limited meaning of the person and his characteristic features.

- Motivation and initiative (Q: Why did you take Qiddisa ... to the 10th of Ramadan A: At the request of the victim, because nobody knew that she was possessed by a devil's spirit and she feared that people would find out // Q: Did you suggest to the victim that she had a wicked spirit A: Yes): On the one hand, the judge seeks to give a precise motivation to the circumstances, so as to characterize them properly (e.g. wilful homicide vs. unintentional manslaughter). On the other hand, the accused seeks to demonstrate that he had no personal interest in initiating the interaction between the victim and himself, without however damaging his credibility. This is what Komter calls the dilemma of interest and credibility.
- Intention and agency (Q: What happened to the victim when you prayed on her A: I got shocked and in a state of utter confusion and I removed the veil she was (unclear) and she did not answer I didn't know what to do): Here again, the judge is interested in knowing whether the accused acted with purpose or not. The accused is himself interested in making his personal agency disappear, while not appearing as a fool and/or damaging the credibility of the narrative of devils. Actually, the accused claims that the responsible agency was that of the devils, not his own, that the devils have a personality who inhabited the woman, attacked him when he tried to extract them, and killed her in a way he cannot remember. In other words, the accused tries to displace the question of agency and to state its transferal from himself to the devils, hence, to underplay his active

participation in the events through the formulation of an alternative version implying the participation of a third actor. By so doing, he confirms common understandings of what is moral and immoral (e.g. killing is immoral), while avoiding negative inferences about his own moral character. Moreover, whereas his moral character could be compromised by the emphasis on his lack of mental capacity, in the narrative the accused makes himself completely disappear from the scene, with the consequence that he claims to be neither personally responsible nor mentally irresponsible.

- Excuses, consciousness and agency (Q: Did you move the corpse by yourself to its position below the building A: There was nobody to help me and I don't know how I left her): The judge is interested in proving the personal and intentional participation of the accused in the crime, hence denying the relevance of any excuses the latter produces. On the other hand, the accused attempts to produce excuses for what he did, including the action of an external constraint obliterating his intentional agency. Here again, both the judge and the accused seem committed to the production of narratives that could account for the personal role, i.e. the intentional and motivated participation of people involved in the case. We may say that they show solidarity in identifying the relevant issues of the file, although they lack consensus with regard to the characterization of the parties' role in it. In other words, they share a common understanding of what constitutes the relevant features of the characterization process and they fight, in an asymmetrical way, so as to document the fulfilment of these features in the case under scrutiny.
- Normality and agency (Q: Was there anybody with you during the prayer on the victim A: No there was nobody during the prayer and she died alone. // Q: The forensic physician says that you strangled her A: No she died naturally): Agency and normality seem to be related in a very interwoven structure. Each situation is characterized according to what is considered to be the normal behavior of actors who have been

implicated. In the case of death, normality or naturality is defined with regard to the non-intervention of human agency in its production. Abnormal death is that which is occasioned by the intervention of an external human agency. Hence, the death of someone due to the action of wicked spirits cannot be considered abnormal, since it is not the consequence of any human agency. On the contrary, suicide is deemed abnormal, since it is the result of the victim's own agency. This shows that the definition of normality can differ from place to place and from time to time.

It is interesting to contrast the accounts given by the accused with the account of the plaintiff's advocate (excerpt 10). It clearly shows how an advocate can contribute to the production of a normal pattern of behavior (e.g. the victim being known by and helping everybody) that should have led to normal consequences (he could have extracted the spirit in the presence of the family and neighbors) and whose breach must therefore be accounted for (why did the accused take her to this remote place?), which in turn moralizes the case ("a heinous crime"). Furthermore, it gives a direct account of the possible motivations of the accused (to steal from the victim) and his strategies so as to realize his purposes (frightening the victim so as to lure her into the trap of such a remote place). In sum, the production of normality makes it possible to infer normative consequences from the congruence with, or divergence from, what is supposed to have happened.

#### **10.**

Present with the parties claiming for damages, Mr. Samih ..., advocate,

He said that the accused performed this heinous crime, that there were bonds between the accused and the victim; the victim was helping everybody; that is why the accused chose to tell the victim, as the witness mentioned in the former session, that her children were in danger; the victim had gold and money with her; hence, the goal was to steal from the victim, the proof being that he brought her far away from her family and her neighbors, to a building in the 10<sup>th</sup> of Ramadan close to nothing; if he intended to really

extract the spirit, as mentioned, he could have done it before the family and the neighbors ...

Finally, we note that it is only in a subsidiary manner that the defense claimed that the accused was insane in order to avoid his criminal liability. However, the Court rejected this argument, largely on the basis of the impression it got when cross-examining him (excerpt 11).

#### **11.**

Considering that the defense asked ... for the transfer of the accused to a hospital for psychological and mental diseases ...

The Court rejects it according to what follows:  
First: ...

Second: The Court is convinced that the accused was at the time of his committing the crime in full possession of his mental capacities and that he is criminally responsible for his deeds, because the Court's cross-examination of the accused ... contradicts it, since his answers to the Court's questions went logically ... The Court considers from all the above that the accused was conscious and capable of discretion at the time of his committing the crime, and that makes him responsible for his deeds, because the mental disease which is characterized as mental disorder impeaches the responsibility, in accordance with article 62 of the Criminal Code, is this disease that impeaches consciousness and discretion; however, all the other psychological states that do not impeach the person's consciousness and discretion are not deemed to impeach responsibility and the defense did not prove that the accused is affected by insanity or mental disorder.

As noted earlier, the accused did not claim insanity as an excuse for his behavior and what happened. However, since participants are fully oriented to the production of legal consequences to the facts of the case, i.e. since they are constrained in their statements and actions by the institutional context in which the case is situated, insanity appears as a convenient way to mitigate the implications of any incrimination, provided the Court rejects the justification of spirit possession. In other words, this can be analyzed as a shift from justification (the accused acted under constraint) to excuse (the accused is insane). For the Court, however, the acceptance of insanity would have meant that possession is not an acknowledged state of the person, but can only account for the manifestation of

mental disorder. This was obviously not its opinion. If spirit possession was not to be considered as the expression of mental disorder, the Court had no choice but to convict the accused for wilful homicide. Indeed, it must take into consideration the procedural constraints that allow an appeal before another jurisdiction. In other words, it must consider the existence of a kind of 'over-reading' audience, an instance that would eventually review its own ruling. If this ruling was based on non-substantiated grounds (and spirit possession is not recognized as such in Egyptian law), it would have exposed itself to the reform of its ruling and eventually to its being sanctioned. This definitely constitutes a procedural constraint on the judge's work.

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I have attempted to demonstrate that the definitions given to categories like the person do not depend on any substantial and essential meaning but are context-sensitive, i.e. they are shaped and oriented according to the setting within which they occur. Given the fact that these settings are mainly institutional, we could further argue that the meaning which is given to categories is related to the institutional circumstances of their use. This holds particularly true for law and judicial institutions. In other words, institutions constitute what we could call frameworks of procedural constraint, and people actively contribute to the production, reproduction and transformation of these frameworks. If this argument is convincing, a major consequence follows: the creation of new institutions, including the environment, the language, the specialists, etc. that accompany them, must necessarily create new procedural assumptions that reflect on the ways people act both physically and verbally, and on the meaning they will give to categories.

In Egypt, the emergence of new legal and judicial institutions had pervasive consequences, not in the sense that they introduced new foreign conceptions of the person that paralleled the old conceptions, but in the sense that they created new frameworks

of procedural constraint with which people had to deal, willingly or not. The progressive understanding of this new institutional environment led to the assumption of new procedural patterns, which in turn closely contributed to the meaning of many categories like that of the person. However, instead of explaining this change by assuming the existence of an internalization process that cannot be properly described, we suggested a praxiological approach that focuses specifically on the activities through which the many meanings of these categories can emerge and which reveal the constituting ways of background understandings.

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## Discussion

### Patrick Watson

I'm curious as to what you are calling procedural constraints. How you distinguish these from procedures themselves. Not knowing much about Egyptian courts, I would hypothesise that what they are trying to do is to find out how to categorise the crimes, and that this and mitigating circumstances become points of interest to judges, juries and investigators. I'm just wondering, at what point do we decide that procedural constraints step in and procedures stop? Is this a normal crime? Or an exceptional crime where another category is relevant?

### Baudouin Dupret

I think at many levels constraints are a feature of this environment, but they are not opposed

to the traditional environment of the common judicial procedures. Anticipating the blame and nature of questions orients to what is known as the crime; this is an orientation to legal relevance, to the categories of the law which are hardly known by the accused, but of course known by law professionals. But there is also the procedural dimension of legal proceedings, which are not only the procedures mentioned in laws and books, but are the ways people orient to these procedures in actual interactions. I think that the judge orients to the fact that there will possibly be an appeal against his decision, so he must be very careful not to block the cross-examination of the accused, even though everything has already been said by the prosecution, or the police. He himself is recognizing the existence of spirits - at some point in the excerpts he is stating that spirits are acknowledged by the Koran, so he has to recognize them. The way the spirits are recognized, however, makes them irrelevant for legal purposes. And this is really the way he is orienting to the institutional constraints exerted by the court.

### **Patrick Watson**

So that is why a question like "why did you do that" isn't necessarily procedurally irrelevant, is procedurally allowed in this kind of environment?

### **Baudouin Dupret**

This is where you can see that it is only because it is procedurally mandatory that something obviously prejudged still needs to be said - the way the Judge is framing his questions shows that he already had a very definite understanding of what the answer is, irrespective of what the accused might say.

[...]

### **Wes Sharrock**

You talk about the concept of the 'person in the law'. I didn't understand what the concept of the 'person' is, and what the concept of the 'person in the law' might be in that sense.

### **Baudouin Dupret**

This might be the difference between common law and civil law. Egyptian law is in the civil law family. In the civil law family you have broad and abstract definitions of the elements devised by the code - you start with a definition of what a physical person or a natural person is and what a juristic person is.

### **Wes Sharrock**

Yes, but I don't know what this definition defines, how is the person defined?

### **Baudouin Dupret**

You have for instance a distinction between the natural person, which is more or less the individual and the juristic person, like corporation or state. The definition is very broad and abstract, which means that courts have to provide interpretations of what has been defined by the law.

### **Wes Sharrock**

But presumably that would function prior to point of interrogation -

### **Baudouin Dupret**

Of course

### **Wes Sharrock**

- and would bring the person into the court to face the kinds charges that they face. Because, presumably, an individual does not face the same charges as a corporation.

### **Baudouin Dupret**

Of course, there are many things that operate prior to the proceedings themselves. For instance, the police decide whether the case is a criminal case.

### **Wes Sharrock**

Yes, but then I am puzzled about how the concept of a person is at play here. I was thinking that that is about things like responsibility and so forth.

### **Baudouin Dupret**

You know, the concept of a persona is relevant here because if Egyptian law and the judge in this very case considered that devils or spirits are persons in terms of Egyptian

law, this would have radically changed the whole outcome of the trial

**Wes Sharrock**

But there are two separate things here - whether you admit the existence of devils, and whether that in this case, the devils were in play.

**Baudouin Dupret**

He accepts the possibility of devils in play, but he says that devils are not acting, they are just influencing souls. So if something has been bodily, physically done, it must be the natural individual who acted, not the devils. But this all depends on the definition which is given of the natural person. You might have imagined the court of cassation's sentence telling that the natural person in Egyptian law includes devils. This is where the legal person is important.

**Patrick Watson**

It seems to me that the courts task is to differentiate between the two, the devils don't matter so much as this guy's agency in what the devils does to him. Is he so crazy that he actually believes the devils are doing these things, or is he using the devil as a defence, and at the end of this can you say, oh right he actually is crazy?

**Baudouin Dupret**

I am not that convinced. [...] I had other testimonies relating to the case. One prosecutor told me that he had a colleague implicated in this case, and all in the police station and prosecution feared this guy because of his devil capacities. So I'm not sure about the clear dividing line you are drawing. And I'm not sure about the claim which would reveal some huge gap between their societies and ours.