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NORMALITY, RESPONSIBILITY, MORALITY

Virginity and Rape in an Egyptian legal context

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This article aims at partly sorting out the problematic interconnections relating normativity and morality. It starts from the presentation of two recent affairs that were raised and discussed in the Egyptian public sphere. On the one hand, the Republic's Mufti gave an interview on the conditions making it legitimate for a woman to restore her virginity. On the other hand, the People's Assembly abrogated the provision of the Egyptian Penal Code that forbade the sentencing of a man who had afterward married the woman he had abducted. In both cases, the discussion turned around the definition of female honor, sexual relationships, and the scope of the power of intervention of legal and religious authorities in defining and regulating them. I intend to show, in a pragmatic perspective, the central character of the idea of normality in the articulation of the norm and morality. Closely scrutinizing the terms of the debate reveals the game of a cluster of ascriptions and anticipations through which the many actors involved in the public sphere build and negotiate a knowledge they consider and present as shared, and hence normal and normative. In other words, I shall attempt to demonstrate that common social knowledge is a construct, while its public construction precisely aims at giving it a predetermined dimension that guarantees its moral and hence constraining weight. However, I shall also try to show that this debate takes place within the frame of a changing pattern of normativity in which the individual is taken as a person responsible for his behavior vis-à-vis the rules of law and morality. In conclusion, I shall see how normality and morality are combined in such a way that it directly affects the public sphere and the political arena.

1. Two recent debates

Late October 1998, the Republic's Mufti issued a communiqué (*bayân*), which was improperly called a *fatwâ* (religious advice) by the press, on rape and the rights of raped women. A few days later, he also gave an interview to the weekly magazine *Rûz al-Yûsif* (26 October, 1998). According to the Mufti, any virginal girl who was the victim of a rape was given the authorization to abort before the fourth month of the pregnancy that would follow the rape. Moreover, she was now given the right to ask a physician to restore her virginity. Finally, the Mufti also gave the girl the right to conceal from her future husband what she has been the victim of.

In his interview with *Rûz al-Yûsif*, the Mufti justified his statement by making society accountable for the lack of sufficient protection given to women security, hence discharging the victim from the responsibility she accordingly should carry if her environment had not been considered defaulting. Here follows the text of the Mufti's interview.

Question: Could you explain this Legal authorization (*ibâha shar'iyya*) you gave? Is the girl bound to explain what happened to the man she is to marry?

Mufti: The girl who has been abducted and lost her virginity following her rape suffered an important psychological and moral prejudice. She has been psychologically wounded and this constitutes a type of disease. If it can cure her, one must give her back her virtue and honor. This duty lies heavy on society, which neglected her rights, did not trust her, and prevented her from recovering what she lost due to its fault. The one who has corrupted something must repair it. The repair is achieved through surgery and virginity restitution. As for the person who abducted the girl and raped her, he has committed an assault and his penalty is death. This is applied in the Code of Criminal Procedure, article 290. He cannot be pardoned. There is no deceit in her virginity's

restitution and in this surgery. No objection. However, there are necessarily conditions and limitations. This cannot be performed but in cases of abduction and rape, in the sense of the exercise of a real constraint so as to do it. If she gave her assent, one enters the room of fraud and deceit. This is why this surgery cannot be performed but with the agreement of the forensic pathologist. He is the responsible and the specialist who can establish whether the girl has been raped actually or not, and this must be recorded officially. There must be specific conditions and clear statements so as to say who is entitled to such a surgery and who is not.

I consider that society, which neglected to defend her rights, so that she has been raped, is responsible for giving to her what she has lost. (...)

We need a legislation that forbids the physician from performing a surgery of this type and forbids the people to ask for its performing except in case of rape. Opening the door to such a practice would lead to deceit and fraud, people would engage in this offense and this process without anybody knowing.

However, in case of rape, it is public, that is why I require that legal conditions and stipulations be laid down that would organize this aspect and would stipulate who is in charge of it, so as to prevent any deceit. But Islamic law (*shar'*) does not forbid surgery restitution of the raped woman's virginity, providing she has been raped actually and did not consent in any way.

Question: The girl who has been raped and who performed surgery so as to recover her virginity, does she have to disclose it to her future husband or to conceal it? What is the position of Islamic law vis-à-vis her lying and denying?

Mufti: If the husband does not know and does not ask, there is no reason to raise this issue, there is no reason for her to tell him.

However, if the situation is clear, since a criminal case is opened, and the husband is led to know one way or another, and if he asks her to tell him the truth, she is not allowed to lie because she is legally excused. On the contrary, in such a case, she will find more people ready to forgive her and she will have evidences and records supporting the truth of her story. However, before her marriage and when her future husband's acceptance of her is at stake, she is not compelled to tell him and there is no shame not telling him, except if he asks her about it.

Question: Isn't it the opportunity to open the door to the performance of surgery outside real cases of rape?

Mufti: This is a very important issue, since the penalty for rape is death. Establishing whether it is a rape with the use of constraint belongs to the competent forensic pathologist who is the only one entitled to authorize the performance of this surgery. (...)

Both the communiqué and the interview gave rise to many diverse reactions, but one must assess the very much-rooted idea according to which women are generally somehow consenting to the rape they are the victims of. It is argued, "If she's been raped, well it's mainly because she's asked for it". Following are some reactions of this kind:

The girl who's raped, she's generally a girl coming home late, dressing in a provocative way or committing immoral acts with her friend, her fiancé or anyone else in hidden places during the night. That's how she's inciting men.

It needs time raping and penetrating a girl. Why doesn't she scream? That's because she wished it.

In another interview given to al-Ahrâm daily newspaper, the Republic's Mufti justified his position in the following terms:

I'm supporting everything that can protect a raped woman; meanwhile, it's up to her to visit a specialist doctor and to ask for a surgery allowing her to recover her virginity. That's a very ordinary situation, sometimes even necessary, and there's nothing to oppose from the point of view of *shari'a*, since she's been raped. (...) There's a huge difference between this who goes to the physician because she's been raped, so as to protect her chastity, and that who undressed herself before anybody asking her and goes afterward asking for her recovering of her virginity. There's nothing to object concerning the first one, because she's been raped. According to the rule of *shari'a*, everything which is the consequence of a rape is null and void and one can't take it into account. Going to the doctor, very good, she must protect herself. Claiming that it's a way to deceive people is void. (...) Is there anybody willing to marry and asking her fiancée: have you been raped? Nobody asks this kind of questions. When visiting someone for asking her to marry him, he fully trusts her purity and her chastity. But that who undresses before anybody asking her, who makes it a habit, if she comes asking me about the possibility to perform a surgery in these circumstances, I tell her: no, because it's willfully that she turned off course. It's logical: I stand for this who, after being raped, goes to the doctor: she's the right to make it erase from her body all the scars of this act and to do all what can give her virginity back, even though she's been raped.

A few months later, the question was raised to know whether article 291 of the Code of Criminal Procedure should be amended, which stipulated:

If this who has abducted a woman legally marries her, he cannot be condemned to any penalty.

This is how the law allowed a rapist not to be sanctioned if he had married the victim. This provision, which was inspired by French law and had been added to the Code in 1904, aimed at making it possible to escape any major criminal sanction for a man abducting a girl so as to marry her without the consent of her family. The intent was clearly to protect family considered as a basic principle of society through the regularization of situations in which people looked for the socially normal situation of marriage, not for rape. This provision was never modified, even when the Code was amended in 1980, though the legislature extended penalties to perpetuity servitude for kidnapping and to death for rape. The paradox was thus that provisions were promulgated, which were heavier than for willful homicide but were followed by other provisions giving the means to dodge them.

Offenders, on the one hand, so as to escape sanction and victims and their families, on the other hand, so as to protect their reputation have often used article 291. It is mainly in police stations and in public prosecution offices that these marriages were concluded. Moreover, it must be noted that men who had been refused by a girl's family to marry her have often used this provision. According to the testimony of a marriage officer (*ma'dhûn*), it is quite frequent that a man finds in this provision the way to compel the girl's tutor to accept his marrying her. Finally, one must stress the fact that this article, which raised the opposition of many judges, was bypassed by making a criminal distinction between abduction and rape. Confusing the two crimes made it possible for the kidnapper/rapist to invoke article 291 to escape any condemnation (including the one for rape), whereas distinguishing the two allowed only applying article 291 to the sole question of abduction, while the question of rape remained submitted to a different treatment (al-Ahrâm, 17 April 1999).

The Parliamentary Committee in Charge of Proposals and Complaints first rejected a law proposal aiming at amending the Code of Criminal Procedure on the ground that the legislature had fully provided for the well being of women. However, the same day one of the eight Criminal Courts of the country issued a ruling discharging four men who had abducted and raped a girl on the ground that one of the former had married the latter. In its preambles, the ruling specifies that these individuals have benefited of the legal provision excluding punishment in case of marriage. Considering this case, the President of the People's Assembly referred the matter to the Legislative Committee, which asked the Ministry of Justice to report on the question. Meanwhile, a presidential proposition was promulgated, which asked for the suppression of article 291 and for the implementation of the penalty to the offender, even though he marries the victim. After its approval by the Cabinet, the People's Assembly voted the proposition on 22 April 1999.

Hereunder follows the text of the preparatory memorandum to the law suppressing article 291. It gives both the historical backgrounds of this provision and the motivations that led the Ministry of Justice to ask for its suppression.

The Code of Penal Procedure, promulgated by Law No 58 of 1937, stipulates in article 289 that abducting a girl less than 16 years old, be it personally or by means of someone else, without using ruse or constraint, is punished by temporary hard labor or imprisonment for a term between three and ten years. Article 290 stipulates that the crime, when there has been use of ruse or constraint and when the victim is more than 16 years old, is punished by temporary hard labor. Article 291 stipulates, "If this who has abducted a woman legally marries her, he cannot be condemned to any penalty". It has been said, in order to justify this impediment to condemnation,

that the legislature had conceived of it as a protection against shame and as a defense against the danger of exposing her to slander.

The legislature, confronted to the extension of the crime of abducting women and fornication, promulgated law No 214 of 1980 amending articles 289 and 290 aforementioned. The crime of abducting a woman without ruse or constraint is punished by temporary hard labor. If it is combined with the crime of fornication with the abducted woman, it is punished by hard labor for life. The crime of abducting a woman with use of ruse or constraint, be it personally or by the means of someone else, is punished by hard labor for life. If it is combined with the crime of fornication with the abducted woman without her consent, its perpetrator is sentenced to the death penalty. However, article 291, which impeded the condemnation of the abductor in case of his legal marriage with the abducted woman, has been upheld without any amendment.

No doubt, when reading the text of articles 289, 290 and 291 aforementioned, that the impediment to condemnation stipulated in the last one of these provisions could only apply to the crime of abducting a woman without fornication. If the crime was combined with the crime of fornication, the criminal could not benefit from this impediment. Hence, each of these crimes, this of abducting and this of fornication, are constituting independent crimes *per se*; they have their own constitutive elements and this is the meaning of the concept of combination as it appears from the preparatory memorandum to law No 214 of 1980 aforementioned. In the same way, this impediment only concerns this who has married the abducted woman, to the exception of any other one among these who have participated in the crime, if they were many.

The impediment to condemnation opened room for the critics of jurisprudence. Recently, the conviction widespread that the text of article 291, which is establishing this impediment to condemnation, encouraged criminals to commit the crime of abducting women, affected the good reputation of women in the society, prejudiced their right to protection and security, diminished the dissuasive strength of the penalty for abducting women, and made it missing its objective of putting down this dangerous crime, especially after the rise of crime rates of women abducting, often combined with fornication. (...) Such a situation led to the rising of many voices. Some M.P.'s introduced law proposals aiming at suppressing article 291 and the People's Assembly decided to refer these proposals to the Committee of Constitutional and Legislative Affairs so as it can examine them.

The Ministry of Justice, through its permanent legislative committees, undertook the complete study of all the points of view expressed on the text of article 291 aforementioned, which stretch from its suppression to its upholding through its amendment allowing to provide for certain conditions and guarantees leading to its proper implementation. It resulted in adopting the point of view that asks for the suppression of this text impeding any condemnation, so as to protect women against the attempts of abductors and to close the doors of such a hateful crime, which is affecting women, the reputation of families and the security of society, for the following reasons:

- 1) The decision impeding any condemnation, as it follows from article 291, dates from the decree of the Sublime Porte of 13 November 1883 promulgated in the shape of a Code of Penal Procedure, from which article 253 of the national Code of Penal Procedure promulgated in 1903 is inspired, which in its turn is reproduced in the current Code of Penal Procedure. This decree (...) must be read in light of the conditions, customs and peculiar social uses in which it took place, among other means of social control. The crime of abducting a woman was generally committed by a lonely man who was driven to kidnap the one he desired as his wife whereas circumstances prevented him from it. This is no more the case today, with transformation of life conditions. The crime of abducting women has taken different shapes and is often combined with fornication. Media have developed and this type of crimes has found the means to widespread. What the legislature aimed, i.e. protection against shame, became something almost impossible, so that the advantage of keeping article 291 is largely weaker than the prejudice and the harmful effects it induces.
- 2) Despite the motivations, which have led the legislature to formulate this impeding (...), it remains that it may fail, since the criminal may repudiate his wife and hence escape from the marriage he has instrumentalized so as to bypass the condemnation. Thus, society has been dispossessed from its right to implement the penalty to the criminal, and the girl has been deprived from her right to a lasting marriage. There is nothing justifying what part of the jurisprudence has claimed; i.e. that one should not implement the penalty to the abductor who has married the abducted woman so as not to make her sharing the infamy of her spouse. This is taking into account an affective aspect that cannot be considered in criminal policy. (...)
- 3) Upholding article 291 aforementioned incites nowadays criminals to commit the crime of abducting instead of refraining from it, and it gives them the opportunity to escape from their punishment by abusing from the psychological situation from which the victim and her family suffers because of her kidnapping. If he succeeds in marrying her, he can escape from the punishment, whereas generally the legal equivalence (*al-kafâ'a al-shar'iyya*) is not realized in this kind of marriage. Indeed, where could there be any equivalence between a criminal having

- committed an infamous crime and a woman having been the victim thereof and which has suffered from heavy constraint. (...)
- 4) There is nothing good that can result from such a marriage, which is grounded on the husband's infamous crime and the wife's constraint and subservience. One cannot hope that it lasts or that it creates a lasting family, neither that it achieves any kind of social good. (...)
 - 5) The main principle in criminal policy is that there could be no impeding to condemnation but for achieving social good. Social transformations and parallel the rise of the crime of abducting women has confirmed that society has less interest in impeding condemnation of those who committed this crime. (...)
 - 6) Implementing this text raises many practical and legal problems, like the problem of the many offenders keen to marry the victim, the situation in which the victim is married, the situation in which the offender's and the victim's belonging to different religions or sects makes it impossible for them to marry, the situation in which they share a degree of kinship prohibiting marriage, or the situation in which there is no legal equivalence between the criminal and the victim and that makes the marriage null and void.
 - 7) (...) It is worth suppressing this text so as to achieve the duties of public control and protection of women, who form half the society, protection of their good reputation and encouragement to their playing their major role in the construction of society and civilization.
 - 8) This must be, notwithstanding what some of the supporters of the amendment of article 291 so as to add some conditions and guarantees that would make its implementation more adequate. For instance, there could be a text allowing condemning the criminal who repudiates his spouse without justification within a term that would run from the time of his marriage (...). Promulgating such legislation within the frame of the current constitution (...) would mean recognizing the principle of the impeding to condemnation, though it runs against Islamic *sharî'a* which is the main source of legislation (...).
 - 9) It comes from this report that suppressing article 291, which is impeding condemnation, does not undermine the General Prosecution's or the court's right to evaluate the circumstances of every case, so as to give them an adequate treatment or ruling (...).

Given all what comes before and so as to answer the rise of the rate of the crime of abducting women, in order to confront those who commit them and to forbid their bypassing their condemnation by a fake marriage that is not grounded on love, clemency and freedom of choice, but on criminal circumstances and conditions of violence and shame, this proposal of law is brought in. It stipulates in its first article that article 291 of the Code of Penal Procedure, that provided for this impeding to condemnation, is abrogated.

This proposal, which aimed at suppressing article 291, had its opponents, as it becomes evident from the reading of the memorandum. They justified their position by arguing that the law was as such in women's interest. Counselor Muhammad Mûsâ, Head of the Committee, considered this provision as a protection against shame, providing that some rules like the prohibition of any immediate repudiation be provided. Counselor Adwâr Ghâli proposed to conciliate supporters and opponents to the law by instituting a three-year probation term suspending the implementation of the penalty, within which any divorce by repudiation without good reason or by judicial ruling because of prejudice would stop. The question was also debated outside Parliament. Among supporters of the amendment, Counselor `Abd al-Mun`im Ishâq Muhammad, Deputy President of the State Litigation Authority, campaigned from November 1998 in the daily newspaper al-Ahrâm. According to this lawyer, it must be stressed that no marriage concluded in these circumstances could be considered legal, whereas penalty should keep its dissuasive character (al-Ahrâm, 23 April 1999). In a press release dated October 1998, the Mufti has clearly expressed his condemnation of article 291 because it strengthened the offender's position to the prejudice of his victim and because it ran against the principles of marriage that make it something based on consent and mutual agreement.

2. Normality and typification

In the case of the Mufti's communiqué on rape and hymen recovering, the debate mainly turned around the definition of female normality, whose main components are virginity and legitimate sexual relationships. With respect to that, we can contrast the two following

examples. On the one side, there is this reaction of a physician, who claimed that the Mufti's communiqué aimed at "remedying the girl's morals, guaranteeing her a normal life". On the other side, there is this doctor's commentary according to whom "if one gives a woman the right to recover her virginity, how shall we know if this membrane is artificial or not?"

In light of this communiqué and the debate it fueled, it appears that sexual normality is based in a prototypical way on the relationships legally established by marriage with an asymmetrical situation between men and women. The gap between this normality and situations like adultery or rape stresses the abnormal character of women's conduct whose responsibility is presumed in a more or less indisputable way. In other words, the Mufti's communiqué allows the victim of rape to perform a normalizing operation, i.e. an operation retrieving appearances and allowing her to conform to the prevailing morality.

In the case of article 291 of the Code of Penal Procedure, the main question also turns around virginity and legitimate reasons for its losing. Whereas rape does not seem to constitute an acceptable permissive ground, because women are presumed responsible for what happened to them without actually being able to produce proof to the contrary, marriage is the only way legitimizing sexual relationships. As a lawyer engaged in reforming article 291 argued, "the qualitative situation of a divorced woman is by large better than the one of a raped woman" (Sabâh al-khayr, April 1999). Normality clearly runs through the idea of virginity and the latter's losing goes through marriage.

This dividing line clearly appears in the question of reconstituting the raped woman's virginity. For instance, a lawyer supported the idea that a new provision be added to the Code of Penal Procedure, that would allow rape victims to ask for the reconstitution of their virginity and for abortion in case of consecutive pregnancy:

The victim must feel that society wants to protect her. She must be able to recover her honor, so as to live a respectful life, holding her head high, like other people of the same sex. She must be freed from any pressure or constraint arising from the conditions of her being abducted and raped. (Sabâh al-Khayr, April 1999)

Likewise, many people consider that reconstituting the raped woman's virginity cannot be confused with repairing that of the "loose woman". Whereas, for the former, it is a right, because her abnormality is not the result of her will (she is not taken for responsible), it is not a right for the latter who must take the responsibility of her "immorality". According to the Egyptian religious authorities, " *sharî'a* does not run against repairing the virginity of a girl who has been forcefully raped, so as to allow her beginning her life as new".

Here, we can see that the proper nature of moral norms is to be postulated without being debatable. It operates like public opinion, whose judgment is constantly invoked and whose sanction, which is always anticipated, is never expressed (Maza, 1997). This supposedly concerned opinion constitutes an audience that cannot retract itself, and what such a mute audience thinks is known without having to be asked (Dupret and Ferrié, 1997). It is grounded on an external authority - the "Egyptian Islamic society" for instance - and the only mention of this reference suffices to establish it in an indisputable way. This is how one enters the realm of normality, i.e. of what belongs to the clearness of "things of nature" and of "the nature of things".

Moral norms enjoy this status of unquestionability that make them out of the reach of any debate or discussion. As Sally Falk Moore argues, "attributing moral significance to political ideas is one way to sacralize them and remove them from the category of the debatable" (Moore, 1993: 1). It makes them normal norms. Law plays a major role in this process of

normalization. Normalization here refers to the idea of normality, which proceeds from both nature and common sense and which is made a legal category. Indeed, there is a legal claim to transform what appears as a socially sanctioned norm into an institutionally sanctioned rule.

Howard Becker has rightly indicated how far the notion of normality depends on the characteristics that are ascribed to individuals and to their actions in the context of their interactions. This is what he calls a labeling process (Becker, 1962). Hence, normality becomes a question of categorization, which is a socially generated process. From an ethnomethodological point of view, normality is a cultural event in society. For instance, Harold Garfinkel, in his seminal study of Agnes, a transsexual, investigates the practical conditions for Agnes displaying the category of "woman", allowing her to exhibit her features of her being a "natural, normal female" she claims to be (Garfinkel, 1984: 185). In other words, sexual categories are at the same time objective configurations produced by members of a population and schemes orienting and organizing their activities (Quéré, 1994, p. 33). Normality characterizes the belonging to a category. It gives the rules and methods that are necessary to the configuration of behaviors corresponding to the category.

My point is to assess the fact that normality, i.e. what refers to nature and common sense, enjoys a status that is considered *per se* legitimate and hence morally desirable. Law leans on this double dimension of legitimacy and morality while constructing it. Categories to which beings and things are ascribed or ascribable are social. It means that they do not impose themselves because of their natural objectivity, but rather because their validity is intersubjectively constituted, making them both desirable and compulsory. This is achieved by formulating and ascribing mutual and reciprocal expectations and by naturalizing and moralizing schemes and beliefs, which are incorporated by these categories (Quéré, 1994: 35). As Harvey Sacks pointed it out, "in public spaces persons are required to use the appearances others present as grounds for treating them. Persons using public spaces are concurrently expected by others to present appearances which can be readily so used, and expect others to treat their own appearances at face value". (Sacks, 1972: 281)

The debate around rape and hymen recovery turns always around the moral category of the "pure, virtuous, modest, normal woman". The fact that such a category is considered to represent society in its normal conception puts it out of any debate about its legitimacy. What is at stake is not the authority of the norm as such, but the many ways to express it, to make it visible, and to give an account of it. This is what Garfinkel would have called the accountability of the norm. Legal debate turns on that point, while it completely dodges any questioning on the legitimacy of the category "normal woman". The latter functions as a constraining category whose existence is postulated and whose permanency is therefore guaranteed.

The kind of constraint the norm is imposing proceeds from its the formal nature of categories and from the praxeological nature of categorizing operations. It means that ascribing to categories is a circumstantial operation aiming at orienting the debate by the ascription to the categorized object a set of rights and duties which does not depend on the essence of the category but on the relational configuration it sets up. In other words, qualifying a woman as virtuous and modest, i.e. normal, because she has no sexual relationship before her being married does not mean that she only follows the immutable rules which an "Islamic Egyptian society" imposes to women. To the contrary, it means that she is ascribed a "membership categorization device" (following Garfinkel's terminology), i.e. being a woman, with the consequence that every activity she performs is evaluated according to the rights and duties, which are attached to the members of this category. This can explain the

fact that raped women, whose chances for good marriage are ruined if they remain stigmatized as such, often agree to marry and divorce anyone, despite the difference in backgrounds, so as to save their reputation and to allow them a marriage "less worse" than if still being considered "raped women" (Mohsen, 1990: 22; Ahmad, 1979).

People's embedment within a categorization device and conventional ascriptions that are following are based on a block of conceptions generally accepted in a given social context. This has a reflexive effect, and the mobilization of this categorial device in order to qualify people and things reinforce its conventional acceptance. We can find in this reflexive operation the origin of the impression of the permanency of the norm: normality helps supporting the mobilization of a norm and the mobilization of the norm participates in constructing normality. Indeed, normality stems from normality, through a more or less continuous process, and it would be useless to look for its origins (Ferrié, 1998): no need to look for the origins of female modesty in "Islam" or in "oriental societies"; the question has to be considered in its presently performing categorization device that embeds it within a system of normality and permanency.

The "norm" has two meanings, one mainly statistical and the other more or less legal. Far from just co-existing, they tend to crumple up, and this can explain the ambiguity of the derivative notions of "normal" and "normality". If one says of something that it is normal because it corresponds to the most frequent type, however there is always remaining the explicit or implicit referring to values, i.e. an idea of "ought to be". As Danièle Loschak puts it, "if the notion of normality is equivocal, it is because it continuously superposes normativity to description" (Loschak, 1993: 393). At first glance, normality does not belong to the conceptual framework of law. However, we must consider its surreptitious re-introduction in the lawyer's work. Normality then becomes a legal category, mainly through the action of legal standards, which explicitly refer to the implicit idea of normality. In other words, "law ratifies and propagates a certain idea of normality and thus contributes to the actual normalization of behaviors" (*ibid.*). On the descriptive side, law claims to reflect prevailing social norms and to give them a legal force, though on the normative side law indicates which social norms it decides to ratify. It has necessarily recursive effects: norms which are considered normal in law and which are therefore guaranteed tend in their turn to determine social normality. Hence, one can observe the systematic tendency of legal actors to conform the social to the legal and conversely to make social and legal normativities coincide.

This process of normalization is achieved through what we call the typification of social events. In Egypt for instance, when focusing on the way the press is dealing with cases of rape, we are always confronted to the presence of paradigmatic images of sexuality, sexual control, and female modesty. Most of the articles are devoted to the reinforcement of these paradigms and the necessary repression of their transgression. Action seems always to be related to an archetype of morality or immorality. Thus, on the one hand, we find marriage as the sole paradigm of "licit sexual relations" and, on the other hand, we find its negative picture, i.e. rape and non-marital relationships (both being generally associated). This archetype constitutes the criterion for evaluating any sexual action. It can explain the fact that the practice of homosexuality without the victim's consent cannot be considered a rape. With or without constraint, it is from the beginning located outside the frame of the paradigmatic reference. This holds true for laymen and professionals' representations. (Cf. Dupret, 1998a and 1998b)

All the above illustrates the ways through which non-political cases can be made political. The debate about rape and virginity clearly shows how moral questions are (made) public.

Sexual relations are totally emptied of any dimension of intimacy and feeling and are constituted into a public legal question turning around their only licit definition: marriage, and counter-definition: rape and non-marital relationships. This public character of morality cases is itself easily made political. In this kind of situation, all public authorities make statements about the case. For instance, in a rape cases, the case of the Ataba girl, President Mubarak assented to a proposal aiming at the amendment of the legal provision dealing with rape, with the consequence that the law was actually amended and that the sanction was strengthened. Commenting on the same case, an Islamic yearly publication explicitly related the decrease of societal security to an increasing focus on political security. Close to the trend of the Muslim Brotherhood, it also seized the opportunity to state that the new law was in contradiction with Islamic *shari'a*, since "it has the major shortcoming not to deal with the question of honor and not to inflict any punishment for the act of sexual intercourse with consent" (s.e., 1993; Dupret, 1994).

3. Stain and responsibility

Sexual morality stems from sexual honor, though the shift from the latter to the former reflects a very important difference in the conception of the individual. Sexual honor is the possibility for someone (generally a man, the protector of the family name) to be seriously affected in his dignity or even to be stained by the sexual situation of another one (generally a woman). In other words, sexual honor is the process through which what A does to the body of B has an incidence on C because of his kinship with B (Ferrié, 1998: 133; Douglas, 1981). By contrast, sexual morality is the situation where someone bears an individual responsibility for his/her own willful sexual behavior by virtue of external obligations (Ferrié, 1998: 135). The difference is mainly located in the fact that, whereas honor is a static situation independent from any act of the will of the person whose honor has to be defended, morality is a relational concept linking the willful behavior of an individual and the rules by which he/she has to abide. At first glance, the practical consequences of a shift from sexual honor to sexual behavior can seem insignificant. As Jean-Noël Ferrié puts it, "what is forbidden to people is, if pushed, the same and their freedom practically suffers from the same kind of interference" (*ibid.*). However, one should not underestimate the significance of the change in what Michel de Certeau calls "the formality of practices" (de Certeau, 1975): the frame of reference legitimizing the same practices has changed, and this in turn can more or less affect them.

The communiqué of the Republic's Mufti makes it religiously legitimate for women to ask for the recovering of their virginity when its loss has been consequential to a rape. To the contrary, such a surgery is deemed illegitimate when it results from the woman's willful behavior. It makes a clear distinction of status between women according to their will. Stain is quite independent from human agency and therefore from the action of the will, while morality depends on what someone does with regard to the norms, be it an active (e.g. the fault) or a passive (e.g. the omission) behavior. It means that stain is completely impervious to the intention of people¹. This is particularly evident in criminal law. Customary justice (e.g. blood feud or crimes of honor) does not take into account the intention of people: it only ratifies that a certain fact has affected the status of a group and of its members. In statute law, to the contrary, it is the will of this who commits an action that is determining its legal characterization and the evidences documenting this will have to be found in the intention of the latter. Customary justice does not make anyone individually responsible, be it for claiming

¹ Stain is the effect of something, like an homicide. Its occurring is independent from any intention, like the intention to kill, and it asks for reparation (Williams, 1993: [84]).

or for paying a right. Statute law, to the contrary, is based on the principle of the personality of penalties. Here we find the emergence of a certain concept of responsibility, which is made of the articulation of the notions of causality, individual intentionality and ascription². Its central unit is the individual who must be considered as the unique starting and ending point of what happens to him/her.

Obviously, customary and statutory systems can co-exist. In Syria, for instance, the Criminal Code makes of crimes of honor a distinct category whose punishment is weaker. Moreover, legal practices show a very deep understanding of the judiciary towards this kind of behavior (Ghazzal, 1996). However, one must also consider the fact that Syrian law, though being lenient, punishes it as a crime that has its grounds of permissiveness, while to a certain extent customary law can consider it a duty for people to kill those relatives who stain their kinship, though they may not bear any responsibility in what happened to them. Safia Mohsen gives the example of a young girl who was raped by her uncle and then killed by her brother who maintained before the court that he was defending the honor of the family and of his sister (Mohsen, 1990: 22). Here, it is worth pointing out the fact that customary law and statute law, or with regard to our main concern stain centered-systems and systems centered on the intentional individual are partly reflecting and influencing each other. In Egypt, like in Syria, law explicitly or implicitly recognizes the category of "crimes of honor" and gives it a different treatment according to the fact it is a man or a woman who is the offender. Article 237 of the Egyptian Penal Code states that a man who surprises his wife in the act of adultery and kills her and/or her partner is punishable with a maximum sentence of six months in prison instead of being sentenced to the legal punishment for willful homicide. However, if it is the wife who surprises her husband in the act of adultery and kills him and/or his partner, there is no ground of permissiveness allowing reducing the sentence. It must be added that the provision of Article 237 does not apply if the husband himself has been convicted of adultery or if he has not acted in circumstances of surprise. These provisions clearly reflect the incidence of customary law on statute law. Adultery itself has an ambiguous meaning. It is mainly considered a crime against privacy and not against society. Hence, the victim can stop the sentence against his/her spouse anytime. Moreover, privacy has a different meaning for men and women. For the former, it means the husband's exclusive right to his wife's sexual activities (as a consequence, she can be punished up to two years in prison no matter where she has committed the crime), whereas for the latter it means the wife's right to privacy and dignity within her domestic domain. In this field too, a stained-centered normative system seems to exert an influence on a criminal legal system based on the intentional individual (Mohsen, 1990).

Current Egyptian criminal provisions related to sexual behavior testify to an ongoing shift from a system based on stain repairing to a system based on the individual's will. The Penal Code makes the individual the main unit of its economy, an individual who is both conscious and willful. Such an individual is considered the center of choice and action. He/she becomes the correspondent of a person, i.e. the bearer of responsibility. As Locke already formulated it, the term of "person" is a forensic term. "It means that dealing with an individual as a person is considering him responsible for his/her acts before the courts, in the literal or figurative sense, of law or morality - or even for some people before the courts of God's ruling" (Montefiore, in Sperber, 1996, v° *Identité morale*). In other words, we find the principle of the individual's

² According to Bernard Williams, any conception of responsibility is grounded on the organization of four fundamental elements: the cause, the intention, the mental state, the reparation. However, there is a whole range of conceptions of responsibility, which result from the different interpretations given to the many elements and from the relative weight they receive respectively (Williams, 1993: [78]).

autonomy, which is the converging point of our judgments of responsibility. Such an individual is the master of his/her choices and capable of orienting his/her behavior in accordance with or in opposition to a system of norms.

Such a shift reflects the conversion from a system that considers facts independently from human agency to a system that allows human agency to act so as to modify matters of facts. In the former system of honor, people had to accept their situation as it was, whatever their individual responsibility in this situation, with its consequences with regard to their status. For instance, as it has been showed above, the loss of virginity outside the legitimate bounds of marriage was affecting the woman and depreciating her status, even though in case of rape she bore no individual responsibility in what had happened to her. In a system of morality, it is made possible for people to act on their own body so as to change, erase or modify what is their lot, providing they are not deemed individually responsible for that situation. Here we find the emergence of sex change operations, plastic surgery, abortion, virginity recovering. Let us note that the communiqué of the Republic's Mufti made it legitimate for the raped woman to ask for both the recovering of her virginity and her aborting of any unwanted child, the principle being that people must not bear any individual responsibility for the acts they did not perform willfully.

The normalization process that has been described above is this process through which people are (made) conforming to (what is presented as) social expectations, which appear in a typified manner. These typifications are the cognitive instruments that allow us to recognize other people and to give them a place without having to know them personally. Moreover, they are also the cognitive instruments of interaction that allow coordinating action without having to personally deliberate with other people. However, this is realized through the ascription to these types of whole sets of rights and obligations. In other words, types are normative and typifications are less descriptive than prescriptive procedures whose constraint cannot be openly challenged because of their alleged public and shared character (Ferrié, 1998; Jackson, 1995; Dupret, 1998a, 1998b, 1998c). Thus, normalization is this process that aims at reducing the gap that can exist between what people are and what people are expected and consequently ought to be. In systems of morality, the possibility to perform such a process remains conditioned by the relationship that exists between the norm and the circumstances that led to its breach, i.e. by the individual responsibility people bear in such a breach. In other words, normalization is allowed when there is no moral reason not to do as if nothing had happened. There is no normality without morality, meaning that there would be no reason to appear as normal or to make things and/or people appear as normal if there were no rights and duties attached to "normal" categories. On the other side, morality is grounded on the assumption that its prescriptive aspect is supported by empirical evidence, i.e. that it represents the most frequent type, the most natural attitude, the most evident conception. In summary, morality and normality lean on each other so as to produce social order.

Conclusion

The analysis of Egyptian debates on rape and virginity aimed at emphasizing the importance of the process of normalization in a context of social transformation, which is reflecting an ongoing centration of the political and legal discourse on the unit of a responsible subject of law. This notion of responsibility is even suffusing discourses denying to women the right to recover their virginity. Indeed, it is explicitly because of her alleged responsibility (her "provocative" behavior) in the rape she was the victim of that the woman is denied that right, not because there is no way to be cleansed from the stain she bears.

This article actually aimed at underlining the close relationship between public morality and individual responsibility. Moral discourse develops only with regard to the ascription to the individual of the responsibility for the deeds resulting from the choice of his/her autonomous will. Although the ascription of this responsibility is made with regard to a norm, which is external to the individual himself/herself, it does not constitute an absolute norm but a criterion for the evaluation of practices, which are grounded on the principle of the freedom of action. Thus, in this type of logical pattern, a woman is considered responsible with regard to the moral norm for her losing her virginity because she has freely decided to have sexual intercourse; hence she must assume the social consequences of her choice. Following the same pattern, the woman who was the victim of a rape must be able to avoid the social stigmatization consecutive to a factual situation in which she bears no individual responsibility because she was constrained. However, in the Egyptian context we analyzed, the two modes of evaluation of sexual action are coexisting: one mode, which is independent from the will, is related to stain and superposes the factual situation and its normative characterization (i.e. it functions apodictically); another mode, which is depending on the will, is related to individual responsibility and refers to a situation in which the legal characterization of facts is conditional upon the actor's intentional part in their happening. The coexistence of these two modes of evaluation, which may probably be analyzed in terms of normative plurality, partly reflects the strains that suffuse the Egyptian public sphere and, in the legal field, the competition for getting the right to define the content of law.

Through these two examples of the way female virtue is dealt with, we tried to show how moral discourse can be elaborated. It comes out that such a discourse is the product of an ongoing negotiation between normative heteronomy and individual autonomy. This comes true at two levels at least. At the level of the enunciation of law (e.g. legislature, judge), the intangible nature of the criterion for evaluating individual behavior must be assessed. In other words, the relativity that has been introduced by the acknowledgement of individual free will must necessarily be accompanied by giving an absolute dimension to the norm of reference: the actor's autonomy goes together with the heteronomy of the rule. At the level of people having to justify themselves (e.g. suspect), the autonomous individual behavior must be located somewhere within the frame of this heteronomous normativity. First, it means that the norm of evaluation and its constraining character must be recognized. Secondly, the gap between the norm and the actual behavior must be explained. It can take two different forms. Either the form of justification, according to which people deny that the act was wrong but accept responsibility for its happening. In rape cases, it is reflected in the recognition of having had sexual intercourse while claiming that the woman was its main instigator. Or the form of excuse, according to which people deny responsibility but recognize the wrongness of an act. It is mainly reflected in rape cases by claiming that individual will has been overwhelmed by a super power, e.g. mental disorder (Komter, 1998: 50-56).

Egyptian public sphere, as observed through the way law deals with rape and virginity, is by large characterized by the strain that results from the dilemma between heteronomy of the norm, taking the shape of what we called the normalization process, and autonomy of the individual, which is translated in terms of responsibility. It is in that sense that questions of public morality permeate it so much.

References

- Ahmad T.N. 1979, *Thirty Years Struggle Against Crime*. Cairo: Dâr al-Nahda (in Arabic)
Becker H. 1962, *Outsiders. Studies in the Sociology of Deviance*. New York: Free Press
Canto-Sperber M. (ed) 1996, *Dictionnaire d'éthique et de philosophie morale*. Paris: PUF

- Certeau (de) M. 1975, *L'écriture de l'histoire*. Paris: Gallimard
- Douglas M. 1981, *De la souillure, essai sur les notions de pollution et de tabous*. Paris: Maspéro
- Dupret B. 1994, «L'annuaire de l'Umma et la question sécuritaire». *Egypte-Monde arabe*. No 17: 157-184
- Dupret B. 1998a, «La typification des atteintes aux bonnes mœurs: approche praxéologique d'une affaire égyptienne». *International Journal for the Semiotics of Law/Revue Internationale de Sémiotique Juridique*. Vol.XI no.33: 303-322
- Dupret B. 1998b, «Repères pour une praxéologie de l'activité juridique: le traitement judiciaire de la moralité à partir d'un exemple égyptien». *Egypte-Monde arabe*. No 34: 115-139
- Dupret B. 1998c, «La recherche judiciaire d'une moralité conforme: la Haute Cour constitutionnelle égyptienne et le voile». In J. Dakhli (ed), *Urbanité arabe. Hommage à Bernard Lepetit*. Arles: Actes Sud / Sindbad
- Ferrié J.N. 1998, «Figures de la moralité en Egypte: typifications, conventions et publicité». In J. Dakhli (ed), *Urbanité arabe. Hommage à Bernard Lepetit*. Arles: Actes Sud / Sindbad
- Ferrié J.-N. 1998, «La Petite robe, ou le dépassement des limites en régime de civilité». *Hermès*, No 24
- Garfinkel H. 1984, *Studies in Ethnomethodology*. Cambridge: Polity Press
- Ghazzal Z. 1996, "Honor Crimes in Syrian Courts: The Art of Finding Good Reasons to Kill Your Wife". *Paper presented at the Middle East Studies Association, 30th Annual Meeting*, November 21-24, Providence, Rhode Island
- Jackson B. S. 1995, *Making Sense in Law. Linguistic, Psychological and Semiotic Perspectives*. Liverpool: Deborah Charles Publications
- Komter M. 1998, *Dilemmas in the Courtroom. A Study of Trials of Violent Crime in the Netherlands*. Mahwah, New Jersey: Lawrence Erlbaum Associates
- Lochak D. 1993, «Normalité». In Arnaud A.J. et al. (sous la dir.), *Dictionnaire encyclopédique de théorie et de sociologie du droit*, 2e édition corrigée et augmentée. Paris: LGDJ
- Mohsen S. 1990, «Women and Criminal Justice in Egypt». In Dwyer D.H. (ed.), *Law and Islam in the Middle East*, New York, Westport, London: Bergin & Garvey Publishers
- Moore S. F. 1993, «Introduction». In S. F. Moore (ed.), *Moralizing States and the Ethnography of the Present*. American Ethnological Society Monograph Series, Number 5
- Quéré L. 1994, «Présentation». In B. Fradin, L. Quéré et J. Widmer (sous la dir.), *L'enquête sur les catégories*. Paris: Ed. de l'EHESS (Raisons pratiques 5)
- Sacks H. 1972, «Notes on Police Assessment of Moral Character». In D. Sudnow (ed), *Studies in Social Interaction*. New York: The Free Press
- Tapper R. & N. Tapper 1992-1993, «Marriage, Honour and Responsibility: Islamic and Local Models in the Mediterranean and the Middle East». *Cambridge Anthropology*, Vol. XVI, No 2
- Williams B. 1993, *Shame and Necessity*. Oxford: University of California Press [French tr. 1997, Paris: PUF]