

Negotiating Virginity: Narratives of Defloration from late nineteenth-century Egypt¹

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Scholars of Middle Eastern societies have tried to understand the social meanings of women's premarital sexuality within two main paradigms. The first is an essentialist understanding of patriarchy, which sees it as a system in which the taboo regarding female premarital sex is maintained and enforced almost exclusively by men. Central to this paradigm is the theme of "honor killing," that is, the killing of a woman by a male relative for engaging in, or for being suspected of engaging in, pre- or extramarital sex. The second paradigm, and the one I will explore in this paper, is the recent emphasis on the role the modern state has come to play in monitoring women's sexuality.²

The surveillance of young unmarried women's sexuality often is explained in terms which imply an essentialist understanding of gender relations and patriarchy, and which leave little room for negotiation, contestation, or even ambivalent compliance. In her ambitious article on honor crimes, legal scholar Lama Abu Odeh argues that women's virginity and honor crimes play a central role in the production and reproduction of gender in contemporary Arab societies. To be an Arab unmarried woman, she argues, is to engage in certain daily practices and public performances that construct one as both a woman and a virgin. In other words, a woman's conduct, her interactions with women and men, her movement in public space, and the ways in which she carries her body, are all informed by and construct her as a woman and also as a virgin. Honor killing, the supervision of women's virginity, and attempts to subvert this supervision without paying the price, she further argues, are all part of male gender performance.³ This line of argument has its analytic utility, since it introduces gender and gender performance to our understanding of women's sexuality, as well as the role it plays in the construction of gender identities. At the same time, it also implies a monolithic and ahistorical understanding of gender relations in Arab societies, which my own and future empirical historical research might help

qualify.

The theme of honor killing is central to many studies of contemporary and historical Middle Eastern societies and is used to reinforce and reinscribe the patriarchal paradigm. Due to the prevalence of this phenomenon in contemporary Arab societies, due to judicial leniency towards it, and due to its centrality in nationalist, colonial and neocolonial discourses, honor killings also became central to contemporary feminist agenda in the Middle East.⁴ This theme likewise is very much present in historical studies of the Ottoman Middle East, in spite, or maybe because, of its absence from historical records. Due to customary law, authors of such studies argue, many cases of illicit sex did not reach the courts and were resolved with honor killing that was neither persecuted nor even reported and is therefore nearly absent from our historical sources. Dror Ze'evi, in his study of Muslim women in seventeenth-century Jerusalem court cases, argues that issues related to women's bodies and sexuality did not reach *shari'a* courts and often were resolved in the form of honor killing, which local judges (the *qadis*) and their officials conspired with their subjects to hide. The relative abundance of reports of accidents in which women and girls were involved, he claims, might serve as a clue to the prevalence of this phenomenon in Jerusalemite society.⁵ Similarly, in her article on one sixteenth-century Aintab *zina* (illicit sex) case, Leslie Peirce argues that women admitted to illicit sexual acts in court to avoid being murdered by their relatives.⁶ This reading, however, gives the false impression that disputes related to premarital sexual relations resulted almost exclusively in honor killing.

Deniz Kandiyoti's conceptualization of "the patriarchal bargain" might prove useful here. This set of historically-specific concrete constraints, she argues, reveal and define the potential forms of women's subordination, but also their forms of passive or active resistance in a given society. In patriarchal societies, she argues, individual women may adopt the system's ideology, con-

form to it, and even impose it on other women, in order to be worthy of the protection from the man's side of the bargain. Women's resistance to or compliance with this bargain will hence be influenced by what they stand to lose or gain in a specific historical setting.⁷ The ways in which both men and women chose to monitor women's premarital sexuality might be further understood within the conceptual framework of such a historically specific bargain.

Finally, recent scholarship has debunked the assumption, implicit in modernization theory, that customs related to women's virginity before marriage are a residue of the past, gradually diminishing with the advent of modernity. This scholarship investigates the prevalence of these customs within the context of the modern nation-state. Ayse Parla, for example, who analyzes the routine enforcement of virginity exams on women suspected of prostitution, on girls and young women in state-run dormitories, orphanages, hospitals, prisons, and sometimes in high schools in present-day Turkey, sees these exams as a particularly modern form of institutionalized violence, with the aim of serving the modern-but-modest women model, central to the state's modernizing vision, and of monopolizing social relations in the name of the nation. Virginity exams, she argues, enforce the normalizing gaze of the state on young women's bodies. Using Foucault's understanding of power, she sees these exams as a form of visibility that enables the state to quantify, classify, and punish.⁸ Less attention is dedicated, however, to the people who initiate such examinations and participate in, or even encourage, state intervention.

Khaled Fahmy adopts a similar perspective in his discussion of defloration cases in the Egyptian medical-legal system during the decades preceding the 1882 British occupation. Cases of defloration (*izalat bikarat al-bint*: literally, "removal of a girl's virginity") were those in which a man, a woman, or both, were accused of premarital sexual intercourse. Sometimes a third party was accused of abetting or mediating the crime. These cases constituted about 0.5-1.25 per cent of cases handled by Egyptian courts and police stations during the 1860s and 1870s.⁹ A *hakima*, a female doctor-midwife stationed at the police stations, examined young women suspected of premarital sex. If the *hakima* concluded that a woman was not a virgin, an investigation followed. If proved guilty, the man, the woman, or both, were sentenced to six months' imprisonment in accordance with the first and second sections of chapter two of the Imperial Code, which refers to the violation of a person's honor and reputation. Simultaneously, the case was adjudicated in the *shari'a* court. There, if the man confessed, he was obligated to pay the woman's *mahr al-mithl*, a compensation equal to the *mahr* (bridewealth) appropriate to the woman's social rank. If he denied the

charges, the case was dropped.¹⁰

Khaled Fahmy's analysis is innovative and very useful to my own work in several respects. First, he introduces the Khedival legal system to show how Islamic and modern state law interacted with and influenced each other, thus debunking a long held assumption that modern state legislation necessarily replaced the *shari'a* law in a conflictual process. Second, Fahmy reads police and court records as sources for social, and not merely legal, history. Fahmy sees the police station as a site of interaction between state power on the one hand, and Egyptian men and women on the other. Police stations, he claims, were sites that imposed state power, but that also provided an opportunity for people to contest the state and other mechanisms of domination. People used the police stations to broker family and community disputes, and to demand what they saw as their legal rights. Finally, the cases Fahmy presents imply that honor killing was not the only way that late nineteenth-century Egyptian society dealt with premarital sex. His analysis of these cases, however, implies that men were almost solely responsible for monitoring women's sexuality, and that the state was gradually taking over this role. "Instead of liberating women," he argues, "the state was beginning to police female 'decency' and sexuality, taking over these functions from fathers, brothers, and families."¹¹

In what follows, I will qualify these claims. My discussion of defloration cases will present the *shari'a* courts and the Khedival legal system as equally informing the ways in which premarital sex was handled in nineteenth-century Egypt. I will further argue that people sometimes confused the two systems, and that their interaction with them was sometimes based on a partial understanding of the law that existed alongside their own normative understanding of law and justice. Hence, I will read court and police records as offering more than one perspective. Although these documents represent the state's perspective, these sources and the cases they record also document, as mediated as they are, the voices of the people who used the legal system. In so doing, they reveal private individuals, including women, who played a role in enforcing norms around women's sexuality.

Handling sexual assault

Shalabiyya Effendi, an Alexandria hospital *hakima*, brought her servant girl and protégée, Bahana bint Hasan, to the police station on the first of Muharram 1281 (6 June 1864), along with a man called 'Ali Khadr, a baker, and reported that Khadr had deflowered Bahana. The girl, she explained, was an orphan who worked and lived with her. The day before, Bahana had taken a loaf of bread to the bakery. When she failed to

return, Shalabiyya sent her female slave to the baker, who told her that Bahana had already left. The slave returned home and indeed found the girl there. Shalabiyya noticed that Bahana looked different than usual; it was also unusual for her to be so late. Bahana then told her that when she arrived at the bakery, the baker took her to a house nearby, and committed an illegal sexual act with her (*fa'al biha al-fahisha*). The police station's *bakima* then examined Bahana and found her not to be a virgin, and Shalabiyya asked the police to pursue the case.

In her interrogation, Bahana described the violent assault: the man had thrown her to the ground, held her arms, ripped off her underpants and committed an illegal sexual act with her. When interrogated, 'Ali confessed to the crime and claimed that he had been "seduced by the devil." The case then was discussed at the *shari'a* court, where 'Ali confessed and was obliged to pay Bahana's *mahr al-mithl*. As the court proceedings became prolonged for almost two weeks, Shalabiyya appealed to the court to exempt her from the case, fearing that her frequent absences from the hospital might cost her her job. The proceedings as a result were hurried, and the *shari'a* court issued its ruling regarding the required compensation. 'Ali then argued that he could not pay this amount of money, and the court reached a payment agreement. The council further decided to convict 'Ali for violating a person's honor, as a punishment to him and as a deterrent to others.¹²

To understand this case and the others which will follow, let us first look at the legal system to which Shalabiyya appealed, the one whose records are our sources to the events of this case: the police stations, the councils of adjudication, and the *shari'a* court. The *shari'a* court is the most familiar one to students of the Middle East, with records dated as early as the sixteenth century. We will discuss its handling of the case shortly. Beginning from the 1840s and following a series of legal reforms that Egypt's viceroys had initiated, the *shari'a* Islamic legal system was supplemented by a parallel system of modern police stations and councils. These, in turn, enforced a legal code that supplemented, but did not replace, the *shari'a*. The police station, upon receiving a complaint, investigated the case and forwarded its findings to both the *shari'a* court, in which *shari'a* law was enforced, and to the councils, which ruled the cases according to the Khedival law. Since each court was interested in different aspects of the case, a person could be convicted in one and acquitted in another, especially with regards to the *shari'a*'s strict rules of evidence. The *shari'a* court, moreover, required a plaintiff, while in the councils of adjudication the state could choose to pursue a case even if the victim preferred to drop the charges.¹³

What exactly was the crime 'Ali Khadr was accused

of, and how was it conceptualized in each of these legal systems? Was it rape? If so, what does the term "violation of a person's honor" imply, and was it applied only in cases of assault? Is it *zina*, a crime against God, for which a corporal punishment could be applied? If so, why was it not even mentioned in our case? In addition, how central was virginity itself to the definition of the crime, in both the *shari'a* court and in the council of adjudication?

The terms *zina* and rape are very central to works on pre- and extramarital sex in the Middle East, but are virtually absent from our sources. *Zina* is sexual intercourse between a man and a woman who is neither his wife nor his slave. It was classified as a *hadd* crime punishable by death when one of the partners was married, or by lashes if both were not married.¹⁴ While the crime and the punishment are both clearly laid out in *shari'a*, scholars have been confused by the rare implementation of the corporal punishments, and have ascribed it to local *qadis*' or *muftis*' flexible interpretation of the law.¹⁵ A closer reading of law and practice, however, reveals that extra- and premarital sexual intercourse was very rarely adjudicated as *zina* at all. *Zina*, several scholars have argued, requires the testimony of four witnesses to the act itself; because this is virtually impossible, *zina* was rarely invoked. To prosecute pre- and extramarital sexual intercourse, they argue, the state supplemented the *shari'a* with its own code, the *qanun*, which persecuted illicit sex as a form of *ta'zir*, which meant less evidence was needed and punishment was lighter.¹⁶ The Egyptian Khedival Code was hence a supplementary code, and the police and the councils were the ones responsible for its enforcement. The *shari'a* court treated defloration cases as issues of violation of the right of a woman to dispense her body, and, if convicted, the man was required to pay the woman compensation, as he would for any other bodily injury. Due to the *shari'a*'s strict rules of evidence, however, in practice the man was convicted only when he chose to confess. Witnesses were the only evidence accepted in the *shari'a* court; due to the private nature of sexual intercourse, witnesses were normally lacking, and since it was a woman's word against a man's word, the burden of proof was on the woman's. If the man denied the charges the woman could still ask the court to administer an oath, in the hope that this procedure might force the man to tell the truth. In most cases, however, the man denied the allegation and the case was dismissed. Further, in the *shari'a* court, a plaintiff was required, and hence if a woman chose to drop the charges, the court was not interested in the case. If convicted of defloration, the man was required to pay the woman compensation equal to *mahr al-mithl* for a woman of an equivalent social status. In Islamic law, the *mahr* was the woman's property, thus offering her some financial security in case of widow

hood or divorce. In practice, the amount of *mahr* payable to a non-virgin was much lower than the *mahr* of a virgin girl, and the prospects of marriage were much lower than for a non-virgin. This compensation, which was, at least theoretically, paid to the girl herself, was therefore particularly crucial to the female plaintiff's economic survival.¹⁷

The councils of adjudication usually ruled defloration cases according to the second article of the second chapter of the Imperial Code. This section stipulated the enforcement of *ta'zir*—lashes or imprisonment—in cases in which a person's honor was injured and the *shari'a* could not be implemented. The law did not specify what kinds of crimes should be considered under this category, but the "removal of a girl's virginity" clearly was. Some defloration cases were ruled according to the sixth article of the same chapter of the law, which stipulated six months imprisonment for abducting a girl "to another region or another country, claiming that he had married her without her relatives knowing it."¹⁸ Interestingly, however, in none of the cases examined did the couple actually elope or move to another city.

The legal procedure here was different from that of the *shari'a* courts. The police station conducted its investigation and forwarded its conclusion to the council. The council, which was staffed by officials rather than by professional jurists, based its ruling and verdict on the police reports. In rare cases, the council chose to summon witnesses, but more often it was content to request the police to further investigate aspects of the case that required further clarification. Unlike the *shari'a* procedure, moreover, pursuing the case was not the prerogative of the victim, but rather that of the state. In this process, as Khaled Fahmy argues, a girl's loss of virginity was no longer a private or even a religious matter: "It was the city itself that was being defended, and it was the security of public life per se that was at stake."¹⁹

Both the *shari'a* court and the councils of adjudication were not concerned with "rape" or with sexual assault per se, but only as far as a woman's virginity was at stake. The term "rape," moreover, does not appear in the legal records I studied. A sexual assault of a woman who was not a virgin only rarely reached the police station, and even then, only when combined with another crime. In one such case, a Jew appealed to the police station and accused another of assaulting his pregnant wife and attempting to impose sexual intercourse on her. The wife was examined and her pregnancy was found to be intact. Since the defendant was seen escaping from the plaintiff's residence, but the assault apparently did not affect her pregnancy, the police recommended a "light conviction."²⁰ Unfortunately, this particular case is taken from the police records, and we do not have the council's verdict; neither do we know

how was the crime defined. It is clear, however, that since the man was cleared of causing a miscarriage — a crime in its own right — the police did not see the assault itself as a severe crime.

Sexual assault of boys, moreover, was seen as a violation of public security, and not as a crime against honor or against public morals. These cases were ruled according to article 13 of the third chapter of the *shari'a* law, which concerned "evil doers," whose conduct "resulted in the withdrawal of peace from the populace."²¹ Like the article under which defloration cases were ruled, this as well was general and in practice was implemented in many types of crimes.²² As we shall see below, however, although "rape" was not a legal category, some common understanding of rape, that is, a sexual act imposed on a woman without her consent, did exist among people who appealed to the police, as well as in the minds of council members who adjudicated these cases.

Let us now move our attention from the state and the law to the people who used it on a daily basis. Most interesting is the initiator of the first case discussed, Shalabiyya Effendi—a privileged woman—a *hakima* at the hospital, an employer, and a slave owner, a product of a system which empowered certain women but at the same time subjugated them to state control; somewhat improved women's health conditions, as it offered Egyptian women healthcare providers who enjoyed modern training, but also imposed upon them the intrusive gaze of the state.

Who were these *hakimas*? In police and court records we rarely encounter them as plaintiffs or defendants, but more often as part of the state apparatus. The school of midwives, in which both the police *hakimas* and Shalabiyya herself were probably trained, was founded in 1832 by Muhammad 'Ali in order to replace the so-called "backward" midwives, who were assumed to be the main cause for stillbirths, and to control the spread of venereal disease.²³ Throughout the first decades of its existence, the school had difficulties enlisting new students, and its graduates never exceeded a few dozens, mostly orphans and freed slaves. These women were given a high salary and a military rank, and were offered free education, economic power, and elevated social status. They also came to play a new role in the urban life of Cairo and Alexandria: they helped midwives in difficult births, carried out autopsies, and administered vaccinations. At first glance, these *hakimas* seem to be independent women whose vocation is to help other women. However, as Mervat Hatem and Khaled Fahmy argue, these *hakimas* became part of state power and helped impose state control on Egyptian women's bodies: they played a key role in the surveillance and criminalization of abortion and examined young women's hymens, hence supervising their premarital sexual activ-

ity. The *bakimas*, moreover, were vulnerable to the same system that they were serving. Ironically, these “independent” women were not allowed to leave the school until they found a suitable husband from among the Egyptian doctors. Hakima were also held to the same rigid sexual standards as other women; in his book on the history of medical education in Egypt, the Egyptian gynecologist Naguib Mahfuz mentions a case in which a young woman was expelled from the school after she had been found not to be a virgin. This anecdote suggests that the *bakimas* were required to undergo the same disciplinary examinations that they would later impose on young unmarried Egyptian females.²⁴

As a result, we see a woman serving a social function which previous scholarship generally ascribed to men—the supervision of adolescent female sexuality. We also can see here that state intervention was not necessarily imposed, but rather at times invited by people themselves. Why did Shalabiyya initiate this case? In the prevailing patriarchal bargain, her servant’s loss of virginity meant diminished prospects for marriage and a smaller *mahr* if the girl did get married. These social constraints, which influenced the future of a young unmarried girl who is no longer a virgin, indeed served patriarchal domination and a double standard with regards to pre- and extramarital sex. Within this social bargain, however, Shalabiyya hoped to improve her servant’s prospects, but in the process imposed on her patriarchal and state domination. As Bahana’s guardian, she probably saw herself as protecting the girl. By appealing to the police she also had the assailant punished, hence both pursued personal justice and served public security.

Defining and negotiating the “worthy victim”

On the night of 15th Rabi’ al-Awwal 1297 (24 April 1879), two men, two women, and a young girl appeared in Alexandria’s police station. One of the women, Zubayda bint Muhammad, a prostitute, had found her daughter, Fatima bint Ahmad, in Sayyida’s brothel with two men, ‘Ali and Majd Abdu. Her daughter had disappeared from home a few days prior, and a neighbor told her that her daughter could be found at Sayyida’s place. She went there, and found Fatima with the two men in a locked room. As she explained at the police station, she thought her daughter was a virgin who had just been deflowered and thus she started screaming until the patrol arrived and took them all to the police station. The *bakima* examined Fatima and concluded that she was not a virgin and that she had been deflowered a while before.

When interrogated, Fatima first insisted that she was still a virgin and that nobody had touched her. After she was confronted with the results of the medical examination, she claimed that a third man, Darwish Mustafa,

the brother of Zaynab the singer, who lived with his sister in the clover market neighborhood, had deflowered her a month before, without her consent. He gave her a piece of pastry, which she ate and which caused her to lose her consciousness. He then tore off her clothes and deflowered her. When she woke up she found herself bleeding. She had not told anyone about it, because she was afraid. She asserted that the two men with whom she was found did not touch her.

During the interrogation, Zubayda explained that Fatima’s father had divorced her ten years previously, when the girl was a year old, and that Fatima had grown up with her father in Cairo. A year and a half before the incident and for unspecified reasons, the girl had escaped from her father’s residence and had moved to live with her mother, in the prostitutes’ area, in a wooden shed near Kum al-Nasura. The mother now wished to bring in the perpetrator, Darwish Mustafa, to investigate him and to punish him, but explained that she could not file a report because she could not afford its cost. The police then continued its interrogation. Darwish Mustafa was interrogated and denied the charges. Since Sayyida, the brothel owner, claimed that she had not been at home during the incident, her minor sister was interrogated and claimed that Fatima was the one who invited the two men to the room in which they were found. The two men then argued that they had not touched Fatima, and that she had attempted to rob them.

The police concluded that since the *bakima* stated that Fatima was not a virgin and that she has been deflowered a while before; since she accused Darwish Mustafa only after being caught with men in a brothel; and since it appeared that Fatima had been the one who attempted to initiate sexual intercourse with them, there was no reason to convict the defendant. Moreover, the two men were released since she went with them willingly and had not been a virgin. The girl was left in prison awaiting the council’s ruling.²⁵

Let us begin now with Zubayda bint Muhammad. Zubayda’s behavior in this case is interesting in at least two respects. First, whereas Shalabiyya Effendi, who initiated the previous case, might be considered to be an insider who was familiar with the legal system and its work, Zubayda is an outsider, a poor prostitute who cannot even afford to pay for the report. Whereas Shalabiyya appealed to the police and saw it as her first resort when her servant had been attacked, it was the police patrol that had brought Zubayda to the police station, after she had been found screaming and knocking helplessly on a brothel’s door. Second, due to Zubayda’s daily involvement in extramarital commercial sex and due to the role of prostitutes in mediating and accommodating premarital sex in Khedival Egypt, it could have been assumed that she would be less concerned

with her daughter's virginity than a person like Shalabiyya.

Prostitution had an ambiguous status in Khedival Egypt because it was neither criminalized nor regulated. Defloration was virtually the only sexual activity taking place in a brothel that warranted police intervention. Prostitutes appeared in defloration cases usually as witnesses, sometimes as accomplices, and in rare cases as a plaintiff.²⁶ Premarital sex was not only a crime; it was also a commodity. Prostitutes seduced young single women to have sexual intercourse with men and received monetary compensation from male clients in return. Due to the transient nature of brothels' clientele, however, it was often difficult to trace the man who had originally deflowered the girl; the man, in turn, could easily deny the charges or claim that he did not know that the girl had been a virgin, and hence was not aware of the fact that he had committed a crime. The response of the police to the occurrence of premarital defloration in a brothel was sometimes harsh. In one case, the police raided a brothel after a young woman claimed she had been deflowered there. The women residing there were arrested, and released only after denying having seen the girl before.²⁷ In another case, the police recommended closing down a brothel in which an illegal defloration had taken place.²⁸

Prostitutes who provided their premises for a defloration of a virgin were sometimes punished for facilitating the crime. Most of them, when interrogated, tried to distance themselves from it or claimed ignorance. In our case, Sayyida argued that she had not been at home when the event took place. Fortunately for her, Fatima claimed that she had been deflowered elsewhere, and Sayyida was not interrogated further. In another case, a woman brought her sister to the police station and claimed that a certain man had deflowered her in a brothel. The madam argued that the girl looked mature, she had thus assumed that the girl was not a virgin, and hence she was not aware of the fact that a crime had been committed. In this case, the man and the girl confessed having used the brothel to fulfill their love, and further claimed that they had their first sexual intercourse outside the brothel in which they were caught, thereby letting their hostess off the hook, maybe lying to reward her for her hospitality.²⁹ At first glance, it seems as though prostitutes, unlike most other Egyptians, tolerated premarital sex and even used it for financial profit. Zubayda might have been an exception to this rule, or, more likely, the fact that it was her own eleven-year-old daughter who had been implicated may account for her severe reaction and her cooperation with the authorities.

This case offers further insight into the role of the *bakima* in monitoring and regulating the bodies and sexuality of Cairo's adolescent girls. In the previous ex-

ample, Bahana was examined after she claimed that she had been assaulted. The examination corroborated her testimony and initiated an investigation against her assailant. Fatima, on the other hand, failed to conform to what Lama Abu Odeh termed the "gender performance" of a virgin.³⁰ In this case, which is not exceptional, Fatima was examined simply on the grounds that she had been found outside of home with male stranger. In three other cases I studied, a girl's hymen was examined simply because she was found "wandering around as she pleased," that is, present in the public space without an apparent aim, away from the watchful eyes of family and of neighborhood community. A parent or a guardian had brought her to the police station and had asked the *bakima* to examine whether she had engaged in premarital sex.³¹ Fatima, like the loitering girls, had her virginity examined because she violated the gender-specific restrictions on her mobility in the public space.

The *bakima's* examination was significant in another respect as well. In most defloration cases the *bakima* was only required to confirm a woman's damaged hymen. In many others, however, she was also required to determine the timing of the event—which had crucial implications on the plaintiff's credibility. In our case, the *bakima's* testimony acquitted the men found with Fatima. It also indicated that Fatima's mother had been wrong to believe that her daughter, found locked in a brothel room with two men, had been a virgin and hence a victim of a crime and worthy of her own and the state's protection.

Who indeed was deemed worthy of protection and who was not? What were the implicit assumptions alluded to earlier, which made certain women seem like victims and other women as accomplices to a crime against public security? Why was Bahana considered a victim of an assault whereas Fatima found herself in prison? In her now classic study of rape in the American legal system, Susan Estrich argues that implicit assumptions, often not written in the letter of the law, influence everyday interactions between victims, the surrounding society, and law-enforcement authorities. These assumptions determine whether rape victims perceive themselves as such, as well as the ways in which they are treated in court and in police stations. Likewise, these assumptions affect the narratives and the "corroboratory evidence" victims are expected to produce to be deemed credible and worthy victims and fit the "perfect model" of "real rape." A "real rape," she further argues, one which is seriously investigated and punished, and the one most likely to be perceived as rape by the victim and her social environment, is one which takes place outdoors, one in which the victim had not known her assailant previously, and one which involves physical coercion. Similarly, to prove that she did not collaborate

in the assault, claims Estrich, the victim must prove that she physically resisted her assailant, that her conduct had not been sexually “provocative” immediately prior to the assault as well as in her everyday life, and that she had complained immediately afterwards. Distrust of women, claims Estrich, is incorporated into the judicial system’s unwritten, unofficial definition of rape and rules of proof.³²

The nineteenth-century Egyptian case is distinctly different from the twentieth century American one. As we have seen, the Egyptian legal system defined the crime as defloration rather than as rape and hence saw a woman’s virginity rather than the woman herself as the victim of the assault. Defloration, moreover, is not an assault against a person, but rather against public morality or public security. A woman’s consent, or assumed consent, to her defloration hence implicated her in a crime against public morals. Interestingly, however, the assumptions implicit in the Egyptian system’s treatment of defloration cases were very similar to the ones in Estrich’s formulation. Bahana’s assault, discussed in the previous section, was what Susan Estrich termed “real rape”—she had been violently attacked by a stranger outside of her home; she left her home for a domestic purpose, that is to buy bread—she was not “wandering about as she pleased,” an expression suggestive of neglecting one’s duties and evading the principle of control of women’s movement. Nineteenth-century Egyptian girls investigated on the grounds of illegal defloration, moreover, narrated their first sexual experience in terms similar to Estrich “real rape”: in half the cases I examined, the girls described physical coercion, in a quarter of them, they claimed that they had been drugged or intoxicated, and in about a third of the cases, they said that they had been seduced by the promise of marriage or other forms of deception. In Fatima’s case, the assumption that she had solicited men also discredited her claim that she had been previously victimized. In this case, moreover, she was held the only responsible actor for the assault against public morality: her own testimony acquitted the men with whom she had been found, and she could not prove that Darwish Mustafa had deflowered her.

Notions of consent and “real rape,” though not explicit in the letter of the law, did exist in actual interactions between the police and women involved in premarital sex. In another such case, a man called Nasr Ayub brought his daughter, Nafisa, to the police station, after the neighbors’ son, Ali, had deflowered her. According to Nafisa’s testimony, ‘Ali told her that his father’s wife was present, and when she entered, he locked the door behind her, pulled a knife, threatened to kill her if she did not consent, pulled her into another room, put his hand on her mouth to prevent her from screaming and deflowered her. Since the room to which

he had taken her was underground, she further emphasized that nobody would have heard her even if she had screamed. When he finally released her, she ran away and started screaming. Her mother and aunt arrived immediately, but her assailant already had escaped.³³ Narrating her assault, then, Nafisa provided details and demonstrated a behavior that the state perceived as constituting “real rape.” Another woman, A’isha, had been deflowered by her brother’s friend, Sa’d ‘Urabi. In her interrogation she argued that he dragged her to a hut, held her mouth shut, tore up her pants, and deflowered her by force. When she told him she would tell her sister what he had done, he promised to marry her.³⁴ Both cases were forwarded to the councils. Since these cases are taken from the police records, the councils’ rulings are not known.

Although consent was not defined by the law, however, Fatima’s case and others imply that when ruling in defloration cases, council members had some notion of consent and, implicitly, of rape and victim’s credibility. In our case, Fatima failed this test on two grounds: she did not complain immediately and she was found in a brothel, both factors that attested to her questionable character. Interestingly, her mother’s profession was not mentioned as one of the factors contributing to her convictions or discrediting her testimony. In another case, a man brought his pregnant sister to the police station, and she, in turn, accused a *shaykh* of entering her house a few months previously and attacking her one night. The council chose not to believe her, basing its decision on two grounds: first, like Fatima, she did not complain immediately, and second, she did not scream. The council claimed that “since the house in which she claims to have been attacked at night is full of people, if she is telling the truth, she would have screamed, and they, as well as the neighbors, would have heard her.” The fact that she failed to yell for help at the time, and the fact that she did not file a complaint until her pregnancy had become apparent, led the court to convict her.³⁵ Here again, the status of the parties involved, in this case, a *shaykh*, is not mentioned in the reasoning of the council’s decision.

Age of consent was another concept that the law did not define, but that was clearly present in cases of sexual assault of children. Although, as we have seen, different articles of the law were implemented in cases in which boys were assaulted, police treatment of child molesters was similar regardless of the child’s gender. Unlike women, children did not have to prove that they had not consented, and they were further regarded as not being capable of forging a false complaint. In one such case, a young man attacked a ten-year-old girl as she was gathering straw in the open field and deflowered her with his finger. She started screaming, and passerbys caught him and brought him to the police

station. The man was convicted and the girl acquitted. In its ruling, the council stated that “since she is of tender age, and since it is clear from the course of the event that what happened was forced on her, there is nothing against her.”³⁶ In another such case, a man accused another of sexually assaulting and deflowering his five-year-old daughter. The defendant denied the accusations and claimed that he had never seen the girl before. The council chose to convict him, and stated “it is inconceivable that in her tender age she would make it up herself, or she would accuse a man although another had committed the act.”³⁷ A similar accusation, when raised by a seven-year-old boy, was treated in a comparable way. The council decided to convict the defendant for “committing the most atrocious act,” because the boy is “of a tender age, and hence incapable of forging a lie or of accusing any other than the real perpetrator.”³⁸ Two issues were at stake, then, when a child was assaulted. First was the question of consent, which a child was not seen as capable of granting. Second, a child was seen as incapable of lying, and more specifically, of forging sex-related accusations. Unlike older girls, who had to prove their complaint against the system’s inherent mistrust, young children’s assault laid the burden of proof on the defendant.

It is hard to evaluate how girls and women came to know the script about real rape and valid victims. Such scripts clearly did not exist in the *shari’a* court procedure and were not mentioned in the letter of the law. Were they preexisting social norms, which governed the ways in which premarital sex was handled outside of the *shari’a* court before the codification of the Imperial Code and the foundation of the modern police stations and councils? Or were they informal norms, which emerged from mid-century legal reforms, in an ongoing interaction between the state and Egyptian women and men? It seems hard to find these out-of-court processes in our official sources, but future research might look for clues for such developments.

What exactly did Zubayda expect from the police procedure? Why was she knocking on Sayyida’s door? First, when her daughter was still in the room she probably hoped to save her from the destiny awaiting a non-virgin: reduced marriage prospects, or even the destiny of prostitution, which she herself had faced after her divorce. When she found out that her daughter had been deflowered she might have hoped, like Shalabiyya, to receive compensation or to have the deflowerer punished. When Zubayda found out that Fatima had not been a virgin, she asked the police to punish her daughter as well, and hence actually invited the police to intervene in her relationship with the daughter she failed to subdue or to protect. She saw it as her duty to safeguard her daughter’s virginity for future marriage in the most difficult circumstances. In Kandi-

yoti’s terms, we might argue here that her call to punish her daughter was a sort of statement to the society at large that she herself was still a part of the “patriarchal bargain,” even if her daughter had left its circle.

In the other previously-mentioned examples, it was familial conflicts that brought parents to invite state intervention and actually supported, rather than replaced or subverted, male domination within the family and existing social norms regarding women’s sexual chastity before marriage. Again, those who enforced these sexual norms were women as well as men. A young women’s deviation from her gender-specific expected performance was something family members of both genders saw as their duty to enforce. In the next and last section of this paper, I discuss a case in which a young woman tried to use the social norms regarding virginity to her own advantage.

Manipulating the System

On the night of 7 Rajab 1296 (27 June 1879), Hasan Husayn, a soldier at the Bulaq district, brought thirty-five-year-old Mursi Ibrahim, a worker at the telegraph agency, and his sister-in-law, twenty-year-old Fatima bint Ibrahim to the police station. Fatima filed a report in which she stated that a few months before her mother and her sister had left for Giza, and left her with her sister’s husband, the aforementioned Mursi Ibrahim. When they were left alone, he drugged her and then deflowered her, promising that he would divorce her sister and marry her. Since he failed to keep his promise, she informed her mother of the incident. The mother started screaming and the *shaykh* of the neighborhood, who happened to be around, heard her screaming and inquired about the circumstances of the case. He then had both Mursi and Fatima sent to Bulaq’s police station. The *hakima* of the police station examined her and found her not to be a virgin, claiming that she had been deflowered for a while, and “in a used condition.” Mursi Ibrahim then denied the accusations, but agreed to marry Fatima and divorce her sister. The police officer concluded that the incident happened in mutual consent, otherwise the woman would not have kept quiet for so long, and the man would have not agreed to marry her and divorce her sister. He then recommended that the court convict both.³⁹

In the previous case, we argued that individuals and communities invited the state to intervene in familial disputes. In this case, a young woman attempted to manipulate social norms with regards to her sexuality or “the patriarchal bargain” to her own advantage, in a family dispute in which she held an inferior position. The basic story is similar to the earlier ones: seduction, even a marriage promise, and then drugged pastry and defloration. Like many other young women we dis-

cussed above, however, Fatima employed existing social norms that would present her as a victim of a “real rape,” such as the use of drugs and the marriage promise. Unlike the other women mentioned above, she disclosed the details of her defloration to her mother because she hoped to manipulate social norms to her own advantage. Why did the police recommend convicting her? Why did she fail to achieve her aims? One answer would be that the legal and social systems were so overwhelmingly patriarchal, that any attempt to subvert them would be doomed to failure. This might be part of the answer, but as Bahana’s case shows, even a female servant could have the state’s support and could have her assailant punished in certain circumstances.

Another answer would be to look at the police considerations in recommending to convict her: it seems that Fatima failed to conform to unwritten norms which define certain cases, such as Bahana’s, as “real rape.” Although she properly narrated her defloration as a violent assault, she did not complain immediately, which cast serious doubts on her credibility. Finally, one may question her intentions or expectations when disclosing the details of the incident to her mother. She might have not expected that her choice would result in police investigation. A reasonable assumption would be that she did not expect that she would be sent to prison. Since the marriage promise and the promise to divorce her sister are so central to her narrative, one may further assume that it was marriage that Fatima envisioned as the outcome of her complaint. We have already seen that in the *shari’a* court, a man might suggest marrying the woman he had deflowered and paying her *mahr*.⁴⁰ This outcome might have been in the back of her mind when disclosing the details of the case to her mother. She might have seen her defloration as an assault on her virginity for which she should be compensated by a *mahr al-mithl* or an actual marriage, but not as an assault against public morality for which she could also be held responsible. Her awareness of the legal process might have been incomplete, and might have relied on some knowledge of the *shari’a* procedure, or maybe her own commonsense understanding of law and justice.

In two similar cases, the police decided to investigate and forward to the councils cases in which couples confessed to having engaged in consensual premarital sex and married in the *shari’a* court.⁴¹ In another case, a woman claimed that she had been assaulted, but agreed to marry the man. When both of them were sent to six months’ imprisonment, the man expressed his confusion since “now we are married,” implying that he believed that once his case was settled in the *shari’a* court in the form of marriage, the state would not be interested in pursuing the case.⁴² Like Fatima, these couples might have seen premarital defloration as a crime for which the man could compensate the woman by mar-

rying her. They did not see their premarital sexual intercourse as a concern of the state or an assault against public morality and were therefore surprised when the state defined it as such.

Conclusion

These legal cases, I argue, have some implications on our theoretical understanding of patriarchy, state power, and the study of illicit sex in the modern Middle East. First, they call for a reconsideration of our understanding of patriarchy, male domination, and control of women’s bodies. As we have seen, women, alongside men, initiated and mediated the supervision of girls’ bodies: the *bakima*, through whom the state could gaze into these girls’ bodies, mothers, and a female guardian who initiated defloration cases at the police station. All of these saw virginity as central to the lives and future of young unmarried girls, and hence sought punishment, compensation, or both when it was violated. In some of the examples I discussed above, it was women’s mere deviation from their “gender performance” as virgins that resulted in state intervention. The society where Bahana and the two Fatimas were engaged in consensual and nonconsensual premarital sex was no doubt a male-dominated one, and the taboo regarding women’s involvement in premarital sex and the double standard it implied served men much more than it served women. In this patriarchal bargain, however, both men and women had vested interests in policing the sexuality and mobility of adolescent girls. This system influenced the ways in which women and girls perceived their own and other women’s sexuality and the ways they chose to handle premarital sex and virginity. The surveillance of certain women’s mobility in the public space served to give them, as well as their female guardians, the type of protection that the patriarchal bargain could offer.

These cases likewise call for a reconsideration of the intrusive role of the state in nineteenth-century Egypt and a reformulation of our understanding of state power, in terms of interaction rather than of mere domination. As we have seen here, defloration cases indeed enabled the state to increase its hold on the population. The state participated in subjugating young adolescent girls; it was allowed to gaze into their bodies, it closed down brothels in order to protect these girls, it summoned witnesses and learned about the most intimate details of their lives. At the same time, however, people invited the state to intervene in their and other people’s lives for a plethora of reasons. When her servant was assaulted, Shalabiyya appealed to the police because she expected them to investigate the circumstances of the assault, punish the assailant, and give her the *shari’a* stipulated compensation. Zubayda sought the help of the police for similar reasons, but ended up us-

ing the *bakima* to learn about her daughter's whereabouts and punish her for her misconduct. Other male and female parents and guardians used the *bakima* and her services to control their adolescent girls. This interaction between the state and the people, I further argue, reveals implicit assumptions regarding law, justice, and sexuality which state officials shared with Egyptians who appealed to the police, alongside other assumptions, which these Egyptians brought with them to the police and which resulted in misunderstandings. Thus, for example, the concept of consent and "real rape" were not explicit in the letter of the law, but did play a role in people's interaction with the legal system. At the same time, it appears that people appealed to the state expecting a *sbari'a*-stipulated compensation, and were surprised when the state saw their involvement in premarital sex as a matter of concern for itself.

Finally, this preliminary research calls for a reconsideration of the theme of honor killing. Like seventeenth-century Jerusalemites, nineteenth-century Cairene women fell off rooftops, drowned in wells and in canals, and were burned by their own candles. These events, and similar accidents, might conceal the occurrence of honor killings. As we have seen here, however, many cases of premarital sex were resolved differently. People who found that their young female relatives had been involved in premarital sex asked for compensation or punishment, but did not mention honor killing as an option. The question as to the prevalence of honor killing in late nineteenth-century Egypt hence remains open, but clearly we must take into account the fact that other methods were employed as well.

NOTES

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²See, for example, Beth Baron, "Women, Honor and the State: the Evidence from Egypt," (paper presented in *Law and Order in Egypt* workshop, March 2003, Graduate Center, City University of New York, New York).

³Lama Abu Odeh, "Crimes of Honor and the Construction of Gender in Arab Societies," in *Feminism and Islam*, ed. Mai Yamani (Reading: Ithaca Press, 1996), 149-150.

⁴See, for example, in Turkey: Dilek Cindoglu, "Virginity Tests and Artificial Virginity in Modern Turkish Medicine," *Women's Studies International Forum* 20:2 (1997): 253-261; and in Morocco: Fatima Mernissi, "Virginity and Patriarchy," *Women's Studies International Forum* 5:2 (1982): 183-191; Abu-Odeh, "Crimes of Honor," 141; Manar Hasan, "The Politics of Honor—The Patriarchy, the State, and Murder of Women in Palestinian Society in Israel in the Name of Family Honor," in *Min, Migdar, Politika* [Sex, Gender, and Politics], ed. Dafna Izraeli, Ariella Friedman, Henriette Dahan-Kalev, Silvia Fo-

giel-Bijaoui, Hannah Herzog, Manar Hasan, and Hannah Naveh (Tel-Aviv: Kav Adom, Hakibbutz Hamiuchad Publishers, 1999), 267-305.

⁵Dror Ze'evi, "Women in Seventeenth-Century Jerusalem: Western and Indigenous Perspectives," *International Journal of Middle East Studies* 27 (May 1995): 161-162.

⁶Leslie P. Peirce, "Le dilemme de Fatma: crime sexuel et culture juridique dans une cour ottomane au début des temps modernes," *Annales* 53 (1998): 310.

⁷Deniz Kandiyoti, "Islam and Patriarchy: A Comparative Perspective," in *Women in Middle Eastern History*, eds. N. Keddie and B. Baron (New Haven: Yale University Press, 1991), 26.

⁸Ayse Parla, "The Honor of the State: Virginity Examinations in Turkey," *Feminist Studies* 27:1 (Spring 2001): 65-88.

⁹A detailed statistical study of these sources has not yet been published. Imad Hilal, who is currently writing his Ph.D. dissertation on crime and criminals in late nineteenth-century Egypt, has estimated the prevalence of defloration cases as 0.5 per cent; in my own initial research I found nineteen cases out of 1504, or about 1.25 per cent.

¹⁰For full text of these sections, see: Ahmad Fathi Zaghlul, *al-Mubamah* (Cairo: Matba't al-Ma'arif, 1900), 161-162. Rudolph Peters, "The Infatuated Greek: Social and Legal Boundaries in Nineteenth-century Egypt," *Egypte/Monde Arabe* 34 (1998): 64.

¹¹Khaled Fahmy, "Women, Medicine and Power in Nineteenth-Century Egypt," in *Remaking Women*, ed. Lila Abu-Lughod (Princeton: Princeton University Press, 1998), 61; see also Khaled Fahmy, "The Police and the People in Nineteenth-Century Egypt," *Die Welt des Islam*, 39:3 (1999): 366-367; and Fahmy, "The Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth-Century Egypt," *Islamic Law and Society* 6 (1999): 1-48.

¹²*Dabtiyyat Iskandriya*, Lam/4/20/9, case no. 183, 27 Safar 1281 (1 August 1864), 971-973.

¹³For more about the legal system see: Fahmy, "The Police and the People"; Fahmy, "The Anatomy of Justice"; Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4:1 (1997): 70-90; and Rudolph Peters, "Administrators and Magistrates: The Development of a Secular Judiciary in Egypt, 1842-1871," *Die Welt des Islam* 39: 3 (1999): 378-397.

¹⁴*Hadd* is the legal term for the punishment of acts which are forbidden or sanctioned by punishment in the Koran and have thereby become crimes against religion. See B. Carra de Vaux, J. Schacht, and A.M. Goichon, "*Hadd*," *Encyclopedia of Islam*, second edition, vol. III, 20a.

¹⁵See, for example: Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), 160-162; Peirce, "Le dilemme de Fatma," 298-299; Amira El Azhary Sonbol, "Rape and law in Ottoman and Modern Egypt," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 219-222.

¹⁶*Ta'zir* is the legal term for a discretionary punishment by a *qadi* for which no *hadd* punishment is laid down. See M. Y. Izzi Dien, "*Ta'zir*," *Encyclopedia of Islam*, second edition, vol. X,

405b. See also Dror Ze'evi, "Changes in Legal-Sexual Discourses: Sex Crimes in The Ottoman Empire," *Continuity and Change* 16:2 (2001): 219-242; Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Provisions in Pakistan's Ordinance on Zina," *Islamic Studies*, 38:3 (1999): 403-441.

¹⁷Judith E. Tucker, *In the House of the Law*, 161-162; Sonbol, 216-221; Ron Shaham, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts 1900-1955* (Leiden: Brill, 1997), 27-28; Edward William Lane, *Manners and Customs of the Modern Egyptians* (London: J. M. Dent, 1954), 164.

¹⁸Peters, "The Infatuated Greek," 64; Zaghul, *al-Mubamah*, 161-162.

¹⁹Fahmy, "Women, Medicine, Power," 61.

²⁰*Dabtiyyat Masr*, Lam/2/51/7, case no. 421, 8 Rabi' Awwal 1295 (12 March 1878), 117-118.

²¹Zaghul, *al-Mubamah*, 165.

²²Fahmy, "Prostitution in Nineteenth-Century Egypt," in *Outside in: On the Margins of the Modern Middle East*, ed. Eugene Rogan (London: I.B. Tauris, 2001), 90-93.

²³Fahmy, "Women, Medicine and Power," 41-46.

²⁴Fahmy, "Women, Medicine and Power," 61-63; Mervat Hatem, "The Professionalization of Health and the Control of Women's Bodies as Modern Governmentalities in Nineteenth Century Egypt," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 73-75; Naguib bey Mahfouz, *The History of Medical Education in Egypt* (Cairo: Government Press, 1935), 71-77.

²⁵*Dabtiyyat Iskandriya*, Lam/4/18/11, case no. 748, 27 Rabi' al-Awwal 1297 (18 February 1880), 71-72.

²⁶On the legal status of prostitutes in nineteenth-century Egypt see: Khaled Fahmy, "Prostitution in Egypt in the nineteenth century," 77-103; and Imad Hilal, *Al-Baghaya fi Masr: Dirasa Tarikhiya Ijtima'iya (min 1834-1949)* [Prostitution in Egypt, a Social-Historical Study, 1834-1949] (Cairo: al-Arabi, 2001).

²⁷*Dabtiyyat Masr*, Lam/2/51/6, case no. 284, 21 Jumada Akhar 1294 (2 July 1877), 123-125.

²⁸*Dabtiyyat Masr*, Lam/2/6/3, case no. 163, 8 Safar 1295 (11 February 1878), 119-121.

²⁹*Dabtiyyat Masr*, Lam/2/6/8, case no. 659, 20 Jumada Awwal 1296 (12 May 1879), 132-133.

³⁰Abu Odeh, pp. 149-150.

³¹See, for example, *Dabtiyyat Masr*, Lam/2/51/6, case no. 284, 21 Jumada Awwal 1294 (31 June 1877), 123-125; *Dabtiyyat Masr*, Lam/2/51/7, case no. 441, 14 Rabi' Awwal 1295 (18 March 1878), 131-132; *Dabtiyyat Iskandriya*, Lam/4/18/9, case no. 36, 1 Jumada Akhar 1296 (22 May 1879), 48.

³²Susan Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1987).

³³*Dabtiyyat Masr*, Lam/2/6/8, case no. 533, 16 Jumada Akhar 1296 (6 June 1879), 59-60.

³⁴*Dabtiyyat Masr*, Lam/2/6/8, case no. 1061, 20 Dhu al-Qa'da 1296, (5 November 1879), 63-64.

³⁵*Majlis al-Abkam*, Sin/7/10/136, case no. 308, 19 Jumada Akhar 1285 (6 October 1868), no pagination.

³⁶*Dabtiyyat Masr*, 2/51/3, case no. 327, 29 Safar 1285 (20 June 1868), 66-67.

³⁷*Majlis al-Abkam*, Sin/7/10/8/2, case no. 491, 8 Rajab 1300 (15 May 1883), no pagination.

³⁸*Majlis al-Abkam*, Sin/7/10/4/2, case no. 425, 15 Jumada Akhar 1300 (23 April 1883), no pagination.

³⁹*Dabtiyyat Masr*, Lam/2/6/9, case no. 727, 9 Rajab 1296 (29 June 1879), 132-133.

⁴⁰Although Islamic law allows a man to marry up to four wives, he is not allowed to marry two sisters, and hence the promise to divorce the sister. See Qur'an, Surat al-Nisa', verse no. 23, and Françoise Heritier, *Two Sisters and Their Mother: The Anthropology of Incest* (New York: Zone Books, 1999).

⁴¹*Dabtiyyat Masr*, Lam/2/6/8, case no. 659, 20 Jumada Awwal 1296 (12 May 1879), 132-133; *Dabtiyyat Masr*, Lam/2/6/4, case no. 719, 20 Jumada Akhar 1295 (21 June 1878), no pagination.

⁴²*Dabtiyyat Masr*, Lam/2/6/10, case no. 1061, 20 Dhu al-Qa'da 1296 (5 November 1879), 63-64.

