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'Reconciliation is the foundation!': Courts of Justice and Unofficial Reconciliation Practices in Algeria and Sudan

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This article is about practices of law and justice in Algerian and Sudanese societies, particularly the interrelationship between unofficial reconciliation practices and judicial mechanisms. Here the expression 'unofficial reconciliation practices' designates *sulh* cases implemented outside the context of official (state) courts of justice. *Sulh* is an Arabic term that can be defined as conciliation, or reconciliation, and refers to the amicable conflict resolution methods emphasised in Islamic normative texts and customary practices *('ûrf)* in Muslim contexts. The notion of reconciliation is preferable here because the cases studied involved a process of restoring or attempting to restore a link destroyed by a crime or infraction (homicide or injury). The aim is to place these judicial and reconciliatory practices side-by-side in order to highlight their similarities and differences, their possible complementarity and opposition. Specifically, we will try to understand why and how these mechanisms survive, and what they tell us about the meaning that reconciliation and justice have for actors in situated contexts. What are the argumentative sources invoked (custom, Koran, etc.), and in what context are they used?

We will endeavour to show, on the one hand, that unofficial reconciliation practices do not necessarily conflict with state justice, just as they are not necessarily a sign of weakness, contrary to widely held views; rather they operate in a complementary way, at another level, and contain the idea of collective responsibility. On the other hand, we will study how judicial mechanisms and reconciliation practices interact. Reconciliation practices operate in the context of 'junctions of justice' that also involve official judicial mechanisms. Research on these 'junctions of justice' has been carried out in Yemen and Egypt (Dupret and Burgat 2005), but unfortunately we have little information on Algeria and Sudan.

Prelude

In a recent article, Barbara Drieskens (2005) retraced the history of an assault in the Egyptian urban context and the circumvolutions and pragmatic aspects that accompanied the reconciliation that was

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ultimately implemented. In this example, the reconciliation that ended up being undertaken outside the court system is viewed not so much as an end in itself, but rather as an alternative to vengeance or judicial channels. These two possibilities are fully discussed but are not chosen because of the failure risks they entail. Nearly forty years earlier, Finnish ethnologist Hilma Granqvist (1965) reported a case of reconciliation (*sulh*) that involved the substitution of an adoption for *diya* (blood money). A man from Hebron, whose wives had only given him girls, remarried and 'luckily' had a son. Fifteen years later, only a few days before this son was supposed to get married, the boy was accidentally run over by a truck making a delivery to his home in preparation for the wedding. The driver belonged to a small, poor clan and feared vengeance from the deceased's powerful agnatic group, so he sought refuge at the police station. Negotiations were initiated between the two parties and a *diya* of 330 Jordanian pounds was agreed. Just after the compensation presentation ceremony finished, the old father of the dead boy summoned the driver and said to him: 'O, my son! I did not have the chance to have a son in this world (to bear my name after me). I lost my only son the way of fate and destiny. Now thou art my son. My son's ransom is thine.' (Granqvist, 1965: 128–129) And he handed him the *diya*. Building on this example, elsewhere I have explored the meaning of *diya* (blood money) in reconciliation processes (Ben Hounet, 2010a). However, there is another aspect I did not explore: the role of judicial institutions – including the police – in out-of-court or unofficial reconciliation practices. They play an essential role in the example cited by Hilma Granqvist, since the police offered refuge to the guilty party during the negotiation period. These institutions also appear in a case cited by Barbara Drieskens, since their very existence and their relationship with the protagonists explain in large part the choice to pursue reconciliation outside the court system.

Let us now turn our attention to the Algerian context. '*Sulh hûwa-l-assas!':* 'Reconciliation is the foundation!' These are the words of a former deputy, a public figure involved in reconciliation practices used in the Ksour Range region (Saharan Atlas, Algeria). I had asked him if justice – that of the courts – should take precedence over unofficial reconciliation practices. This answer concluded an interview (conducted in 2010) in which he explained that unofficial practices helped the state and the courts of justice in their work. He defended the primacy of law and state justice in matters of homicide or serious injury. I then asked him to be more specific. He replied: 'reconciliation is the foundation, because otherwise justice cannot be done; to be implemented correctly, justice needs the overall atmosphere of appeasement that *sulh* provides.' This answer from the field constitutes one entry point among others for approaching the question of judicial practices from an anthropological and holistic perspective. For this reason, analysis of courts of justice – especially in the Muslim context in which the *sulh* practice is recognised and encouraged by traditional Islamic normativity itself (Othman, 2007) – should also incorporate analysis of unofficial (or more precisely social) practices that operate alongside them, in a certain sense orienting the exercise of justice. The reverse is also true; in return, judicial practices influence the parallel reconciliation modalities. One can certainly understand the official judicial mechanisms and unofficial reconciliation practices in their own development. But this would only clarify one part of the totality constituted by the interrelationship of the official and unofficial judicial mechanisms that operate for the same case.

Complementarity

In January 2009, in Khartoum Shamal (North) in Sudan, I had the chance to attend a judge's hearings over several consecutive mornings. They were not trials but hearings for plaintiffs accompanied by their lawyers or sometimes by the police. I was not there to observe the judge's practices, but to speak to him about the application of *diya* (blood money) within the court (Ben Hounet,

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2012). We discussed this subject during recesses. At the end of each hearing, the lawyers and police submitted their complaint files to the judge, then left with the plaintiffs. As soon as everyone had left, the judge set these files aside without even glancing at them. The same files were still on his desk the next day and the following week. Intrigued by this, I asked him if he had read them. He replied: 'No, but it's not important'. It was not until a year later, in Algeria, that I found an answer to this practice, after interviews with a court clerk and a judge. They explained to me that complaints were quite often withdrawn because the parties had reconciled in the meantime. Why bother wasting time examining submitted complaints when you know they will probably be withdrawn in the next few days? A complaint is only taken into consideration several days after being submitted, giving the disputants the chance to reconcile in accordance with *sulh* principles. Furthermore, submitting a complaint can also put pressure on the guilty or responsible party, thus influencing the negotiations and parallel reconciliation modalities. If justice proceeds taking account of *sulh*, it is also true that the *sulh* process incorporates the work of the courts of justice, in such a way that sometimes it is hard to think of one without referring to the other.

I also witnessed an 'injunction' to reconciliation made by a traffic court judge in Khartoum. The event took place in the judge's courtroom (December 2011): a man of around fifty years of age entered the room accompanied by his lawyer. The judge's hearing began: 'What's the request?' the judge asked. 'My client requests that the mortgage on his property (two cars) be lifted, Our Master *(mûlana)*', the lawyer replies. 'Where is the representative from the victim's family? Has he reconciled with them?' the judge asked. 'He has gone several times to see them, to apologise, Our Master,' the lawyer replies. 'If there's no representative from the family to tell me they've reconciled, I can't do anything,' the judge retorted. The exchange ended there. The lawyer and her client left. The case and the mortgage in question date back to 2004. It started with a car accident in Khartoum. The person responsible (the client's driver) had killed a young man during a traffic accident, with an aggravating circumstance (he had not respected the right of way). On a judge's orders, the police had placed a mortgage on the client's two cars pending judgement. This served to guarantee the payment of blood money (*diya*) to the victim's family. But since 2004, no representative of the victim's family had appeared before the judge, forcing him to uphold the mortgage (since the judgement had not yet been delivered) and forcing the client to reconcile with the victim's family, but also make sure this reconciliation was validated by the judge (in the presence of a representative of the victim's family). This time the lawyer from the insurance company and her client had once again left without having the mortgage lifted, receiving the same injunction from the judge: reconcile with the victim's family.

In the Aïn Sefra region (Ksour Range, Algeria), there is a system of reconciliation and compensation (*diya*) for cases of involuntary homicide: all of the groups in the 'Amûr tribal confederation (located in the Aïn Sefra region, where it has a majority[1]) as well as inhabitants of the *qsar* of Sfissifa (one of the region's traditional villages) and the Awlâd Ziad families (a lineage that settled in the region in the 1980s) all contribute to the *diya*.[2] Each tribal group has one or two leaders *(mashûl)* responsible for collecting the sum to be given to the victim's family. In 2006 this was 80,000 Algerian dinar (DZD, around 800 EUR/1000 USD/600 GBP) for the manslaughter of a child, 100,000 DZD for a woman and 120,000 DZD for a man. In early 2008 it was set at 100,000 DZD regardless of the victim's age or gender, then rose to 120,000 DZD in 2010. But in cases of culpable homicide, this system no longer applies. As soon as the compensation is accepted in principle by the victim's family, it is solely up to the guilty party's agnatic[3] family to raise the sum, which is often higher (between 100,000 and 400,000 DZD).

During a stay in the Aïn Sefra region in October 2010, I was told of the events following the murder of a semi-nomad from the Lamdabih tribal group, implicating five members of the Awlâd Shahmi tribal group (one murderer and four alleged accomplices). It had taken place in March of

that year. Three reconciliation attempts had been made by local figures in the region, including *diya* offers, but in vain. The victim's father rejected any possibility of reconciliation between the tribal groups involved or acceptance of the *diya* before a court decision. The father was waiting for the court to clarify the role played by the four other people so that he could gauge their complicity and the degree of premeditation, thereby determining the possibility of reconciliation – not with those responsible, but with the clans they belonged to. Since the trial had not yet taken place, the disagreement remained unresolved, so as a precaution and with a view to preventing further attacks, the tents of the tribal group of those responsible – previously neighbours of that of the victims – had been moved over 100 kilometres away. This case is analogous to another that took place within this tribal confederation in 2006. Two members of the Awlâd 'Abdallah group (a tribe of the Awlâd Bûbkar) had killed two members of the Lambadih group (belonging to the same tribe). These two culpable homicides followed a dispute. The murderers were then imprisoned. The fathers of the murderers and members of the Awlâd 'Abdallah clan tried to initiate a reconciliation that would include a *diya* payment. Several public figures belonging to the 'Amûr confederation were asked to accompany members of the Awlâd 'Abdallah clan and obtain a resolution of the latent conflict. As a result of several appeals and pressure from these figures, the victim's families accepted the compensation.[4]

Another case: this time concerning manslaughter. In late 2007, a seven-year-old girl was killed by a car in Aïn Sefra. The driver was placed in police custody for twenty-four hours, then released. In the meantime his father, accompanied by local figures and a few mediators, went to the victim's family to offer his apologies and condolences, and ask them to forgive his son. *Diya* (blood money) was offered as confirmation of the family's good faith, and to seal acceptance of the apologies. The *diya* was accepted because of the involuntary nature of the accident. A few days after the burial, the father of the man responsible returned to the victim's family accompanied by a delegation of local figures and the leaders *(mashûl)* who had been in charge of collecting the compensation money. He offered a ram to the father of the victim. The father sacrificed the animal and offered to everyone present a meal that included the sacrificial meat. The ritual of the sacrifice and the shared meal consecrated the victim's family's forgiveness and their acceptance of the *diya*. At the end of the meal, 80,000 DZD [800 EUR/1000 USD /600 GBP] were given in compensation to the victim's father. The *diya* process was therefore complete. But the penal and civil judgement was still pending. It was decided a few months later. During the judgement, the victim's father told the judge he had forgiven the man responsible. The defendant was then handed a six-month suspended prison sentence and a 1000 DZD fine. In Algerian law at that time (penalties have increased since then), involuntary homicide was punishable by a prison term of six months to three years, as well as a fine of 1000 to 20,000 DZD if the defendant had no criminal record. The civil judgement then determined the damages and interest, to be covered by the insurance of the person responsible.

These examples show how the reconciliation work undertaken in advance either does or does not influence the victim's family's decision to grant forgiveness, and how it can also affect the final decision at the end of the trial. As has already been pointed out, reconciliation practices and *diya* are not officially recognised under Algerian criminal law, which is inspired by positive law. Where homicide is concerned, whether involuntary or culpable, the courts are obliged to consider the case. This is not necessarily required in the context of assaults and injuries, for which a complaint must be submitted. Although the judge is supposed to apply the laws and measures of the penal code, reconciliation practices can influence the workings of justice. Forgiveness on the part of loved ones can encourage the judge to show clemency.

How should this connection between courts of justice and unofficial reconciliation practices be conceived? In the early stages of my work, I used the concepts 'legal pluralism' and 'popular justice' – taking inspiration from an issue of the *Journal of Legal Pluralism* (Foblets, Griffiths,

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La Prairie and Woodman, 1996) – to describe the simultaneous presence of judicial mechanisms and unofficial reconciliation practices for the same case. The term 'legal pluralism' has generated debate that persists to this day. The basic problem relates to the definition that different authors give to 'law', as can be clearly seen in various critiques (Merry, 1988; Tamanaha, 1993, 2000; Dupret, 2003, 2007). One example of this is a recent publication by Jacques Vanderlinden (2009), who defines himself as a radical pluralist and, nearly forty years after his famous summary essay on legal pluralism (Vanderlinden, 1972), considers domestic agreements to be forms of law. However, it seems to me that if one is finding law and legal pluralism everywhere, it is impossible to describe what is really happening in the field. So I have more or less abandoned the use of this concept,[5] as well as that of popular justice, since it led me to conceive of reconciliation practices and the practices of courts of justice as forms of law, or at the very least forms of justice, that could of course have interacted but operated independently, even competitively. If we are here faced with a multiplicity of jurisdictional orders and normative corpuses, it is not their *a priori* definition as law that is of interest, but rather the description of how they are used by the people involved.

Jacques Berque (1953), in his famous article on the foundations of the sociology of law in North Africa, drew attention to the diversity of the legal sources used (Arab customs, Berber systems, urban *fiqh*, the initiatives of local jurists, etc.) and on the syncretic aspect of the laws (coherent legal systems) existing in this region. Here the aim is to go beyond observing the diversity of legal systems in order to analyse how the people involved orient their practices in line with their own definitions of law and justice.

I subscribe to the approach that consists in 'getting back to observing social practices and considering that law is that which the people refer to as law' (Dupret, 2005: 13). It is a matter of not setting up categories that are like watertight systems, with state law on one side and customary law on the other (anthropology's traditional approach), but rather understanding how the various actors are led to use one practice before or instead of another (unofficial reconciliation practices instead of judicial authorities), and how they move from one practice to another. How do people choose a means of resolving a case (an offence or crime)?

In reconciliation practices, although one may refer to *'ûrf* (ordinary conventions or customary law), or even to Koranic law and Muslim jurisprudence (particularly Maliki), generally the actors nevertheless distinguish relatively well between reconciliation (*sulh*) as a social practice and law, that of the state (*qanun dawla*). Furthermore – and more importantly – within a single totality, reconciliation is quite commonly viewed as extending and complementing judicial practices. At the same time, this highlights the incompleteness of judicial practices, which tend to be centred on the individual. In what could be called socio-legal proceedings, which link social reconciliation practices with judicial practices in the strict sense, it is important to consider not just the plurality of actors, but also the spatial and temporal dimensions that orient all of the proceedings. There is a plurality of settings involved (the scene of the crime, the site of the reconciliation, the court of justice) as well as the interpretations that are made of the offence and the socio-legal proceedings as a whole.[6] Added to this is the plurality of temporalities: the temporality of reconciliation – quick and urgent – and the temporality of justice, which is longer and relates to bureaucratic contingencies. These are temporalities that themselves also orient all of the socio-legal proceedings.

Actor plurality, spatiotemporal dimensions and intentionality

Let us return to the culpable homicide cases cited above. What is interesting in the two cases is not so much their different outcomes – the fact that the *diya* was accepted in the 2006 case but rejected in the 2010 case (or at least it has been rejected so far). What raises questions is the involvement of *mashûl* in these cases, the mediators from different tribal groups who are responsible for the

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compensation. Most of the *mashûl* I questioned said they did not get involved in cases of culpable homicide *(qatl 'amdi)*, unless it concerned a member of their own clan. And yet the cases presented are indeed cases of culpable homicide. This apparent contradiction is explained by the fact that the spatiotemporal context of the homicides causes the *mashûl* to interpret intentionality differently.[7]

When my discussions with various *mashûl* turned to their involvement in these culpable homicide cases, they all mentioned the following two things: that the homicides had taken place 'near Fortassa', and that it had been springtime *(rbi').* None of them mentioned the exact dates and locations of the homicides, as a commissioner or judge could have. This specific definition of the spatiotemporal context of the homicides is, in itself, a justification and interpretation of intentionality. The expression '*mjit* Fortassa', 'near Fortassa', indicates that the homicides took place far from the main city (Aïn Sefra), in an area reserved for pastoralism near the Moroccan border, a contraband area. As for the term *rbi'*, this word indicates that the murders took place in springtime, in other words during the period when nomadic shepherds are searching for pastures for their animals – a potentially conflictual period. Also, many *mashûl* mentioned the bad faith of various protagonists. In other words, the fact that the incidents had taken place in a certain area during a certain period suggested that the homicides were considered more semi-intentional. If they had taken place in the city or during another season, they would probably have been characterised as intentional and the *mashûl* would not have become involved.

This way of defining the degree of intentionality is different from that of a judge who is subject to standards and operates in a different context and setting (the court). The following case from the Khartoum Chamal court, recounted by the judge mentioned at the beginning of this article, provides an opportunity to examine the reasoning behind the definition of intentionality in the context of a judgement.

The decision in question was handed down by the judge on 1 July 2007. The trial concerned a homicide that had taken place in 2005 at the Arab market in Khartoum; the accused had stabbed his victim after escaping from a psychiatric hospital. The aim of the trial was to determine if the homicide was a murder (culpable homicide) or if it was involuntary due to the fact that the defendant was probably insane. We will follow the exposition of the decision as it appears in writing. The decision was based on scientific considerations (the forensic doctor's report) and on arguments that are supposed to be logical, rational and in accordance with the Sudanese penal code.

Decision of the court of North Khartoum (1 July 2007)

In the name of God, The Clement, The Merciful.

Summary of the decision of 1/07/2007. At the Khartoum Arab market (within the fuel centre), south of the Great Mosque, the defendant Haitam O. was walking down a side street in the aforementioned centre after having escaped the psychiatric institute *(kûbar)*. He encountered the deceased Abderrahmane E. Believing that he and other passers-by were monsters that wanted to devour him, he took an Omani knife on display for sale, stabbed him in the back and surrendered. The victim was sent to the hospital, where he died. An autopsy was ordered following this event. The defendant was in a lamentable psychological state and was given treatment so he would be in a position to answer for his actions. He was questioned about the acts that had been attributed to him, in line with article 130 of the penal code. In his deposition, he claimed he was not conscious and that he could not be held legally responsible. The court, in the discussions that followed, referred to article 129 of the penal code, which reads as follows: 'homicide is to cause a person's death with or without premeditation. And murder (culpable homicide), is to cause death intentionally'. As stipulated in article 130 of the penal code: 'murder (culpable homicide) is 1. causing a person's death; 2. premeditating the act of taking someone's life; 3. the relationship of the act with the death'.

The court has discussed the following facts: Did the defendant Haitam O. stab the victim Abderrahmane E.? The answer was 'yes'. Prosecution witnesses said they saw the victim get stabbed in the back at the

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> Arab market in the presence of the police and be transported to the hospital, where an autopsy was ordered. The autopsy report reveals a wound to the left side of the thoracic cage, 9 cm deep and 1 cm wide. A wound to the diaphragm was also noticed. The left ventricle of the heart was punctured. The causes of death: a wound to the heart and a haemorrhage due to the cut. Document signed by the forensic doctor, Dr. Akil Ennour S. E., dated 1/07/2005.
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> The second element: Did the defendant have the intention of killing the deceased? Intention is defined by article 03 of the penal code and on the basis of the case Government of Sudan versus Aissa A. M., vol. 72, p. 74: the defendant took a knife that was on display and used it to stab the victim, causing a deep wound to the thorax followed by a severe haemorrhage. […] In their depositions, prosecution witnesses noted a wound to the thorax and a haemorrhage due to the wound. The forensic doctor's report confirms the facts. In this case, the court has concluded that given that a knife was used on the heart (a sensitive part of the human body), and that it was held at the level of the thorax, the defendant was aware that this act would lead to death.
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> The third element: Is there a relationship between the act and the victim's death? The answer is 'yes'. Prosecution witnesses stated that the victim fell after receiving the knife wound, and following this he died on the same day, following the stab inflicted on the victim by the defendant with a sharp object (exhibit no. 2). There is no evidence that other elements led to the victim's death.
>
> Now that it has been proven that the defendant committed an act punishable under article 130/2 of the penal code and that he was not in a legitimate state of defence and that he was not provoked by the victim, we will now proceed to a discussion of the paragraph concerning mental instability and we ask the following question: Was the defendant under the influence of mental, psychological or nervous instability to the extent that he was unable to control his actions? Prosecution witnesses stated that at the moment of the acts, the defendant was psychologically unstable; his clothing was torn and dirty. This statement was confirmed by the psychiatrist, who declared that he [the defendant] was institutionalised in a psychiatric hospital, where he had been receiving treatment prior to escaping and committing his crime, and added that he [the defendant] had been transferred from another hospital on the recommendation of another doctor (Dr. A); his family complained that he was violent and psychologically unstable. He was also an alcoholic. He was institutionalised on the basis of this behaviour. At the beginning he mumbled to himself, and this meant he was hearing voices. After his treatment, the mumbling stopped. It was also noted that the defendant had fits of violence without any reason. The court received confirmation of this observation from his brother, who stated that he and his sister had been victims of the defendant's violence before he was institutionalised.
>
> The defendant was found to be responsible and the court dismissed the mental instability hypothesis based on article 2/131 of the penal code, which defines premeditation. He was found guilty by virtue of the 1991 penal code.

I will extract the argument relating to the question of knowing how to define the intentionality of the act: 'the defendant used a knife that had been on display to stab the victim, causing a deep wound to the thorax followed by a severe haemorrhage. […] In their depositions, prosecution witnesses noted a wound to the thorax and a haemorrhage due to the wound. The forensic doctor's report confirms the facts. In this case, the court has concluded that given that a knife was used on the heart (a sensitive part of the human body), and that it was held at the level of the thorax, the defendant was aware that this act would lead to death.'

The decision was based neither on the defendant's personality, nor on his possible motivations; neither did it emphasise the fact that the weapon was not originally in his possession (since it was an Omani knife on display for sale). The court's decision was influenced by more pragmatic considerations (the nature and site of the stab). It was based on the 'logical' reasoning that the

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site of the stab indicated consciousness of the seriousness of the act. The defendant was therefore held to be responsible and the court dismissed the mental instability hypothesis: the homicide was not deemed involuntary, but rather semi-intentional.[8] The murderer was imprisoned and required to pay aggravated *diya* (three million dinar at the time, around 10,000 EUR/15,000 USD/7,500 GBP[9]).

This example shows quite clearly that, as Baudouin Dupret has noted, the judge (and the court) '[…] are probably more concerned about showing his ability to judge correctly, according to the the standards of the profession, the formal constraints applying to its practice, the legal sources it is based on and the norms of the interpretive work it implies, than reiterating the Islamic primacy of the law it implements' (Dupret, 2011: 10). The definition of intentionality is not necessarily self-evident. It is subject to the various standards of different actors and it does not necessarily follow from the Koranic law (*shari'a*) that is supposed to be applied in Sudan. This definition of intentionality also influences the possibilities of reconciliation, just as it can be influenced by a prior reconciliation. The fact that no reconciliation had been undertaken before the trial, and that the defendant's close relations had turned against him, very probably forced the judge to strike a balance between involuntary homicide due to insanity (which would have been interpreted as an affront to the victim's family and would have forced the defendant's close relations to contribute to the payment of the *diya*) and culpable homicide (which would have implied the death penalty since there had been no reconciliation with the victim's family).

Conclusion

Let us return to the title of this contribution: 'Reconciliation is the foundation!' If this relatively simple phrase heard in the field stuck with me, it is because it not only highlights the need to view reconciliation and judicial practices as a continuum, but also reflects the importance of taking account of the whole socio-legal structure or framework implemented in the first phases of reconciliation: the positions taken by the various individuals involved, their perceptions of the case, the interpretive and argumentative register that is structured and reconfigured in the different key moments (and therefore the different spaces and times) of the socio-legal process – whether it be the meeting of local figures initiated by the guilty party's close relations, or a delegation's meeting with the victim's close relations, or the reconciliation ceremony (if a reconciliation has been agreed), or a delegation's attempt to get the police station and the judge to lift a committal order in a case of involuntary homicide, or the criminal investigation and trial. In so doing, in the context of the links between the courts of justice and unofficial reconciliation practices, we have a multiplicity of places (the scene of the crime, the site of reconciliation, the court of justice) that affect both the interpretation of the offence and the socio-legal process as a whole, places where various actors and distinct forms of reasoning come into play.

In these links between the courts of justice and unofficial reconciliation practices, things do not go only in one direction. If reconciliations undertaken out of court can influence the judgements within them, particularly in the form of sentence mitigation, at the same time judicial work can give rise to reconciliations or influence how these proceed. Finally, judicial practices, in their arbitration and judgement modalities, can operate based on what is implicit in the reconciliation(s) achieved or yet to be achieved out of court. In Algeria (particularly in rural and suburban areas) as well as in Sudan, this is one of the blind spots in judicial practice: taking out-of-court reconciliation(s) into account is not a formal judicial modality that is subject to explicit guidelines and can be easily evaluated, even though it most certainly has its effects on how justice is dispensed in these countries.

Translated from the French by Matthew Cunningham

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Notes

1. The ‘Amûr make up a confederation that includes three large tribes: the Swala, the Awlâd Salim and the Awlâd Bûbkar. On the ‘Amûr and Algerian tribes, see Ben Hounet (2009, 2010b).
2. The other tribes and lineages of the region, such as the Awlâd Bûtkhill (inhabitants of the *qsar* of Aïn Sefra) and the Awlâd Sid Tadj, do not participate in the system. They contribute to the *diya* independently.
3. Locally, this refers to those who share the guilty party’s surname, not necessarily the agnatic family to the fifth degree, the *khamsa* highlighted by Joseph Chelhod (1971) for the Bedouins of the Middle-East.
4. I was also told about the murder of a member of the Hmiyan (a tribe of the region) by a man belonging to the ‘Amûr, a few years ago. In order to appease the latent antagonism between these two tribes, which the crime had exacerbated, and to prevent vendettas and counter-reprisals, the Wilaya regional commissioner sought a reconciliation and a *diya* payment. He enlisted the help of sheikhs from among the ‘Amûr, the Hmiyan and the Awlâd Sid Ahmad Majdûb. These men, who did not belong to the tribes involved, served as guarantors. Aware of local realities and of the unrest that this crime could have generated, the commissioner used local customs in order to appease resentments and prevent inter-tribal conflicts.
5. This concept could sometimes be used, for the sake of economy of language, to convey the plurality of normative systems.
6. Studies on the spatial dimension of law have developed considerably over the past fifteen years. On this subject, see Benda-Beckmann, Benda-Beckmann and Griffiths (2009).
7. Using the concept of the ‘nomosphere’, Bertram Turner (2010) shows the effects of the spatiotemporal dimension in the context of a case of alcoholism and affray that occurred one night near a village market in Morocco’s Sous region. The nomosphere concept was introduced by David Delaney (2004: 851) who defined it thus: ‘This neologism (from the root *nomos* or law) refers, as a first approximation, to the cultural/material environs that are constituted by the reciprocal materialization of the legal and the legal signification of the sociospatial.’
8. Article 131/2: ‘Notwithstanding the provision of section 130 (1), culpable homicide shall be deemed to be semi-intentional in any of the following case: (1) Where the offender commits culpable homicide under the influence of mental, psychological or nervous disturbance, which manifestly affects his ability to control his acts. – 131/3: Whoever commits the offence of semi-intentional homicide shall be punished, with imprisonment, for a term, not exceeding five years, without prejudice to the right of *diya*.’
9. According to the official rates of 30 June 2006.

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