

TRIADIC LEGAL PLURALISM IN NORTH SINAI: A CASE STUDY OF STATE, *SHARI' A*, AND *'URF* COURTS IN CONFLICT AND COOPERATION

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ABSTRACT

To the extent that legal scholars have addressed the post-authoritarian transitions underway in the Middle East, the scope of their work has been primarily confined to the formal infrastructure of state-manufactured law. Attention has focused on the activities of high courts, parliaments, and the administrative apparatus of official justice systems, while largely neglecting to acknowledge the importance of non-state institutions and systems of normative rules that operate in the shadow of modern bureaucratic governments. The concept of legal pluralism, defined as the coexistence of multiple legal or normative orders within a common geographical area, has been applied extensively in European, South American, and sub-Saharan African contexts, but is underutilized in analysis of revolutionary and transitional change in the Middle East. Nowhere is the presence of legal pluralism more apparent than in Egypt's geographically remote Sinai Peninsula, where non-state Islamic courts that emerged in the post-revolutionary security vacuum in 2011 claim to have absorbed 75 percent of the caseload once handled by Egypt's official justice system and aspire to achieve full autonomy from the state. This paper, based on field research conducted in the governorate of North Sinai, argues that the rapid institutionalization of non-state shari'a courts since the 2011 uprising can be explained in part by two historical trends: (1) the Islamizing effects of state-sponsored development and labor migration policies on Bedouin society in North Sinai; and (2) growing disillusionment with state and tribal judiciaries, which are often viewed as complicit in the disenfranchisement of the Bedouin and expropriation of their lands.

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1. INTRODUCTION

To the extent that legal scholars have addressed the post-authoritarian transitions underway in the Middle East, the scope of their work has been primarily confined to the formal infrastructure of *state*-manufactured law. Attention has focused on the activities of high courts, parliaments, and the administrative apparatus of official justice systems, while largely neglecting to acknowledge the importance of *non-state* institutions and systems of normative rules that operate in the shadow of modern bureaucratic governments. The concept of legal pluralism, defined as the coexistence of multiple legal or normative orders within a common geographical area, has been applied extensively in European,¹ Latin American,² and sub-Saharan³ contexts, but is underutilized in analysis of revolutionary and transitional change in the Middle East.⁴ Nonetheless, the observation that governments do not wield a monopoly over law offers a powerful framework for understanding patterns of instability, conflict, and violence in contemporary Arab and Muslim-majority societies where popular uprisings have shaken the constitutional and legal foundations of governments. The diminished capacity of transitioning states emerging from authoritarianism — in Egypt and across the region — has created space for the expansion of non-state legal

1. See, e.g., John Griffiths, *What is Legal Pluralism?*, 24 J. OF LEGAL PLURALISM & UNOFFICIAL L. 1 (1986); Alec S. Sweet, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe*, 1 J. OF GLOBAL CONSTITUTIONALISM 53, 62 (2012) (detailing the landscape of constitutional pluralism within national legal orders in European states).
2. See Donna L. Van Cott, *A Political Analysis of Legal Pluralism in Bolivia and Colombia*, 32 J. OF LATIN AM. STUD. 207 (2000) (documenting efforts to implement constitutionally mandated regimes of legal pluralism).
3. See Boaventura S. Santos, *The Heterogeneous State and Legal Pluralism in Mozambique*, 40 L. & SOC'Y REV. 39 (2006).
4. Although there is a rich literature on legal pluralism and multiculturalism in Europe and the United States, the concept of legal pluralism has not been well integrated into the study of contemporary systems of governance in the Middle East, which has instead tended to privilege the study of state-based legal positivism over inquiries into the production of unofficial norms that may operate in the shadow of modern bureaucratic states. See ANDREW MARCH, *ISLAM AND LIBERAL CITIZENSHIP: THE SEARCH FOR AN OVERLAPPING CONSENSUS* (2009) (examining Muslim participation in secular, pluralist societies); See also ANVER EMON, *RELIGIOUS PLURALISM AND ISLAMIC LAW: DHIMMIS AND OTHERS IN THE EMPIRE OF LAW* (2012) (discussing the challenges of governing a populace in which minority and majority groups diverge on the meaning and implication of values deemed fundamental to their respective traditions). Baudouin Dupret has noted the absence of works dealing with normative plurality in the contemporary Middle East. Although the non-state normative orders of customary and Islamic law have been studied separately, few works have addressed the triadic interaction between state, customary, and Islamic law in the Middle East, with the notable exception of Baudouin Dupret, who discusses normative pluralism and non-state actors engaging in “self-proclaimed law,” and Muhammad Qasim Zaman, who examines the role of the ‘ulama as a source of legal authority outside of the modern state. See BAUDOIN DUPRET, *LEGAL PLURALISM IN THE ARAB WORLD* (1999); MUHAMMAD QASIM ZAMAN, *THE ULAMA IN CONTEMPORARY ISLAM: CUSTODIANS OF CHANGE* (2007). Dupret and Chibli Mallat have both noted that where scholars of Middle Eastern law have acknowledged pluralism of legal sources and authority, they have tended to assign a dominant role to Islam. See BAUDOIN DUPRET, *LEGAL PLURALISM IN THE ARAB WORLD* (1999) (noting that “the overdetermination of Islam remains undeniable” in studies of the Arab world); See also Chibli Mallat & Mara Revkin, *Middle Eastern Law*, 9 ANN. REV. OF L. & SOC. SCI. 405 (2013) (mapping diverse legal systems existing throughout Middle Eastern history through an analysis of judicial decisions and codes).

orders offering an alternative framework for the delivery of justice and security that weakened governments struggle to provide.

Nowhere is the presence of legal pluralism more apparent than in Egypt's geographically remote Sinai Peninsula, where non-state Islamic courts⁵ that emerged in the post-revolutionary security vacuum in 2011 claim to have absorbed 75 percent of the caseload once handled by Egypt's official justice system.⁶ Within two years of former president Hosni Mubarak's resignation, *shari'a* courts — which provide voluntary arbitration services free of cost — had become so popular among residents of North Sinai that *shari'a* judges claimed to be hearing cases brought not only by observant Muslims but also by Christians, secular-inclined local businessmen, and even Egyptian government employees.⁷ It had become clear that *shari'a* courts, although they are ideologically aligned with and in many cases run by self-trained Islamist jurists associated with ultraconservative Salafi movements,⁸ were increasingly being used by non-Islamists because of their reputation for efficiency and integrity in contrast with an official justice system that had become notorious for its corruption⁹ and nepotism.¹⁰

5. A note on terminology: *Shari'a* judges in North Sinai primarily identify their non-state arbitration forums as “*Shari'a* courts” (*mahakim shari'a*) but occasionally refer to them as “*shari'a* committees” (*lijan shari'a*). According to Sheikh Hamdeen Abu Faisal, a *shari'a* judge who rotates between Islamic courts in Sheikh Zuweid and Arish, the term “committee” is often used in conversations with Western academics or journalists to emphasize the voluntary nature of the arbitration process and to discourage alarmist characterizations of the informal Islamic justice system as being associated with radical or jihadist groups in Sinai. This paper has adopted the term “court” because it is more commonly used than “committee” and also reflects the high degree of institutionalization — reflected in the formality of the physical spaces occupied by arbitrators and their extensive written records of decisions — observed during field research in North Sinai.
6. See Mara Revkin, *Egypt's Power Vacuum is Radicalizing the Sinai Peninsula*, WASH. POST, Aug. 29, 2013, http://www.washingtonpost.com/opinions/egypts-power-vacuum-is-radicalizing-the-sinai-peninsula/2013/08/29/77c427d2-10bb-11e3-bdf6-e4fc677d94a1_story.html.
7. Interview with Sheikh Hamdeen Abu Faisal, *Shari'a* Judge, in Arish, North Sinai, Egypt (Aug. 11, 2013); Interview with Sheikh Assad al-Beik, *Shari'a* Judge, House of Sharia Judgment, in Arish, North Sinai, Egypt (Aug. 10, 2013); Interview with Anwar Ahmed Mohamed, telecommunications entrepreneur who operates the Arish branch of a Cairo-based internet service provider, who litigated a business dispute through a *shari'a* court after police failed to respond when angry customers attempted to burn down his office, in Arish, North Sinai, Egypt (Aug. 10, 2013).
8. William McCants defines “Salafism” as “the method of modeling one’s thought and behavior on Muhammad and the first three generations of Muslims, called the ‘forefathers’ (*salaf*).” See WILLIAM MCCANTS, *THE LESSER OF TWO EVILS: THE SALAFI TURN TO PARTY POLITICS IN EGYPT*, Middle East Memo No. 23 (2012), http://www.brookings.edu/~media/research/files/papers/2012/5/01%20salafi%20egypt%20mccants/0501_salafi_egypt_mccants.pdf.
9. See NINETTE S. FAHMY, *THE POLITICS OF EGYPT: STATE-SOCIETY RELATIONSHIP* 244 (2012) (stating that “[c]ourt rulings are not respected, often ignored by the executive and in many cases justice is perverted. This is carried on through corruption, where judges are bribed by the executive apparatus”).
10. Litigants with experience in state as well as non-state judiciaries reported that *shari'a* courts resolved cases significantly more quickly than *urf*. One theory to account for the disparity is that *shari'a* cases are arbitrated by a single judge, whereas *urf* cases have traditionally been arbitrated by a panel of three judges, making consensus on a judgment more time-consuming. See Interview with Anwar Ahmed Mohamed, telecommunications entrepreneur who litigated a business dispute through a *shari'a* court in 2013, in Arish, North Sinai, Egypt (Aug. 10, 2013). A comparison of Tables 1 and 2 suggest that *shari'a* had been resolve cases faster on average than *urf* courts, at least

In addition to challenging the sovereignty of the Egyptian state, *shari'a* courts have also destabilized the Bedouin system of pre-Islamic customary law (*'urf*) that has historically regulated tribal affairs in the absence of a strong central government in the Sinai Peninsula.¹¹ The deepening of a pluralistic and multi-polar legal order in this strategically vital region has important implications for the legitimacy and stability of Egypt's governing institutions.¹² This paper, based on field research conducted in the governorate of North Sinai in August 2013, offers a historical and theoretical explanation for the institutionalization of unofficial Islamic courts that seek a high degree of autonomy from the Egyptian state.

Non-state judiciaries are not necessarily antagonistic toward or destabilizing of governmental authority, as illustrated by the historically cooperative relationship between the Egyptian government and tribal *'urf* courts. The *'urf* courts in particular have long pursued a strategy of integration rather than separation and autonomy from the official justice system and North Sinai tribal leaders have recently gone so far as to advocate constitutional reforms that would codify an official legal status for *'urf* law.¹³ However, in the case of non-state *shari'a* courts in North Sinai, self-appointed Islamic arbitrators explicitly reject and denounce not only the secular aspects of Egypt's legal and constitutional system but also the moderate interpretation of Islamic law promoted by Egypt's preeminent center of Sunni Islamic scholarship and official religious establishment, al-Azhar.¹⁴

until August 2013.

11. *'urf* courts in North Sinai are closely affiliated with particular tribes, of which there are approximately twenty. Over time, the different tribes have developed specific areas of expertise in certain types of disputes. For example, the *Bilī* tribe specializes in cases of murder and physical assault, while the *Banī 'Ugba* tribe specializes in marital disputes. See CLINTON BAILEY, JUSTICE WITHOUT GOVERNMENT 164 (2009). By contrast, the *shari'a* courts are more closely affiliated with ideological Salafi Islamist movements than with any particular tribe, and many adherents of these Salafi movements are relatively recent migrants to the Peninsula who do not identify as Bedouin. This demographic feature is reflected in patterns of litigation observed at *shari'a* courts, where a significant proportion of litigants in a sample of cases were residents of the small North Sinai city of Arish, and unaffiliated with Bedouin tribes (see Table 2). The *Shari'a* courts' non-identification with particular tribes creates enforcement challenges stemming from the difficulty of mobilizing social pressure to induce compliance.
12. See Liam Stack, *Islamists Blamed for Uptick in Sinai Violence After Morsi's Ouster*, N.Y. TIMES, July 17, 2013, http://thelede.blogs.nytimes.com/2013/07/17/islamists-blamed-for-uptick-in-sinai-violence-following-morsis-ouster/?_php=true&_type=blogs&_r=0 (noting that "Sinai is a profound strategic asset for Egypt, bordered on the west by the Suez Canal and on the east by Gaza and Israel, which occupied the region after the 1967 war." See also MATTHIAS SCHOLZ, EGYPT'S SINAI SINCE THE UPRISING 2011 - EXPLAINING THE DIFFERENCES IN THE AMOUNT OF VIOLENCE BETWEEN NORTH AND SOUTH (Master's Thesis), 2 (2013), Leiden University and the Clingendael Institute (noting that "[t]he Egyptian peninsula of Sinai constitutes one of the strategically most important areas for the country — given the economic importance of the Suez canal, tourism in Sinai, and the peninsula's function as buffer zone to Israel ...").
13. See Sherine Abdel-Sayed & Rabab el-Shazli, القادِم الأربعمِئتين لجنه على مشكلاتهم بطرحون سيناء قبائل ممثلو, AL-MESRYOON, (Sept. 30, 2013) (noting that when tribal leaders met with members of the committee tasked with drafting a new constitution in September 2013, their demands included a clause that would codify the status of *'urf* and render it enforceable by state authorities).
14. See Jakob Skovgaard-Peterson, *Egypt's 'Ulama in the State, in Politics, and in the Islamist Vision*, in THE RULE OF LAW, ISLAM, AND CONSTITUTIONAL POLITICS IN EGYPT AND IRAN (Saïd Amir Arjomand &

Although the non-state Islamic justice system currently relies on a voluntary model of arbitration and is primarily used to administer monetary civil penalties known as *ta'zir*¹⁵ for tort and property claims as well as marital disputes, *shari'a* judges have expressed their hope that in the future, these courts will be sufficiently institutionalized and possess the requisite enforcement mechanisms to administer the full spectrum of Islamic penalties, including corporal and criminal punishments (*hudud*).¹⁶ *Shari'a* courts already benefit from their association with Salafi community policing groups, known as popular committees (*lijan shaabiya*), which help to promote compliance with court decisions through social pressure. Although the popular committees purport to be unarmed, one Salafi leader in Rafah has claimed that the Gama'a Salafiyya group has mobilized its own armed paramilitary wing to enforce *shari'a* judgments.¹⁷ In a region where non-state '*urf*' judiciaries have long coexisted symbiotically with the official Egyptian courts, what conditions explain the emergence of a separate system of non-state Islamic courts that aspire to create a fully autonomous legal order whose ultimate goal is the replacement of state law with *shari'a*?

Although the institutionalization of *shari'a* courts accelerated rapidly in the legal and security vacuum induced by the collapse of Hosni Mubarak's police state in 2011, I argue that the contemporary "Islamization"¹⁸ of North Sinai's pluralistic legal order is a historically contingent process that began decades ago with the imple-

Nathan J. Brown, eds., 2013) (explaining al-Azhar's efforts to cultivate a moderate understanding of Islam known as *wasatiyya* or "middle ground").

15. *Ta'zir* may be defined as "prevention, correction, or chastisement," and includes all crimes for which the Qur'an or Sunna do not prescribe a penalty or for which there was doubt as to the persuasiveness of evidence presented for *hudud* crimes. *Ta'zir* punishments are subject to the discretionary power of a *shari'a* judge and are aimed at rehabilitation of the culpable party. See KRISTIN STILT, *ISLAMIC LAW IN ACTION: AUTHORITY, DISCRETION, AND EVERYDAY EXPERIENCES IN MAMLUK EGYPT* 29 (2011).
16. See Mara Revkin, *Islamic Justice in the Sinai*, FOREIGN POLICY (Jan. 11, 2013), http://mideastafrica.foreignpolicy.com/posts/2013/01/11/islamic_justice_in_the_sinai.
17. See Osama Khaled, الجماعة السلفية بسيناء تنتشى لجناً لفض المنازعات، (Aug. 9, 2011), <http://www.almasryalyoum.com/node/484797>.
18. The term "Islamization," as used in this paper, denotes an ongoing process of "bringing tribal society closer to normative Islam, not conversion," a definition adapted from the work of Aharon Layish. See Aharon Layish, *The "Fatwa" as an Instrument of the Islamization of a Tribal Society in Process of Sedentarization*, 54 BULL. OF THE SCH. OF ORIENTAL AND AFR. STUD. 449. Although comparative examples of the impact of social Islamization on tribal customary law have been noted in Yemen (Laila al-Zwaini, 2012), the Palestinian West Bank (Aharon Layish, 2011), Pakistan (Rubya Mehdi, 2013), and India (Muhammad Qasim Zaman, 2012), the scope of this paper is limited to the effects of Islamization on non-state legal orders in North Sinai, as illustrated by increased incorporation of Islamic or *shari'a* law in arbitration proceedings and in written legal documents. Islamization in North Sinai has manifested in two ways: 1) the institutionalization of autonomous *shari'a* courts that compete with older tribal courts administering a body customary law (*'urf*) with pre-Islamic origins; and 2) an increasing tendency among '*urf*' judges to refer to Islamic law in their judgments, in response to pressure from *shari'a* courts that question the religious legitimacy of the '*urf*' judiciary. See Aharon Layish, *The Qadi's Role in the Islamization of Sedentary Tribal Society*, in *THE PUBLIC SPHERE IN MUSLIM SOCIETIES* 103 (Miriam Hoexter, Shmuel Noah Eisenstadt & Nehemia Levtzion eds., 2002). For an example of the incorporation of *shari'a* into '*urf*' jurisprudence in North Sinai, see Table 1, case U5, in which an '*urf*' judge referred a divorce case to a *shari'a* court and said it must be decided according to Islamic law.

mentation of state-sponsored development and resettlement projects in the 1980s and 1990s that exerted alienating effects on the region's primarily Bedouin population. A series of interventionist policies in North Sinai, notably the reclamation of tribal lands, sedentarization projects, and the promotion of labor migration from the Nile Delta region, transformed the structure of Bedouin society in ways conducive to the adoption of conservative Islamist ideology and with it the establishment of an autonomous *shari'a*-based system of dispute resolution offering an Islamic alternative to Egypt's primarily secular legal system.

Drawing on field research conducted in North Sinai in August 2013, I argue that the expansion of non-state Islamic judiciaries since the 2011 uprising can be explained to a large extent by two historical trends: (1) the Islamizing effects of state-sponsored development and labor migration policies on Bedouin society in North Sinai; and (2) growing disillusionment with state and tribal judiciaries, which are seen as complicit in the economic disenfranchisement of the Bedouin and expropriation of their lands. Adopting an interdisciplinary theoretical framework combining the concept of legal pluralism with a model of inter-institutional interaction drawn from political science, I argue that these historical factors encouraged the relatively recent institutionalization of non-state *shari'a* courts offering an alternative to an official justice system viewed as exploitive and corrupt.

2. BACKGROUND AND SIGNIFICANCE OF THE CASE

Throughout Egypt's modern history, the Bedouin tribes of North Sinai have maintained a semi-autonomous legal order through the operation of unofficial '*urf*' judiciaries.¹⁹ However, the 2011 uprising precipitated a further devolution of power and legitimacy away from the weakened central government toward non-state normative systems, including not only the preexisting '*urf*' courts but also a new form of non-state judiciary: *shari'a* courts. The expansion of non-state *shari'a* courts in North Sinai in recent years is not only a function of the erosion of state sovereignty, but also a byproduct of the gradual Islamization of the region's Bedouin tribes and their customary law — a process that began in the 1980s under the influence of private Islamic education, the expansion of Salafi charitable organizations, and the radicalizing effects of state-sponsored development, labor migration, and land reclamation projects that were associated with the economic and political disenfranchisement of Bedouin tribes by state authorities. Gradually, Islamization in the social realm extended to non-state legal institutions, as a growing number of self-trained Islamic jurists practicing *fiqh* emerged as a challenge to their '*urf*' counterparts' long-standing monopoly on informal dispute resolution.

Although the development of pre-Islamic '*urf*' law has been richly described in the work of Frank Stewart, Clinton Bailey, and other scholars of Middle Eastern customary law, few have explored the relationship between '*urf*' and Islamic jurisprudence (*fiqh*), or how the non-state judiciaries associated with these two traditions

19. See generally BAILEY, *supra* note 11.

interact with and challenge the authority of official judicial systems.²⁰ Comparative examples of the impact of social Islamization on *'urf* law have been noted in Afghanistan (Asta Olesen, 1995), Yemen (Laila al-Zwaini, 2012), the Palestinian West Bank (Aharon Layish, 2011), Pakistan (Rubya Mehdi, 2013), and India (Muhammad Qasim Zaman, 2012).²¹ Even with these contributions, however, there is a need for more systematic inquiry into the complex and evolving interactions between these different traditions, which have important implications for the consolidation and legitimacy of legal and constitutional orders in the Middle East.²² This paper seeks to contribute to a deeper understanding of the triadic relationship between state, *'urf*, and *shari'a* in Middle Eastern contexts through a case study of legal pluralism in North Sinai.

The deepening of legal pluralism in North Sinai since 2011 has presented a direct challenge to the state's claim to exclusive sovereignty. Historically, the Egyptian government and its justice system have never been able to assert full control over the geographically remote and sparsely populated governorate of North Sinai, which despite its strategic significance as a buffer zone along the Israeli border, has been poorly integrated into Egypt's national governance and economic development efforts.²³ The predominately Bedouin population of North Sinai has long harbored separatist tendencies²⁴ fueled by resentment of the revolving door of occupying governments — the region has changed hands at least seven times in the last hundred years between the Ottoman Empire, Great Britain, Egypt, and Israel²⁵ — all of which have struggled to fully control the Peninsula. For centuries, the Bedouin have coped with the weakness and transience of state institutions through largely autonomous, tribal structures of governance, including their system of orally transmitted customary law with pre-Islamic origins (*'urf*). Despite the Bedouin community's resentment and distrust of the central government, cooperation between customary *'urf* courts and the official justice system has been well documented since the 1980s. During his field research in Sinai, Larry Roeder was informed by *'urf* judges that while the po-

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20. See Frank H. Stewart, *Notes on the Arrival of the Bedouin Tribes in Sinai*, J. OF THE ECON. & SOC. HIST. OF THE ORIENT 97 (1991) (using archival manuscripts from St. Catherine's Monastery in South Sinai to document the early history of Bedouin migration to the Peninsula); See also BAILEY, *supra* note 11 (compiling the first comprehensive study of Bedouin law in English collected over forty years of field work).
 21. See, e.g., ASTA OLESEN, ISLAM AND POLITICS IN AFGHANISTAN (1995); LAILA AL-ZWAINI, THE RULE OF LAW IN YEMEN: PROSPECTS AND CHALLENGES (2012); AHARON LAYISH, LEGAL DOCUMENTS FROM THE JUDEAN DESERT: THE IMPACT OF THE SHARI'A ON BEDOUIN CUSTOMARY LAW (2011); RUBYA MEHDI, THE ISLAMIZATION OF THE LAW IN PAKISTAN (2013); MUHAMMAD QASIM ZAMAN, MODERN ISLAMIC THOUGHT IN A RADICAL AGE: RELIGIOUS AUTHORITY AND INTERNAL CRITICISM (2012).
 22. See, e.g., MEHDI, *supra* note 21; LAILA AL-ZWAINI, STATE AND NON-STATE JUSTICE IN YEMEN (2006); LAYISH, *supra* note 21; ZAMAN, *supra* note 21.
 23. See generally BAILEY, *supra* note 11.
 24. See Nicholas Pelham, *Sinai: The Buffer Erodes*, CHATHAM HOUSE (2012), <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/pr0912pelham.pdf> (referring to the Bedouins' "separatist spirit enhanced by opposition to the old security regime").
 25. See Smadar Lavie & William C. Young, *Bedouin in Limbo: Egyptian and Israeli Development Policies in Southern Sinai*, 16 ANTIPODE 34 (1984).

lice “sometimes caused minor hassles, more often than not they referred cases.” As proof, Roeder was shown stamped referral slips from several police departments.²⁶ Such overt cooperation became even more intensive under the rule of former president Hosni Mubarak, during which state authorities in North Sinai made efforts to certify *urf* decisions and render them enforceable by the local administrative bureaucracy.²⁷ The state’s voluntary outsourcing of adjudicative functions to *urf* courts had the dual effect of reducing the administrative burden on a weak state justice system and providing a basis for the implementation of *urf* rulings by the state law enforcement apparatus.

Although *urf* courts have been a powerful feature of North Sinai’s pluralistic legal order for hundreds of years, the 2011 uprising catalyzed dramatic changes in the informal justice landscape with the emergence of a new form of non-state judiciary: informal Islamic courts aspiring to implement a conservative Salafi interpretation of *shari’a*. The institutionalization of *shari’a* courts has transformed a previously dyadic system of pluralism consisting of *urf* and state law into a triadic one with the introduction of a third branch — that of non-state Islamic law. As early as the 1990s, self-taught *shari’a* judges had been informally adjudicating disputes in basements and private homes, but after the 2011 uprising, they began to establish brick and mortar courthouses — at least fourteen in North Sinai alone — operating in plain view of Egyptian authorities and in some cases with their tacit consent (See Fig. 1).²⁸ The Egyptian government’s tolerance of an increasingly autonomous Islamic legal order in North Sinai, although ultimately short-lived,²⁹ is remarkable in light of the fact that these non-state *shari’a* courts have explicitly rejected the sovereignty of Egypt’s government and presented themselves as an alternative to the primarily secular official justice system as well as the preexisting *urf* system, both of which *shari’a* judges condemn as corrupt and un-Islamic.³⁰ What accounts for the rapid institutionalization of previously underground *shari’a* judiciaries in the aftermath of the 2011 uprising, and why are these courts pursuing a strategy of autonomy rather than the integrationist approach taken by non-state *urf* courts? This paper will argue that the expansion of non-state Islamic judiciaries in North Sinai since the 2011 revolution can be explained primarily by two factors: (1) the Islamizing effects

26. Larry W. Roeder, *Trial Law and Tribal Solidarity in Sinai Bedouin Culture: The Story of Besha*, 84 ANTHROPOS 230, 233 (1989).

27. Interview with Sheikh Abdel Hady, *Urf* Judge, in Sheikh Zuweid, North Sinai, Egypt (Aug. 11, 2013).

28. Interview with Sheikh Assad al-Beik, *supra* note 7. See Figure 1 for image of the House of Shari’a Judgment, a non-state Islamic courthouse in Arish.

29. *Shari’a* courts proliferated greatly in the security vacuum resulting from Mubarak’s overthrow and under the rule of Islamist president Mohamed Morsi, but their activities were sharply curtailed by the military-led government that assumed power in a popularly backed coup on July 3, 2013 and which initiated a sweeping counter-terrorism campaign targeting Islamist groups in Sinai. In September 2013, two of the leading *shari’a* judges in North Sinai were arrested on charges of inciting terrorist attacks against government targets, and others have since gone into hiding. See Mara Revkin, *Sharia Courts of the Sinai*, FOREIGN POLICY (Sept. 20, 2013), http://mideastafrica.foreignpolicy.com/posts/2013/09/20/sharia_courts_of_the_sinai.

30. Interview with Sheikh Assad al-Beik, *supra* note 7.

of state-sponsored development and labor migration policies on Bedouin society in North Sinai; and (2) growing disillusionment with state and tribal judiciaries, often seen as complicit in the economic disenfranchisement of the Bedouin and expropriation of Bedouin lands.

3. METHODOLOGY AND THEORETICAL FRAMEWORK

This case study builds on field research conducted in the governorate of North Sinai in August 2013, as well as local media reports, archival court records, government land use and budgetary reports, and qualitative data gathered from accounts of disputes litigated in non-state courts since 2011 (see Tables 1 and 2). Interviewees included two *shari'a* judges, four *'urf* judges, and various lawyers and litigants with experience resolving disputes in state as well as non-state courts in the areas of Arish, Sheikh Zuweid, and Rafah. Due to the political sensitivity of the research, it was not possible to arrange interviews with official representatives of the state judicial and law enforcement systems.

Proceeding from the observation that *'urf* judiciaries are pursuing a strategy of integration with Egypt's official legal system while *shari'a* courts aspire to full autonomy, I attempt to explain the divergent behaviors of these two systems through an interdisciplinary theoretical framework that combines the concept of legal pluralism with a model of inter-institutional interaction drawn from political science. Theories of legal pluralism offer a framework for understanding the existence of multiple legal orders within a common geographical area, but legal pluralism is not well-equipped to explain significant variations in the interactions between these different orders, which range from antagonistic to cooperative.

The potential for significant variation in the orientations of non-state judiciaries toward the state is demonstrated clearly in North Sinai, where unofficial Islamic courts explicitly reject the authority of both the official justice system and the state-regulated religious establishment and its normative interpretations of *shari'a*, represented by al-Azhar. In contrast, tribal *'urf* courts have a long history of symbiotic and cooperative relations with the Egyptian government, and recently have gone so far as to advocate constitutional reforms that would codify a formal status for *'urf* law within the framework of the official justice system.³¹ What explains why some non-state judiciaries operating in contexts of legal pluralism cooperate with governments, while others fiercely reject their authority? Political scientists working in the tradition of historical institutionalism have shed light on how we can answer that question.³² The following discussion attempts to bridge these two theoretical approaches to explain the diametrical orientations of North Sinai's *'urf* and *shari'a* courts toward the Egyptian state and its official justice system.

31. See Sherine Abdel-Sayed & Rabab el-Shazli, "ممثلو قبائل سيناء يلتقون أعضاء «الخمسين» الأربعاء لعرض مطالبهم", AL-MESRYOON, (Sept. 30, 2013), <http://www.masress.com/almesryoon/369545>.

32. See Gretchen Helmke & Steven Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, 2 PERSPECTIVES ON POL. 725, 728 (2004).

LEGAL PLURALISM: A THEORY OF COEXISTENCE BETWEEN STATE, ‘URF, AND SHARI’A

The theoretical concept of legal pluralism,³³ defined as the coexistence of multiple legal or normative orders within a common geographical area or the absence of a state monopoly on the production and administration of law, has been applied extensively in European, South American, and sub-Saharan African³⁴ contexts, but has been underutilized in contemporary scholarship aiming to describe and understand the legal transformations brought about by the 2011 uprising in Egypt and other post-authoritarian transitions in the Middle East.³⁵ To the extent that scholars have addressed legal questions in Egypt in recent years, their work has focused on public and constitutional law as the exclusive domain of sovereign governments, in keeping with the traditional paradigm of legal centralism and its normative assumption that “law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions.”³⁶ Official judicial and legal institutions have played a central role in recent political battles in Egypt, as illustrated by the highly symbolic trials of former president Hosni Mubarak and other former regime officials, a unilateral constitutional declaration issued by former Islamist president Mohamed Morsi that immunized executive decisions from judicial review in 2012, and the most recent suspension of the constitution following Morsi’s overthrow by a popularly backed military coup in July 2013.³⁷ While the laws and

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33. The theory of legal pluralism, first formulated by John Griffiths, begins with a rejection of the ideology of legal centralism and its assumption that law is exclusively administered by states. Griffiths’ framework built upon the concept developed by “semi-autonomous social fields” that possess their own normative and regulatory capacities, and are capable of enforcing these on their members. *See, e.g.*, Griffiths, *supra* note 1; Brian Tamanaha, *A Non-Essentialist Version of Legal Pluralism*, 27 J. OF L. & SOC’Y 296 (2000); Gunther Teubner, *The Two Faces of Janus: Rethinking Legal Pluralism*, 13 CARDOZO L. REV. 1443 (1992); BOAVENTURA DE SOUSA SANTOS, TOWARDS A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION (1995). Some scholars have suggested that the presence of legal and constitutional pluralism may help to upgrade the protection of rights and promote the public interest. *See* Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155, 1196-1234 (2007). *See also* Sweet, *supra* note 1 (arguing that competition among autonomous nodes of legal authority “serves to upgrade, rather than reduce, a collective commitment to rights protection”).
34. *See* De Sousa Santos, *supra* note 3.
35. *See, e.g.*, Griffiths, *supra* note 1; Sweet, *supra* note 1; Van Cott, *supra* note 2.
36. For a discussion of the foundational assumptions of the legal centralist paradigm, see Griffiths, *supra* note 1. There is a rich literature on constitutional development in Egypt, but considerably less interest in questions of legal pluralism and non-state law. *See* TAMIR MOUSTAFA, THE STRUGGLE FOR CONSTITUTIONAL POWER (2007). One of the few case studies addressing questions of legal pluralism in Egypt is that of Clark Lombardi and Nathan Brown, who examine the Islamization of constitutional law in Egypt through the jurisprudence of the Supreme Constitutional Court. *See* Clark B. Lombardi & Nathan J. Brown, *Do Constitutions Requiring Adherence to Shari’a Threaten Human Rights? How Egypt’s Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, 21 AM. U. INT’L L. REV. 379 (2005). However, Lombardi and Clark are primarily concerned with the one-way influence of non-state Islamic law on state law, whereas this paper shifts the object of analysis away from Egypt’s constitutional order toward a pluralistic space in which state and non-state law interact in a dialectic and mutually constitutive relationship.
37. *See, e.g.*, David Kirpatrick, *Egypt Court Rejects Verdict Against Mubarak*, N.Y. TIMES, Jan. 13, 2013,

courts of the state have indeed been at the center of power struggles in the post-Mubarak period and throughout Egypt's modern history, the scholarly preoccupation with official legal and constitutional institutions — which some have gone so far as to describe as constitutional “fetishism”³⁸ — has obscured an equally important aspect of the country's social and political infrastructure: the presence of autonomous, non-state legal and normative orders operating in the shadow of the state and its official institutions.

A state-centric approach to the study of law therefore fails to fully capture the complexity of Egypt's legal landscape, which has long been animated by the triadic interactions between three parallel legal orders — state law, *shari'a*, and customary *urf* — all of which operate in constant tension and dialogue with one another. *Shari'a*, in addition to participating in the triadic pluralistic legal order described above, is also internally pluralistic by virtue of its scholarly and juristic diversity (the presence of multiple schools of thought) as well as the heterogeneity of specific legal rulings issued by independent jurists practicing a range of interpretive techniques.³⁹ Consistent with the pluralistic tradition of *shari'a*, there is no consensus among Islamic legal scholars and practitioners on fundamental questions, such as the appropriate relationship between *shari'a* and the modern state. In Egypt's civil and primarily secular legal system, *shari'a* primarily governs personal status matters, although it has been identified as a source of law in every Egyptian constitution since 1971.⁴⁰ State institutions such as the Supreme Constitutional Court and the official religious establishment, al-Azhar, have played an active role in promoting a moderate interpretation of *shari'a* that is consistent with the needs of modern society, but these government institutions nonetheless face resistance and competition from non-state religious authorities that challenge the official Islamic discourse.⁴¹ Despite al-Azhar's efforts to assert a monopoly on the interpretation of Islam, non-state Islamist movements, including the ultraconservative Salafis associated with the *shari'a* courts of North Sinai, contest the moderate view of Islam as promulgated by Egypt's official religious establishment and advocate instead for a strict literalist interpretation of the divinely revealed sources of law, the Qur'an and Sunna.

http://www.nytimes.com/2013/01/14/world/middleeast/egyptian-court-grants-hosni-mubarak-a-new-trial.html?_r=0; David Kirkpatrick, *Citing Deadlock, Egypt's Leader Seizes New Power and Plans Mubarak Retrial*, N.Y. TIMES, Nov. 22, 2012, <http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html>; David Kirkpatrick, *Army Ousts Egypt's President; Morsi Is Taken Into Military Custody*, N.Y. TIMES, Jul. 3, 2013, <http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html>.

38. See Neil Walker, *The Idea of Constitutional Pluralism*, 65 MODERN L. REV. 317 (2002).

39. See Intisar A. Rabb, *Ijtihad*, in THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, <http://www.oxfordislamicstudies.com/article/opr/t236/e0354> (last visited Aug. 5, 2014) (noting that “the merely ‘probable’ status of the legal rulings and the myriad jurists performing *ijtihad* with varying levels of competence resulted in the existence of multiple and varying juristic opinions (*ikhtilaf*)”).

40. See Lombardi & Brown, *supra* note 36.

41. See Nathan J. Brown, *Egypt and Islamic Sharia: A Guide for the Perplexed*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (May 15, 2012), <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-shari-a-guide-for-perplexed/argb>.

The third branch of Egypt's pluralistic legal order, customary *'urf*, has been defined by Aharon Layish as "unwritten law shaped on the ground by the collective practice of the community, outside the control of the central authority."⁴² Layish contrasts *'urf*, characterized by a tendency toward decentralization and adaptation to particular geographical and cultural circumstances, with the more text-based and change-resistant tradition of *shari'a*, which in its most doctrinally conservative form is described as "eternal, immutable and imposed on society from above."⁴³

The coexistence of *shari'a* and *'urf* law in North Sinai is consistent with other cases of legal pluralism observed in tribal-based societies across the Middle East. Stewart has found that "many, perhaps all, systems of Bedouin customary law have to some degree been influenced by Islamic law."⁴⁴ Yet despite growing convergence and cross-pollination between the two non-state legal orders, they remain "two profoundly different legal systems" with very different orientations toward the possibility of doctrinal innovation and reform.⁴⁵

In the case of Egypt, the interactions and conflicts between the two non-state legal orders of *'urf* and *shari'a* have been shaped in the shadow of state law, and can be understood as a reflection of the government's historical inability to maintain a monopoly on legal authority. The 2011 uprising precipitated a further devolution of power to alternative normative systems that are increasingly challenging the state's claim to exclusive sovereignty. As repeated and controversial revisions of Egypt's constitutional framework alongside the growing politicization of the judiciary⁴⁶ have weakened the legitimacy of the official legal order, the influence of the two primary non-state normative systems — *'urf* and *shari'a* — has become ever more salient. In the context of a clear erosion of the legitimacy of Egypt's laws and justice system, the concept of legal pluralism offers a powerful framework for understanding patterns of instability, conflict and violence in the post-Mubarak era — a period during which the state's capacity to enforce order has faced unprecedented challenges from alternative systems of dispute resolution and informal security provision, as illustrated by a dramatic increase in the incidence of extra-judicial killings by civilian vigilantes,⁴⁷ community policing initiatives,⁴⁸ and the growing popularity of non-state courts applying customary *'urf* as well as *shari'a*.⁴⁹ All of these exercises of law by

42. See LAYISH, *supra* note 21.

43. *Id.* But see ZIBA MIR HOSSEINI, MARRIAGE ON TRIAL: A STUDY OF ISLAMIC FAMILY LAW 11 (1993) (arguing that "the Shari'a in its classical form allowed fluidity in the demarcation between the moral and the legal aspects of human conduct. It was open to interpretation and capable of accommodating individual needs and circumstances").

44. See FRANK STEWART, CUSTOMARY LAW IN NORTH AFRICA AND THE ARAB EAST (2006).

45. LAYISH, *supra* note 21.

46. See Nathan J. Brown, *Egypt's Judges in a Revolutionary Age*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Feb. 2012), http://carnegieendowment.org/files/egypt_judiciary.pdf.

47. See Mara Revkin & Yussef Auf, *Egypt's Fallen Police State Gives Way to Vigilante Justice*, THE ATLANTIC (Apr. 3, 2013, 10:26 AM), <http://www.theatlantic.com/international/archive/2013/04/egypts-fallen-police-state-gives-way-to-vigilante-justice/274616/>.

48. See Mara Revkin, *The Egyptian State Unravels*, FOREIGN AFFAIRS (June 27, 2013), <http://www.foreignaffairs.com/articles/139541/mara-revkin/the-egyptian-state-unravels>.

49. See Revkin, *supra* note 29.

non-state actors make clear that Egypt's multi-polar legal landscape cannot be adequately understood through the traditional paradigm of legal centralism and is better conceptualized through a legal pluralistic approach.⁵⁰

MODELING BEHAVIORAL VARIATION BETWEEN NON-STATE JUDICIARIES

The concept of legal pluralism described above offers an explanation for the existence and multiplicity of two distinct non-state legal orders in North Sinai, but it does not provide a framework for understanding variations in their behavior toward the Egyptian government. This paper seeks to build upon the existing literature on legal pluralism by integrating it with theories of inter-institutional interaction developed by political scientists working in the tradition of historical institutionalism.⁵¹ Going beyond empirical observations of the fact of legal and institutional pluralism, comparative political scientists. However, political scientists working in the tradition of historical institutionalism have classified several types of possible relationships between state and non-state institutions, of which the three most relevant to this case study are identified respectively as “complementary,” “competing,” and “substitutive.”⁵² *Complementary* non-state institutions perform a gap-filling function by addressing deficiencies in the state institutional framework, but without violating the formal rules of the system. *Substitutive* non-state institutions are employed by actors who seek outcomes compatible with formal rules and procedures, but tend to be found in environments where formal rules are not routinely enforced, such as weak or fragile states. Finally, *competing* non-state institutions aspire to create outcomes that are incompatible with rules established by the state.⁵³ These three categories of behavioral variation provide a framework for describing the ways in which the two non-state legal systems in North Sinai — ‘*urf* and *shari’a* — are pursuing opposite strategies of integration and autonomy in their relations with the Egyptian government and official justice system.

4. THE CASE OF NORTH SINAI: TRIADIC INTERACTION BETWEEN STATE, ‘URF, AND SHARI’A COURTS

Field research in North Sinai in August 2013 revealed a stark difference in the orientation of ‘*urf* and *shari’a* courts toward Egypt’s constitution and official justice system. ‘*Urf* judges emphasized the importance of tailoring their rulings to comply with state laws, favored increased coordination with state authorities, and have even lobbied for the creation of a special department within the Justice Ministry

50. See Griffiths, *supra* note 1, at 3.

51. See Helmke & Levitsky, *supra* note 32.

52. *Id.*

53. *Id.* at 728-29. Helmke and Levitsky observe that competing non-state institutions are often found in post-colonial systems in which foreign-inspired formal institutions are imposed on preexisting indigenous structures, a scenario that is particularly applicable to the dynamics of legal pluralism in Egypt, where a French-based civil law system was adopted in the nineteenth century.

that would provide training and financial support to *'urf* courts.⁵⁴ The *'urf* courts, therefore, seek to operate in cooperation with the state, working within the framework provided by the official justice system. In contrast, *shari'a* judges insisted that Islamic law must always prevail in cases of conflict between *shari'a* and Egyptian law. Whereas *'urf* judges see their role as supplementing, not subverting, the work of state courts, *shari'a* judges are motivated by what they describe as a religious obligation to replace an official justice system that is failing to uphold Islamic law. One judge, Sheikh Abu Faisal, explained that *shari'a* courts will occasionally take into account state laws in minor disputes such as those related to traffic violations, but he insisted that the divine law must always prevail when it comes into conflict with man-made legislation.⁵⁵ Sheikh Assad al-Beik expressed disappointment that *shari'a* courts, which practice a form of binding arbitration in which the enforcement of a judgment relies on prior consent of both parties, do not currently have the authority or enforcement capacity to implement the full spectrum of "*hudud*," including Islamic criminal punishments such as "cutting the hand or the neck or lashing the back or stoning . . . because we do not have a full Islamic state yet."⁵⁶

Data gathered by the author on recent cases heard by *shari'a* courts in North Sinai reveals that a majority of arbitrations are related to tort claims such as battery, divorce, and land disputes (see Table 2). Although *'urf* courts commonly hear serious murder cases and have even prosecuted human traffickers, *shari'a* courts have had difficulty litigating these more serious crimes due to the difficulty of forcing the defendant to submit to binding arbitration and ultimately enforcing their judgments. There is at least one notable exception of a *shari'a* court adjudicating a murder case in 2012, and there are indications that informal enforcement mechanisms, such as the social pressure exerted by popular committees, may be enabling *shari'a* courts to take on more serious cases previously considered beyond the scope of their authority.

According to *shari'a* court judge Sheikh Assad al-Beik, in cases where a court specifies a *hudud* punishment but does not have the power to enforce it, the court instead applies a more lenient *ta'zir*⁵⁷ punishment — usually a monetary fine — while apprising the defendant of the *hudud* punishment to which he would hypothetically be subject in a full Islamic state.⁵⁸ Although *'urf* courts, like *shari'a* courts, do not have their own law enforcement officials to implement rulings, *'urf* courts have benefited from cooperation with state authorities, the ability to mobilize coercive social pressure derived from tribal membership through the appointment of a guarantor

54. Interview with Sheikh Yehia al-Ghoul, *'Urf Judge*, in Arish, North Sinai, Egypt (Aug. 10, 2013).

55. Interview with Sheikh Hamdeen Abu Faisal, *supra* note 7.

56. See Mara Revkin, *Outsourcing Justice in the Sinai: Sharia Courts Thrive in the Shadow of a Weak State*, ATLANTIC COUNCIL (Mar. 12, 2013), <http://www.atlanticcouncil.org/blogs/egyptsource/out-sourcing-justice-in-the-sinai-sharia-courts-thrive-in-the-shadow-of-a-weak-state>.

57. As explained in note 15, *Ta'zir* includes all crimes for which the Qur'an or Sunna do not prescribe a penalty or for which there was doubt as to the persuasiveness of evidence presented for *hudud* crimes. *Ta'zir* punishments are subject to the discretionary power of a *shari'a* judge and seek to rehabilitate the culpable individual. See RUDOLPH PETERS, *CRIME AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY* 67 (2006).

58. Interview with Sheikh Assad al-Beik, *supra* note 7.

(*kafil*),⁵⁹ and a tradition of forcing recalcitrant defendants to appear in court by confiscating their property (often vehicles or camels) through a practice known as *wisaaga* (for examples, see cases U2 and U4 in Table 1).⁶⁰ The following section will describe the divergent behaviors of *urf* and *shari'a* courts with reference to the categories of inter-institutional interaction described in Section 3.

'URF COURTS: A HISTORY OF CO-OPTATION AND INTEGRATION

Of the different patterns of institutional interaction described in Section 3, *urf* courts exhibit the characteristics of complementary and substitutive institutions in their relations with the Egyptian state, while *shari'a* courts function as both competing and substitutive institutions. Like complementary institutions, *urf* courts have evolved out of the need to provide a system of order and justice in the absence of a strong central government capable of resolving disputes, but nonetheless conform to the formal rules of the state, however weak it may be. The outsourcing of sovereign law enforcement functions to non-state *urf* courts in North Sinai is consistent with the political science literature on the “gap-filling” function of informal institutions in fragile or transitioning states, where non-state judiciaries offer an alternative to government bureaucracies that are often unable to maintain security and deliver essential public services.⁶¹ At the same time, *urf* courts are also substitutive institutions, in that they consciously seek integration with the official justice system — for example, seeking government notarization of *urf* rulings to render them enforceable by government officials.⁶²

The development of *urf* law in Sinai and other tribal-based societies throughout the Middle East has been driven by the existential necessity of creating rules to regulate social conflict in the absence of any reliable central authority.⁶³ The approximately 20 major tribes of Sinai have long considered themselves an autonomous and self-governing society. As far back as the Assyrian period in Mesopotamia, the successive empires and governments that have laid territorial claims to the Sinai have granted the tribes a significant degree of autonomy to manage matters of international jurisdiction according to their own traditions and customary laws, because these bureaucracies have lacked the capacity and legitimacy needed to enforce compliance

59. Tribal judges appoint a guarantor (*kafil*) to each of the disputants to hold them accountable for complying with the court's judgment. Guarantors are usually prominent tribal elders, such that the reputational costs of refusing to implement a judgment create overwhelming incentives for compliance. Although *shari'a* courts have attempted to appropriate the *kafil* system to facilitate enforcement, their lack of strong affiliation with indigenous tribes — due to their closer alignment with ideologically rather than territorially defined Islamist movements — has made it difficult for them to leverage reputational pressure to facilitate enforcement of judgments. See KAMAL AL-HILW & SAID MUMTAZ DARWISH, *CUSTOMARY LAW IN NORTH SINAI* 104 (1989).

60. *Id.* at 111.

61. See Helmke & Levitsky, *supra* note 32, at 729 (discussing the development of non-state institutions as a response to gaps or deficiencies in the formal rules of a system).

62. Interview with Sheikh Hamdi Gouda, *Urf* Judge, in Arish, North Sinai, Egypt (Aug. 9, 2013).

63. See BAILEY, *supra* note 11 (emphasizing the importance of developing an indigenous set of rules to provide protection to compensate for the weakness of state law enforcement agencies).

with state laws, and on a practical level, have found it more efficient and cost-effective to outsource a range of state administrative functions to tribal leaders.⁶⁴ At least since the fourteenth century, successive occupying powers, including the Ottoman and Byzantine empires, have voluntarily delegated law enforcement and administrative functions — including tax collection and border control — to the region's Bedouin tribes as a form of indirect rule.⁶⁵

A similar pattern of outsourcing sovereign state functions to indigenous institutions has been documented in former European colonies in sub-Saharan Africa, where occupying powers deliberately cultivated legal pluralism to consolidate their political control through a strategy of indirect rule. In his study of Mozambique, Boaventura de Sousa Santos has argued that “colonial regimes allowed local law and traditional legal institutions to persist under their rule, as a means of ‘managing’ local society.”⁶⁶ Laurence Juma has similarly argued that colonial governance in Africa could not have been achieved “without the help of the indigenous communities.”⁶⁷

Similar to the manner in which European colonial powers historically delegated traditional state functions to non-state actors to facilitate indirect rule, the Egyptian government's strategy for governing the Sinai Peninsula has been characterized by carefully controlled grants of limited autonomy. With the rise of crime and Islamic extremism in the 1980s, the central government increasingly regarded the autonomy of the tribes as a national security risk and made efforts to co-opt their leaders into the ruling party's political machine, while at the same time revealing their distrust of the Bedouin by excluding them from serving in the police or military.⁶⁸ Mubarak created a government department for the administration of Bedouin affairs in Sinai in an effort to integrate the tribes into the administrative apparatus of the state and better monitor their activities, in addition to manipulating the appointment of tribal

64. See BAILEY, *supra* note 11, at 9-12 (noting that in the Sinai Peninsula, as in other Middle Eastern deserts, the landscape has historically proven “too daunting for the governments that claimed authority in them to penetrate sufficiently to make their rule effective”). Given the impossibility of controlling the territory by direct rule, the premodern and later modern governments seeking influence in Sinai engaged in a variety of patronage strategies to promote their own interests vis-à-vis friendly tribes — including direct payments to tribal leaders in exchange for the protection of caravans as well as political and military support. See also 4 MIDDLE EAST RECORD 461 (1968) (noting that during the Israeli occupation of Sinai, “Israeli policy was to give [the Bedouin] autonomy in tribal matters, in the expectation that a measure of co-operation would be forthcoming”).

65. BAILEY, *supra* note 11, at 10.

66. See De Sousa Santos, *supra* note 3, at 62-63 (arguing that, in Mozambique, “traditional authorities have been politicized or politically manipulated. This was also the case during the colonial period The colonial use of traditional law and structures of power was thus an integral part of the process of colonial domination obsessed with the reproduction of the super-exploitation of African labor”). See also Helen Maria Kyed, *The Politics of Legal Pluralism: State Policies on Legal pluralism and Their Local Dynamics in Mozambique*, 59 J. OF LEGAL PLURALISM & UNOFFICIAL L. 87 (2009) (noting that “state recognition of non-state legal orders is . . . not a technical, neutral process, but an inherently political one”).

67. See Laurence Juma, *Reconciling African Customary Law and Human Rights in Kenya: Making a Case for Institutional Reformation and Revitalization of Customary Adjudication Processes*, 14 ST. THOMAS L. REV. 459, 478 (2002).

68. See Pelham, *supra* note 24, at 2.

sheikhs. The department was overseen by the chief of police for Sinai, the chief of state security for Sinai, and the chief of military intelligence for Sinai.⁶⁹

According to an *'urf* judge and prominent elder in the Sawerka tribe, Sheikh Abdel Hady, the department began to cooperate closely with tribal courts and in 2006, the local state security directorate in Arish went so far as to set up a large tent in the government compound and invited *'urf* judges to hear cases there.⁷⁰ During this time, *'urf* judges began to receive salaries from government payrolls and cooperation between *'urf* courts and the official justice system became further institutionalized. Even leading judges in the official justice system have publicly acknowledged close cooperation between state security and *'urf* courts in rural areas of Egypt, including North Sinai, where police have strong ties to local families and tribes.⁷¹

'Urf judges interviewed in North Sinai for this case study noted that they deliberately tailor their rulings to comply with state law and negotiate with local officials to secure the certification and enforcement of certain judgments by the state bureaucracy. During negotiations over the rewriting of Egypt's 2013 constitution, they also lobbied for the inclusion of provisions that would legally recognize the status of *'urf* within the framework of the official justice system.⁷² This concern for compliance with state law is characteristic of complementary institutions, which perform a "gap-filling" function by addressing deficiencies in the state institutional framework, but without violating the formal rules of the system.

SHARI'A COURTS: SEEKING AUTONOMY FROM THE STATE

While *'urf* courts, functioning as complementary institutions, have historically pursued a strategy of integration with a state that simultaneously seeks to co-opt them and limit their autonomy, *shari'a* courts have pursued an opposite strategy aspiring to complete autonomy from the state. The theories of institutional interaction outlined above help to explain the significant behavioral variation between these two systems. Whereas *'urf* courts function as complementary and substitutive institutions, *shari'a* courts exhibit the characteristics of substitutive and competitive institutions.

Shari'a courts, like *'urf* courts, are substitutive institutions in that they are seeking outcomes that state institutions were designed to achieve, but have nonetheless failed to deliver. Although *shari'a* courts object to many of the secular-oriented policies and goals of the Egyptian state, they share the government's interest in combating crime and lawlessness in North Sinai. As *shari'a* court judge Sheikh Assad al-Beik explained, "The people are calling for *shari'a* judgment because the state courts are broken."⁷³ Another *shari'a* judge, Sheikh Hamdeen Abu Faisal, also de-

69. See Jayson Casper, *A Security Source Speaks on the Sinai*, ARAB-WEST REPORT (Dec. 16, 2013), <http://www.arabwestreport.info/year-2013/week-50/46-security-source-speaks-sinai>.

70. Interview with Sheikh Abdel Hady, *supra* note 27.

71. See Sara Arafa & Sami Magdey, *بدل القضاء في سيناء.. تحقيق- اللجان الشرعية*, AL-MASRAWY (May 27, 2013), <http://www.masrawy.com/News/reports/2013/may/27/5627339.aspx>.

72. See Abdel-Sayed & el-Shazli, *supra* note 13.

73. Interview with Sheikh Assad al-Beik, *supra* note 7.

scribed the work of the *shari'a* courts as complementing and not necessarily clashing with the official justice system. According to Sheikh Abu Faisal, the *shari'a* courts “are not on a collision course with the authorities but are on a path parallel with it, by absorbing people and reducing their need to resort to the police and state judicial authorities which cause delays in litigation and exacerbate problems.”⁷⁴ This relatively non-confrontational statement contradicts the overtly hostile attitude toward the state that is more commonly expressed by *shari'a* judges in North Sinai and suggests that the relationship between *shari'a* courts and the Egyptian state is more complex than it may appear. Despite their pursuit of an ultraconservative Islamic project that is at odds with the formal rules of the state legal system, *shari'a* courts nonetheless share common goals with the state in curbing crime and lawlessness. The government’s failure to achieve these goals through its own institutions has encouraged the devolution of sovereign state adjudicative and law enforcement functions to *shari'a* courts that function as a substitute for dysfunctional state institutions.

In addition to their role as substitutive institutions, and unlike the *urf* courts, *shari'a* courts also exhibit the characteristics of competing institutions, in that they strongly reject the authority of the state and seek complete autonomy from it. The antagonistic relationship of *shari'a* courts toward state authorities and their desire to impose Islamic legal norms that are at odds with the rules of the official justice system is typical of competing non-state institutions, which Helmke and Levitsky define as seeking outcomes that are incompatible with the objectives of the government. For example, Sheikh Ahmed al-Beik — head of the House of *Shari'a* Judgment in the North Sinai city of Arish — views the mission of the *shari'a* courts as promoting an ultimate goal of “a pure Islamic state” based on a reading of the Qur’an that is significantly more literal and conservative than that envisioned by the more moderate Islamist political program of the Muslim Brotherhood, which al-Beik criticized for its tendency toward moderation and compromise with secular forces.⁷⁵ The *shari'a* courts function as competing institutions to the extent that they are promoting a vision of Islamic statehood that diverges sharply from the relatively modest Islamic-legal provisions contained in the Egyptian constitution. Since 1980, Egypt’s constitutions (including the current draft) have identified “the principles of Islamic *shari'a*” as “the main source of legislation,” with Egypt’s Supreme Constitutional Court interpreting this language to provide at least some protections for the rights of women and religious minorities.⁷⁶

While *shari'a* courts have never accepted the legal or religious legitimacy of the Egyptian government, even under the rule of an Islamist president, Mohamed Morsi, whom they regarded as too moderate, *shari'a* judges have taken an increasingly radical stand against the state since the July 2013 military coup. In the months following Morsi’s removal, some Islamists sought to capitalize on the dubious legality of the military’s intervention to portray the Muslim Brotherhood as the defender

74. See Arafa & Magdey, *supra* note 71.

75. Telephone Interview with Sheikh Assad al-Beik, *Shari'a* Judge, House of Sharia Judgment (Jan. 6, 2013).

76. See Lombardi & Brown, *supra* note 36, at 379.

of democracy and rule of law. This narrative, emphasizing the illegal nature of the military's takeover, has resonated powerfully in Sinai, where *shari'a* judges explicitly promote Islamic law as the only remedy for a broken justice system that cannot be trusted to investigate or prosecute state-perpetrated crimes.⁷⁷ After the army moved to forcefully disperse pro-Morsi sit-ins in Cairo on August 14, 2013, killing hundreds of Islamists, including sons and daughters of leading Brotherhood officials,⁷⁸ a *shari'a* judge, Sheikh Hamdeen Abu Faisal, was so disturbed by the interim government's attitude of impunity that he conducted a symbolic trial to hold the perpetrators accountable under Islamic law. The verdict, published on his Facebook page, sentenced General al-Sisi, the Interior Minister and other "infidels" to public execution.⁷⁹

When Egyptian newspapers described the statement as an illegal "fatwa" condoning the assassination of public officials, Abu Faisal was quick to accuse the media of distorting his views, insisting that his symbolic ruling was purely rhetorical.⁸⁰ Until the 2013 military coup, Salafi leaders in North Sinai had been careful to renounce violence, but following the launch of a major counter-terrorism campaign targeting Islamists, *shari'a* judges conspicuously declined to condemn acts of terrorism against government targets, and are increasingly inclined to view violence as a legitimate strategy to avenge what they regard as criminal state action.⁸¹ Sheikh Abu Faisal acknowledged that rising anger among Islamists in Sinai is contributing to a retaliatory mood. "There is a long line of people seeking revenge," he said in interview.⁸² Meanwhile, *shari'a* judges cited the release of Hosni Mubarak from prison on a procedural technicality as confirmation of their deep-seated belief that the current military-backed government, which shares institutional interests with remnants of the former regime, cannot be trusted to enforce accountability for the crimes of public officials. As Islamist opposition to the perceived injustices of the state legal system grows, *shari'a* courts are increasingly displaying the characteristics of competing institutions in their efforts to establish an autonomous Islamic legal system.

SHARI'A COURTS CHALLENGE THE LEGITIMACY OF THE STATE RELIGIOUS ESTABLISHMENT, AL-AZHAR

Consistent with the *shari'a* courts' rejection of the Egyptian government's authority and legal legitimacy, they also challenge the religious legitimacy of the official Islamic establishment, al-Azhar, which has historically cooperated with the state

77. See Revkin, *supra* note 6.

78. See El Sayed Gamal El Din, *Son of Brotherhood Supreme Guide Dies in Cairo Clashes*, AHRAM ONLINE (Aug. 17, 2013), <http://english.ahram.org.eg/NewsContent/1/64/79278/Egypt/Politics-/Son-of-Brotherhood-Supreme-Guide-dies-in-Cairo-cla.aspx>.

79. Facebook page of Sheikh Hamdeen Abu Faisal, FACEBOOK <https://www.facebook.com/abofesalfaisal?fref=ts> (last visited Aug. 5, 2013).

80. Amal Saleh, "مفاجأة.. فتوى رئيس المحاكم الشرعية بالشيخ زويد تشجع الاغتيالات وتهدر دم السيسي ومحمد ابراهيم وهيكل"، *AL-YOUM AL-SABA'A* (Sept. 10, 2013), <http://www1.youm7.com/News.asp?NewsID=1243588&SecID=12&IssueID=0>.

81. See Revkin, *supra* note 6.

82. *Id.*

and shares the state's interest in promoting a moderate interpretation of Islam. When asked if the *shari'a* courts of North Sinai look to al-Azhar for guidance, a *shari'a* judge in Arish, Sheikh Assad al-Beik, said dismissively, "Azhar has nothing to do with *shari'a*. It is an agent of the state."⁸³

Despite al-Azhar's recent efforts to secure greater institutional and financial independence from the Egyptian government, the institution has never — in its modern history — aspired to the level of autonomy that the *shari'a* courts of Sinai have attempted to claim for themselves.⁸⁴ Of greater importance to al-Azhar than institutional independence is recognition of its role as Egypt's supreme moral and religious authority — a status it succeeded in codifying in the draft 2013 constitution.⁸⁵ Al-Azhar has consistently attempted to assert a monopoly on religious interpretive authority in Egypt. For example, in 2007, al-Azhar declared that Dar al-Iftaa — a scholarly institution established by the Egyptian government in the late nineteenth century that is responsible for issuing official religious edicts known as *fataawa*⁸⁶ — was the only organization legally authorized to issue such edicts in response to concerns that non-state Islamist movements with radical views were threatening the interpretive exclusivity of the official Islamic establishment. As Mahmoud Ashour a former al-Azhar official, explained the motivations underlying the 2007 declaration, "we had an enormous amount of strange fatwas that should have never been said and this law is to restrict those types of fatwas [sic]."⁸⁷ Autonomous Islamic lawmaking by non-state *shari'a* courts in North Sinai — exemplified by Sheikh Abu Faisal's symbolic trial of General al-Sisi⁸⁸ — is precisely the type of pluralism that al-Azhar has sought to control.

As the *shari'a* courts of North Sinai became increasingly vocal in their rejection of the Egyptian state and its official Islamic establishment in the aftermath of the 2011 uprising, scholars at al-Azhar took note of the rebellious and occasionally radical rhetoric and publicly denounced the non-state Islamic judiciaries for their apparent efforts to circumvent and ultimately provide a substitute for the official

83. Interview with Sheikh Assad al-Beik, *supra* note 7.

84. See Nathan J. Brown, *Post-Revolutionary Al-Azhar*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (2011), http://carnegieendowment.org/files/al_azhar.pdf.

85. See Nathan J. Brown & Michele Dunne, *Egypt's Draft Constitution Rewards the Military and Judiciary*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Dec. 4, 2013), <http://carnegieendowment.org/2013/12/04/egypt-s-draft-constitution-rewards-military-and-judiciary/gvc8>.

86. See NATHAN J. BROWN & SAID A. ARIOMAND, *THE RULE OF LAW, ISLAM, AND CONSTITUTIONAL POLITICS IN EGYPT AND IRAN* 238 (2013). See also HUSSEIN ALI AGRAMA, *QUESTIONING SECULARISM: ISLAM, SOVEREIGNTY, AND THE RULE OF LAW IN MODERN EGYPT* 249 (2012) (noting that although Dar al-Iftaa is institutionally separate from al-Azhar (the former is overseen by the Ministry of Justice and the latter is overseen by the Ministry of Religious Endowments), in practice their functions "very often overlap."). Dar al-Iftaa, which is headed by the state Mufti, is responsible for issuing fatwas regarding Egyptian legislation that implicates *shari'a*, whereas al-Azhar, headed by the presidentially appointed Grand Sheikh, issues fatwas with broader international influence — through its own council of Azhar scholars — who clarify the official Azhari position on more general questions of *shari'a*, often with reference to the views of other centers of Islamic learning such as Saudi Arabia.

87. See Yasmine Saleh, *Al Azhar: Only Dar Al Ifta Can Issue Fatwas*, DAILY NEWS EGYPT (May 1, 2007), <http://www.masress.com/en/dailynews/101613>.

88. See Revkin, *supra* note 6.

justice system. As Sheikh Ashraf Saad al-Azhari, an al-Azhar scholar, commented disapprovingly on the autonomous aspirations of *shari'a* courts in an interview with an Egyptian newspaper, “At no time has al-Azhar ever presented itself as an alternative to the [state] judiciary.” Sheikh al-Azhari insisted that non-state Islamic courts should defer to al-Azhar’s authoritative interpretations of *shari'a*, and warned that “deviation from our [interpretive] approach will lead to religious chaos such as that which we are now seeing [in Sinai].”⁸⁹

There is concern within al-Azhar and the state judiciary that the self-taught *shari'a* judges of North Sinai are extremists promoting a warped and inauthentic version of *shari'a* to advance their Islamizing social agenda. Sheikh al-Azhari said that the *shari'a* judges lack the necessary training and “precise techniques” required to properly interpret the Qur’an and Sunna in ways compatible with the needs of contemporary Egyptian society.⁹⁰ Since the 1920s, Azhari imams have publicly endorsed the interpretive technique of *ijtihad*, which involves the use of independent reasoning to resolve contemporary legal questions for which the Qur’an, Sunna, and other authorities do not provide a clear answer.⁹¹

Ijtihad is viewed as an essential tool for modernist Islamic jurisprudence, facilitating the adaptation of 1,400 year-old texts to contemporary conditions that could not have been anticipated during the Prophet’s lifetime. But Sheikh al-Azhari expressed concern that the *shari'a* judges of Sinai lack the sophisticated training and education required for this type of creative interpretation, and instead draw their verdicts directly and literally from the canonical texts of Islam without questioning their continued relevance and applicability in modern Egypt. “Sharia courts adopt a direct literal interpretation of the divine texts of the Quran and Sunna without the proper interpretive techniques and without knowledge,” Sheikh al-Azhari said.⁹² None of the *shari'a* judges in North Sinai possess formal legal training and both of those interviewed for this case study had careers in agricultural engineering before undertaking independent study of Islamic law.⁹³

Different *shari'a* judges interviewed in North Sinai expressed contradictory views on the permissibility of *ijtihad*. Sheikh Assad al-Beik emphasized the importance of adapting Islamic law to contemporary circumstances. “There are no car accidents in the Qur’an,” he said. Al-Beik estimated that he uses *ijtihad* in 80 percent of his decisions, because the technique allows for greater flexibility than a literalist approach and allows *shari'a* courts to deal with contemporary problems that would otherwise be beyond their scope.⁹⁴ But Sheikh Hamdeen Abu Faisal, who also hears cases at the House of *Shari'a* Judgment and at two other courts in Sheikh Zuweid and Rafah, firmly rejected the possibility of adapting Islamic law to accommodate

89. See Arafa & Magdey, *supra* note 71.

90. *Id.*

91. See MUHAMMAD Q. ZAMAN, MODERN ISLAMIC THOUGHT IN A RADICAL AGE: RELIGIOUS AUTHORITY AND INTERNAL CRITICISM 91 (2012).

92. See Arafa & Magdey, *supra* note 71.

93. See Revkin, *supra* note 29.

94. Interview with Sheikh Assad al-Beik, *supra* note 7.

modern developments and emphasized that the core values of Muslim society have not changed since the time of the Prophet. “Man is still man and woman is still woman. The only difference is new technology: Now, we can use airplanes instead of camels. But our fundamental values and principles have not changed,” he said.⁹⁵ In a separate interview with an Egyptian newspaper, Sheikh Abu Faisal categorically rejected the legitimacy of *ijtihad* as an interpretive technique, saying, “The reference for our work is exclusively to the Quran and Sunnah as understood by our ancestors in the first three centuries of Islam.”⁹⁶ The *shari‘a* courts’ rejection of the official religious establishment, al-Azhar, and the moderate interpretive approach it promotes, is an important dimension of the overall antagonistic relationship between non-state Islamic judiciaries in Sinai and the Egyptian government.

ANTAGONISM AND RIVALRY BETWEEN *SHARI‘A* AND ‘*URF* COURTS

Not only do *shari‘a* courts reject the authority of the official justice system, but over time they have increasingly challenged the religious and moral legitimacy of ‘*urf* courts by emphasizing their un-Islamic and financially exploitive practices. Until the institutionalization of *shari‘a* courts, ‘*urf* judges had maintained a lucrative monopoly on informal dispute resolution in North Sinai. ‘*Urf* judges typically require litigants to pay exorbitant fees known as *rozk*, which over the course of a single case can add up to L.E. 50,000 (approximately U.S. \$ 7,156).⁹⁷ *Shari‘a* judges, in comparison, do not charge fees and pride themselves on the voluntary nature of their services, which they regard as essential to the neutrality and integrity of the adjudicative process. Sheikh Assad al-Beik emphasized that the House of Sharia Judgment is staffed entirely by volunteers and receives no financial contributions. Al-Beik harshly contrasted the voluntary nature of his work with the costly services of ‘*urf* judges and suggested that their excessive *rozk* fees are not only inconsistent with Islamic values, but also evidence of the ‘*urf* judges’ susceptibility to bribery and corruption. Sheikh Abu Faisal contended, “As long as they take money they can be influenced by bribes.”⁹⁸

The rivalry and antagonism between ‘*urf* and *shari‘a* courts in North Sinai can be attributed in large part to deep philosophical and interpretive differences between the two legal traditions. Although ‘*urf* and *shari‘a* legal systems have coexisted side-by-side in Egypt and the greater Islamic world for centuries, their relationship has been characterized by tension and periods of conflict. Historically, Islamic jurists resisted recognizing ‘*urf* as a formal source of law because of its malleability under pressure from changing societal conditions.⁹⁹ Joseph Shacht has attributed resistance to the recognition of ‘*urf* law to the notion that “the classical theory of Islamic law

95. Interview with Sheikh Hamdeen Abu Faisal, *supra* note 7.

96. See Arafa & Magdey, *supra* note 71.

97. Heba Fahmy, *Sharia Tribunals on the Rise in North Sinai*, EGYPT INDEPENDENT (Nov. 17, 2012), <http://www.egyptindependent.com/news/sharia-tribunals-rise-north-sinai>.

98. Interview with Sheikh Assad al-Beik, *supra* note 7.

99. See WAEL HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* 40 (2005).

was concerned not with its historical development but with the systematic foundation of the law.”¹⁰⁰ Over time, Islamic jurists gradually began to incorporate *‘urf* into their reasoning based on the doctrines of *ijma’* (consensus) and *darura* (necessity), and by the 19th century, *‘urf* was finally recognized as a formal source of law. As contact and dialogue between the two legal systems intensified, *‘urf* and *shari’a* influenced one another in a mutually constitutive relationship, resulting in the gradual Islamization of customary law. As Aharon Layish has described this growing integration in the context of the Negev Bedouin community, “Interaction between the *shari’a* and customary legal systems has reached a new stage in which tribal law is gradually yielding ground on its own territory to Islamic law.”¹⁰¹

Despite these movements toward convergence, integration between the two systems has never been complete, and the *‘urf* and *shari’a* judiciaries of North Sinai clash over their often irreconcilable orientations toward Islamic law. While the Bedouin of North Sinai generally identify as Muslims,¹⁰² they draw a clear distinction between *‘urf* law and *shari’a*. *‘Urf* judges interviewed in North Sinai emphasized the adaptability of customary law to changing social and technological conditions that were not anticipated in the divinely revealed sources of Islamic law. As one *‘urf* judge, Sheikh Yehia al-Ghoul, explained the benefits of *‘urf* over *shari’a*, “We deal with a lot of credit card fraud and disputes, but there were no credit cards in the Qur’an.”¹⁰³ Al-Ghoul’s critique of the rigidity of Islamic law reflects an underlying tension stemming from deep structural and historical differences in the development of *‘urf* and *shari’a*. *‘Urf* judges interviewed for this case study routinely attempted to discredit *shari’a* judges by describing them as uneducated Islamic “fundamentalists,” while *shari’a* judges question the religious legitimacy of their *‘urf* counterparts by accusing them of issuing “un-Islamic” judgments.¹⁰⁴

The adaptability of customary law to changing societal conditions has rendered it vulnerable to criticism by an Islamic legal order that, in its most conservative form, emphasizes the immutability of divinely revealed law. Non-state Islamic courts in North Sinai have appealed to supporters by challenging the Islamic legitimacy of *‘urf* courts. Although *‘urf* judges interviewed in North Sinai insisted that their judgments are entirely consistent with state as well as Islamic law, *shari’a* judges criticize the *‘urf* courts for their incomplete and inauthentic application of *shari’a*.¹⁰⁵

100. See JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 62 (1966).

101. See Layish, *supra* note 19, at 15.

102. See Ehud Yaari, *Sinai: A New Front*, THE WASH. INST. FOR NEAR E. POL’Y 5 (Jan. 2012), <http://www.washingtoninstitute.org/uploads/Documents/pubs/PoolicyNote09.pdf>. See also NAUM SHUKAIR, HISTORY OF THE SINAI 352 (1916).

103. Interview with Sheikh Yehia al-Ghoul, (Aug. 9, 2013), *supra* note 54.

104. Interview with Sheikh Abdel Hady, *supra* note 27 and Sheikh Hamdi Gouda, (Aug. 11, 2013), *supra* note 62 (accusing “fundamentalist” *shari’a* judges of capitalizing on the political discontent of the Bedouin to promote Islamization). Interview with Sheikh Hamdeen Abu Faisal, (Aug. 10, 2013), *supra* note 7 (accusing *‘urf* judges of issuing “un-Islamic” rulings that make superficial references to *Shari’a* but distort the original meaning of the Qur’an and Sunna).

105. Interview with Sheikh Yehia al-Ghoul, (Aug. 9, 2013), *supra* note 54. Interview with Sheikh Hamdi Gouda, (Aug. 9, 2013), *supra* note 62. Interview with Sheikh Abdel Hady, *supra* note 27.

Furthermore, growing cooperation between *'urf* courts and an official justice system that is criticized by Islamists for its secularity, corruption, and brutality has exacerbated tensions between *'urf* and *shari'a* courts. Antagonism between the two non-state judiciaries has intensified since the July 2013 military coup, after which several *'urf* judges publicly endorsed a violent counter-terrorism campaign targeting Islamists in Sinai. In yet another indication of cooperation between the tribal elite and state security and military establishments, one *'urf* judge interviewed in Arish had his cell phone ring tone programmed to play the official anthem of the Egyptian military.¹⁰⁶

The close and symbiotic relationship between the *'urf* and state systems is a byproduct of deliberate efforts by the Mubarak regime to co-opt tribal elites, including sheikhs and *'urf* judges, as a strategy of indirect rule, as well as a simultaneous effort by *'urf* judges to improve integration with the official justice as a means of enabling the enforcement of *'urf* judgments by state authorities.¹⁰⁷ Throughout Egypt's modern history, the government has voluntarily delegated traditional state law enforcement functions to the *'urf* system as a strategy of indirect rule,¹⁰⁸ encouraging *'urf* courts to perform the gap-filling function associated with the category of complementary non-state institutions described in Part 3. The increasing integration of state and *'urf* courts has provoked resistance from the *shari'a* courts, which increasingly frame themselves as an autonomous legal order occupying a moral and religious high ground over state and tribal systems that they regard as corrupt and un-Islamic.

5. HISTORICAL ORIGINS OF ISLAMIZATION IN SINAI DEVELOPMENT POLICIES

The preceding discussion has outlined a theoretical framework for explaining the triadic interactions between the three distinct legal orders — *'urf*, *shari'a*, and state law — that coexist, albeit uneasily, in North Sinai's pluralistic legal environment. As noted previously, the historically symbiotic relationship between *'urf* and state courts demonstrates that non-state judiciaries are not inherently subversive of governments, yet the more recently institutionalized *shari'a* courts have fiercely autonomous aspirations and cite as their long-term objective the replacement of the official justice system with a fully realized Islamic state. Proceeding from descriptive observations of these two opposite orientations toward the state, the following analysis will propose a historical explanation for the rapid institutionalization of *shari'a* courts following the 2011 uprising and their rejection of the official legal order.

This paper argues that the relatively recent institutionalization of non-state *shari'a* courts observed in North Sinai since 2011 has deep historical roots in

106. Interview with Sheikh Yehia al-Ghoul, (Aug. 9, 2013), *supra* note 54.

107. See Lavie & Young, *supra* note 25, at 36 (discussing how the Mubarak government “dramatically increased the number of sheikhly offices” in order to render these sheikhs “clients of the administration.”).

108. See BAILEY, *supra* note 11, at 11 (discussing the history of state institutions delegating law enforcement and administrative functions to the tribes of Sinai, dating back to the Ottoman Empire's practice of outsourcing tax collection and border control to Bedouins).

Egyptian government policies that began in the 1980s. I argue that the expansion of non-state Islamic judiciaries in North Sinai since the 2011 uprising can be explained to a large extent by two historical trends: (1) the Islamizing effects of state-sponsored development and labor migration policies on Bedouin society in North Sinai; and (2) growing disillusionment with state and tribal judiciaries viewed as complicit in the disenfranchisement of the Bedouin and the expropriation of their lands.

ISLAMIZING EFFECTS OF STATE-SPONSORED DEVELOPMENT

Following Israel's withdrawal from the Sinai Peninsula in 1982, the Egyptian government launched a massive development campaign to capitalize on the region's natural resources and strategic access to the Suez Canal, funded heavily by the U.S. Agency for International Development (USAID).¹⁰⁹ The development strategy, which required the displacement of thousands of Bedouin from their lands and resulted in significant demographic changes associated with labor migration, transformed the structure of tribal society in ways conducive to the adoption of conservative Islamist ideology.

By the 1980s, the Egyptian government had launched a major agricultural policy and "land reclamation" program to convert 214,000 acres of desert into agricultural land. The plan also proposed increasing the population of Sinai from a mere 172,000 primarily Bedouin inhabitants to nearly one million by encouraging labor migration from overpopulated areas in the Nile Valley.¹¹⁰ At a time when Hosni Mubarak's regime was striving to liberalize the national economy and attract foreign investment, the Sinai Peninsula was described glowingly in official reports as a commercial utopia and potential "Red Sea Riviera" with the potential to transform Egypt into a global economic power and major destination for international tourism.¹¹¹

Despite these ambitious objectives, the development plan was designed with little concern for the rights and livelihood of the indigenous Bedouin, who were not only expelled from tribal lands to accommodate construction and tourism projects, but were also systematically excluded from employment opportunities in these industries.¹¹² A USAID feasibility study conducted on behalf of the Egyptian government in 1985 downplayed the detrimental effects of development on the local population, claiming that "in recent years, the Bedouin of Sinai have shown great flexibility in adapting to opportunities for work made available to them as a result of large-scale investment in petroleum and agriculture as well as by construction and transportation activities." The report also claimed that the Bedouin "are eager to be full partners in any further development of the Peninsula."¹¹³ But in reality, the jobs created by these

109. See generally Ministry of Planning & International Cooperation, *The Prospects and Challenges of Sinai's Development*, 11 CENTRE FOR PROJECT EVALUATION AND MACROECONOMIC ANALYSIS (2012), [http://kenanaonline.com/files/0074/74933/483\[1\].pdf](http://kenanaonline.com/files/0074/74933/483[1].pdf).

110. See USAID, *Sinai Development Study, Phase I: Final Report*, 1 A STRATEGY FOR THE SETTLEMENT OF SINAI 15 (Mar. 1985), http://pdf.usaid.gov/pdf_docs/Pnaas536.pdf.

111. See Pelham, *supra* note 24, at 2.

112. *Id.*

113. See USAID, *supra* note 110.

industries were given almost exclusively to labor migrants from other areas of Egypt, and from the perspective of the Bedouin, the development projects quickly came to be viewed as instruments of political and economic marginalization.

Firsthand accounts from Bedouin who were displaced starting in the 1980s convey bitter resentment toward development projects that pushed Bedouin tribes away from their prime territory along the southern coast and toward the barren interior of the peninsula.¹¹⁴ Disruptive development projects in North Sinai, including the construction of an industrial zone, the opening of agribusinesses and the laying of the gas pipeline to Israel and Jordan, were perceived as a mechanism for sequestering Bedouin land without redistributing any of the profits.¹¹⁵ Increasingly, the Egyptian government was viewed as a parasitic and almost neo-colonial occupier that was pursuing exclusionary macroeconomic growth at the expense of the rights and interests of the local population.

LABOR MIGRATION AND SEDENTARIZATION

Over time, the economic and territorial disenfranchisement of the Bedouin gave rise to strong anti-government sentiment and a fertile environment for the adoption of conservative Islamist ideology. Two particularly destabilizing aspects of the development campaign, sedentarization and labor migration into Sinai from areas of the Nile Delta, created conditions conducive to Islamization. Efforts to increase Sinai's population ten-fold by incentivizing labor migration resulted in the introduction of a non-native population that included religious conservative elements. Among the hundreds of thousands of labor migrants were Egyptians educated at private Islamic schools and public universities known for the Islamist orientation of their faculty, including Zagazig University.¹¹⁶

An influx of Egyptian expatriates previously working abroad may have provided another channel for Islamization in the Sinai. A USAID report on the resettlement program identified "current expatriate Egyptians" as "a prime source" of potential immigrants.¹¹⁷ During the 1980s, many skilled Egyptian workers were drawn to the Gulf countries, where the oil boom had led to a spike in labor demand. Scholars have noted that many of these expatriates working in Saudi Arabia and other Gulf countries assimilated more conservative religious views during their time abroad, and the eventual return of these expatriate workers to their home countries is believed to have promoted Islamization in Egypt and other labor-exporting countries.¹¹⁸

In the context of the Islamizing demographic changes associated with labor migration, the Egyptian government's efforts to sedentarize the Bedouin in order to facilitate large-scale land reclamation of tribal lands had similarly disruptive effects on the local population. Resettlement plans designed with the help of USAID

114. See Lavie & Young, *supra* note 25, at 34-44.

115. See Pelham, *supra* note 24, at 2.

116. See Yaari, *supra* note 102.

117. See USAID, *supra* note 110, at 67.

118. See GILLES KEPEL, *JIHAD: THE TRAIL OF POLITICAL ISLAM* 70-71 (2006).

proposed the creation of approximately twelve new towns and an intrusive system of roads that did not conform to traditional zones of tribal authority.¹¹⁹ Scholars of tribal societies in the Middle East have long observed a correlation between the processes of sedentarization and Islamization in previously nomadic or pastoral societies.¹²⁰ Increasingly, scholars have suggested that there is a direct causal link between the two phenomena. In a case study of the impact of sedentarization on a Somali community, Elizabeth Waithanji argues that sedentarization facilitates the adoption of Islamic ideology because it brings formerly nomadic groups that previously lacked ties to institutionalized religion into contact with mosques and formal religious practices that take root more easily in sedentarized communities.¹²¹ Aharon Layish has suggested that the breakdown of tribal hierarchies and solidarity networks that occurs when nomadic groups are broken up into family units and settled in individual homes leads them to look to alternative sources of moral and spiritual authority outside of the tribe.¹²² In Sinai, sedentarization appears to have corresponded with a decline in the influence of tribal elites in the face of competition from religious leaders and mosques.

FUNDAMENTALIST BACKLASH AGAINST INTRUSION OF WESTERN TOURISM

Yet another impetus for Islamization starting in the 1980s was the intrusion of a Western-oriented tourism industry that threatened the cultural and moral values of Bedouin society. A growing number of militant Islamist groups operating in Sinai began to make moral and religious claims justifying violent attacks on Western hotels throughout the 1990s. As one spokesman for *al-Gama'a al-Islamiyya* explained the militant group's motivations, "Tourism must be hit because it is corrupt" and it "brings alien customs and morals which offend Islam, especially the attire of some women."¹²³ During this period, conservative clerics affiliated with *al-Gama'a* began to distribute audiocassettes in Sinai and other areas of Egypt condemning tourism as "*haram* [forbidden] ... and a flagrant and indisputable sacrilege," among other anti-Western messages.¹²⁴ Although most Bedouin have historically identified only loosely as Muslims¹²⁵, the dissemination of this conservative Islamic discourse at a

119. See USAID, *supra* note 110, at 80.

120. In a study of the settling of the population of agricultural lands in 15th century Punjab (now Pakistan), Karin De Vries notes that the sedentarization of the previously nomadic pastoral population "went hand in hand with Islamization." See Karin De Vries, *Pirs and Pastoralists: Along the Agrarian Frontier of Multan, 1886-1947*, 24 INT'L INST. FOR ASIAN STUD. NEWSL. (2000), <http://www.iias.nl/iiasn/24/theme/24T3.html>. Ronnie Ellenblum has similarly argued in a case study of the Palestinian territories that "the resettlement of the deserted regions by the formerly nomadic population accelerate the process of Islamization." RONNIE ELLENBLUM, *FRANKISH RURAL SETTLEMENT IN THE LATIN KINGDOM OF JERUSALEM* 256 (2003).

121. See ELIZABETH M. WAI THANJI, *GENDERED IMPACTS OF SEDENTARIZATION OF NOMADS ON THE SOMALI COMMUNITY IN MANDERA CENTRAL DIVISION OF NORTHEASTERN KENYA* 9 (2008).

122. See Layish, *supra* note 18, at 449, 454.

123. See 16 MIDDLE EAST CONTEMPORARY SURVEY 370 (Ami Ayalon ed.).

124. *Id.* at 371.

125. See LAYISH, *supra* note 21, at 10 ("Bedouin in various parts of the Muslim world identify themselves

time of social instability and change in Sinai society prompted many to assimilate a more conservative understanding of Islam. Smadar Lavie and William Young have described this religious backlash to the intrusion of the tourism industry as an “Islamic revival.”¹²⁶

Although Bedouin were almost entirely excluded from employment in large international hotels, which instead favored educated expatriates or urbanite Egyptians from the Nile Delta, Bedouin did seek to profit off of the growing tourism industry by setting up makeshift beachside camps offering a “Bedouin hospitality” experience.¹²⁷ With the increasing institutionalization of religion corresponding to the sedentarization process described above, many Bedouin influenced by ideas about Islamic morality came to reject their fellow tribesmen’s participation in the informal tourism industry, particularly in light of a steady influx of Israeli tourists. Smadar Lavie and William Young have argued that Islamization in Sinai was fueled by moral outrage with the “sin” of selling Bedouin traditions to tourists. Lavie and Young write:

“Many people who used to pray only on major holidays started praying punctually at the prescribed five times a day. They tuned the antennas of their transistor radios to Egyptian and later Saudi radio preachers . . . People constantly juxtaposed their values as pious Muslims to the moral chaos of their heretical occupiers.”¹²⁸

Throughout the 1980s and 1990s, growing resentment of foreigners viewed as “heretical” interlopers led many Bedouin to look to Islam as a source of moral authority and stability in an atmosphere of alienating social change.¹²⁹

STATE-SPONSORED RE-ISLAMIZATION AFTER ISRAEL’S WITHDRAWAL FROM SINAI

In addition to the destabilizing effects of labor migration and sedentarization, another factor contributing to the Islamization of the Bedouin community was a deliberate campaign by the Egyptian government to renationalize and reintegrate the Sinai Peninsula into the Egyptian “mainland” following the Israeli withdrawal in 1982. A component of the renationalization strategy was re-Islamization, in

as Muslims regardless of the state of their knowledge and practice of Islamic doctrine, worship, and ethical and legal norms.”).

126. See Lavie & Young, *supra* note 25, at 40.

127. See JEANNIE SOWERS, ENVIRONMENTAL POLITICS IN EGYPT: ACTIVISTS, EXPERTS AND THE STATE 110 (2013) (“While elite business groups bought up land, local Bedouin communities were systematically excluded from the boom in coastal tourism. Beginning under the Israeli occupation . . . Bedouin established small camps to service tourists, typically consisting of small huts. . .”). See also REBECCA L. STEIN, ITINERARIES IN CONFLICT: ISRAELIS, PALESTINIANS, AND THE POLITICAL LIVES OF TOURISM 36 (2008) (“[During the Israeli occupation of the Sinai Peninsula] [t]ens of thousands enjoyed its affordable beachfront accommodations, mythic landscapes, and celebrated ‘Bedouin hospitality,’ a trope borrowed from the Orientalist discourses of the prestate period.”).

128. See SMADAR LAVIE, THE POETICS OF MILITARY OCCUPATION: MZEINA ALLEGORIES OF BEDOUIN IDENTITY UNDER ISRAELI AND EGYPTIAN RULE 72 (1990).

129. *Id.*

conformity with the carefully regulated and moderate version of official Islam promoted by al-Azhar. The Egyptian government's strategy for reintegrating the Sinai was both economic and ideological. In addition to initiating large-scale development projects, the government allocated funding for Islamic education under the supervision of al-Azhar as well as the construction of mosques. The 1981-1982 Capital Plan for Sinai included a budget of L.E. 90,000 for "Al-Azhar Institutes" and L.E. 120,000 for the construction of new mosques.¹³⁰

Throughout the 1980s, al-Azhar dispatched educational teams to Sinai to "raise the religious and nationalist consciousness" of the Bedouin and reconsolidate their Egyptian identity after years of Israeli occupation. According to Smadar Levie and William Young, these educational teams under the direction of al-Azhar "stroved to channel Bedouin religious identity and wed it with pro-government Islam."¹³¹ Although the moderate brand of Islam promoted by al-Azhar is at odds with the radical ideology often espoused by Islamic extremists in North Sinai, the Egyptian government's deliberate cultivation of Islamic institutions and religious identity among the Bedouin arguably created a climate in which the emergence of ultraconservative Salafism later associated with *shari'a* courts was more likely.

LOSS OF CONFIDENCE IN STATE AND 'URF LEGAL SYSTEMS

State laws and the official justice system played a central role in the implementation of alienating development policies that contributed to the Islamization of Bedouin society in North Sinai throughout the 1980s and 1990s. The formalization of property rights in a region where understandings of land ownership had historically been based on collective and communitarian tribal values exerted profoundly destabilizing effects on the Bedouin. The changing legal structure and intrusion of the state into tribal areas created unprecedented competition and conflict between Bedouin who, for the first time, were forced to engage in zero-sum struggles for individual control of territory that they once communally shared. But while the number of land-related disputes was rapidly rising, there was no corresponding increase in the capacity of state institutions to adjudicate and resolve these conflicts.

Instead of helping to mitigate the destabilizing effects of development, the official justice system in North Sinai directed its energies and resources toward legitimizing the expulsion of Bedouin from their lands. Even if remedies were available through the courts, Bedouin found it difficult to access the justice system. Obstruction of justice in land disputes was a common phenomenon across Egypt in the 1980s and 1990s, with reports of police and large landowners purposefully blocking rural tenants and members of marginalized communities from accessing the courts to litigate land claims.¹³² The state's predatory manipulation of courts and law en-

130. See USAID, *Sinai Development Study, Phase I: Final Report*, 7 SINAI DATA BOOK 246-247 (Mar. 1985), http://pdf.usaid.gov/pdf_docs/PNAAS542.pdf.

131. See Lavie & Young, *supra* note 25, at 41.

132. See generally Farhat J. Ziadeh, *Law of Property in Egypt: Real Rights*, 26 AM. J. OF COMP. L. 239 (1978). See also USAID, *Egypt: Land Tenure and Property Rights Profile*, <http://usaidlandtenure>.

forcement authorities to disenfranchise the Bedouin led to a rapid loss of confidence and trust in the official justice system, and created an opening in which increasingly influential Salafi Islamist movements could promote *shari'a* as an alternative moral and legal authority.

FORMALIZATION OF PROPERTY RIGHTS LEADS TO INCREASED SOCIAL CONFLICT

The first act of nationalization made by the Egyptian state after it reclaimed the Sinai Peninsula from Israel was to declare all of its territory as state-owned land, which could be used, leased, or sold to any interested parties only by the permission of state authorities.¹³³ The introduction of exclusive individual rights over land and the requirement that property be registered with the state had highly destabilizing effects on the Bedouin, who had historically relied on traditionally informal *'urf* law to regulate collective rights over the use of land and its resources within the geographical borders of each tribe.¹³⁴

Another destabilizing effect of state land reforms was a dramatic increase in the value of coastal property — the tourism industry's prime territory — which raised the financial stakes of land disputes and created an incentive for fierce competition. The individualization of formerly collective property rights, combined with rising property values, led to increased inter-tribal conflict over land, as well as increased conflict between tribes and state authorities engaged in the reclamation of land for development projects.¹³⁵ During this time, there were reports of many displaced Bedouin resisting the new property regime and illegally reoccupying lands from which they had been expelled.¹³⁶ The Egyptian Land Center for Human Rights (LCHR) documented numerous annual deaths, injuries, and arrests related to implementation of new land laws in Sinai and other rural areas of Egypt.¹³⁷ Tables 1 and 2 illustrate examples of land disputes that would not have occurred in the absence of a legal regime recognizing individualized property rights (cases U1, U2, S2, S4).

Legal reforms aimed at facilitating development and land reclamation led to a drastic increase in property-related disputes, yet the capacity of state and judicial institutions in North Sinai remained extremely limited and ill-equipped to cope with the growing number of conflicts. In a 1985 report to the Egyptian government, USAID acknowledged that absorbing an additional 800,000 labor migrants — increasing the population growth rate by a factor of ten — would be “a massive and challenging administrative task,” and cautioned that “achieving these targets will

net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Egypt_Profile.pdf.

133. See Law 143 of 1981, in BAILEY, *supra* note 11, at 263.

134. *Id.*

135. See Ahmed Abd' al-Mawjoud al-Shenawi, “في سيناء الضبط الاجتماعي والمشكلات المرتبطة بالتفاعلات الاجتماعية وأنماط السلوك,” 123 (2002).

136. See Ministry of Planning, *supra* note 109, at 3.

137. See Land Center for Human Rights, *Farmers Disputes: Victims and Violations*, DERECHOS HUM. RTS. (Jan. 2000), <http://www.derechos.org/human-rights/mena/lchr/farmer.html>.

require exceptional management, organization and precision in execution.”¹³⁸ Yet the report did not propose any concrete administrative mechanisms for mitigating the disruptive effects of development and sedentarization on the Bedouin population, nor did it suggest any strategies for strengthening the capacity of the legal system that would need to absorb a sharp increase in land disputes arising from reclamation policies and the newly imposed individualized property regime.

STATE LEGAL INSTITUTIONS ASSOCIATED WITH EXPLOITATION AND DISPLACEMENT

State law and the official justice system played a central role in the implementation of the alienating development policies that contributed to the Islamization of Bedouin society in North Sinai throughout the 1980s and 1990s. The Bedouin, already suspicious of state law and inclined to resolve their disputes through *‘urf*, experienced a further loss of confidence and trust in an official justice system they regarded as corrupt and exploitive. A new law requiring the registration of property with local authorities functioned as a tool for exclusion, enabling officials to discriminate against Bedouin claimants in favor of Egyptians from the Nile Delta, foreign investors, or private companies.¹³⁹ Meanwhile, the LCHR alleged collusion between the government and large farmers in the forceful eviction of tenants.¹⁴⁰ These practices reinforced the Bedouin community’s longstanding distrust of the state legal system and its reputation for injustice and exploitation.

Along with the perception that state courts and police were being manipulated to legitimize the displacement of the Bedouin and protect the economic interests of the Egyptian government and private companies, the Bedouin were becoming more fearful of a state security apparatus that grew increasingly repressive in response to violent attacks by militant Islamists throughout the 1990s. While the official justice system was too weak to cope with a rise in land disputes and crime, a hyperactive military justice system was detaining thousands of Bedouin and torturing many of them on unsubstantiated suspicions of involvement in terrorist attacks.¹⁴¹ The association of the state with human rights violations and economic exploitation encouraged Bedouin to revert to adjudicating their disputes in *‘urf* courts rather than pursuing remedies through the official justice system.

CO-OPTIONATION OF *‘URF* COURTS TO ADVANCE STATE DEVELOPMENT AGENDA

The failure of state institutions to respond effectively to an increase in land-related disputes and crime led to a further devolution of state adjudicative and law enforcement functions to non-state tribal judiciaries. At the same time, however, the

138. See USAID, *supra* note 110, at 16, 90.

139. See generally Nadeem Karkabi, *Lifestyle Migration in South Sinai, Egypt: Nationalisation, Privileged Citizenship and Indigenous Rights*, 3 INT’L REV. OF SOC. RES. 49 (2013).

140. See Land Center for Human Rights, *supra* note 137.

141. See Pelham, *supra* note 24, at 2.

Egyptian government was working to co-opt 'urf judges and other tribal elites into a patron-client system of indirect authoritarian governance that rendered 'urf courts vulnerable to legitimacy challenges by increasingly influential Salafi movements from which *shari'a* courts eventually emerged.

In order to facilitate the development of the Sinai Peninsula and more effectively harness its natural resources, Mubarak's government introduced a clientelist system of control in which sheikhs guaranteed the loyalty of their tribes and compliance with government policies in exchange for the distribution of state resources and subsidized goods. As the relationship between tribal elites and the Egyptian state grew more cooperative, 'urf courts were increasingly integrated into the official justice system, and, together with state courts, played a critical role in enforcing land and property laws that advanced state development goals at the expense of the interests and rights of the Bedouin population.

In recognition of the effectiveness of 'urf courts in adjudicating disputes that the official justice system lacked the capacity to resolve, the Egyptian government increasingly looked for opportunities to outsource the burden of conflict-resolution to the tribes while at the same time subjecting them to oversight and surveillance through the co-optation of tribal elites, including 'urf judges. Mubarak's government manipulated the structure of tribal governing systems to facilitate their penetration by the state, creating hundreds of artificial "sheikh" appointments staffed with regime loyalists, and inviting 'urf judges to conduct arbitration sessions at government facilities overseen by the Bedouin Affairs Department and security services. The government employed a range of patronage tactics, providing salaries for 'urf judges and using co-opted sheikhs to placate the disaffected tribes by distributing subsidized food and other basic goods.¹⁴² During this period, 'urf judges became increasingly susceptible to bribery and corruption.¹⁴³

The co-optation of tribal elites, including 'urf judges, led to growing frustration and resentment among ordinary Bedouin, who increasingly viewed the 'urf courts as complicit in the Egyptian government's exploitive development and land policies. As one Bedouin informant explained to a visiting anthropologist in 1984, "The sheikhs are nothing but government brown noses."¹⁴⁴ This sentiment reflects a pervasive loss of confidence and trust in both the state and 'urf legal systems among the population of Sinai. In this climate of hostility toward both the government and tribal elite, the Salafi movements that had been steadily gaining influence in North Sinai saw an opportunity to promote *shari'a* arbitration as an alternative source of moral and legal authority. During these years, leading figures in the Salafi community began to informally adjudicate disputes in private homes, where they could avoid detection by the state security apparatus. Having established a reputation for integrity and justice through their operation of underground Islamic arbitration services under Mubarak's rule, *shari'a* judges were well-positioned to take advantage of the legal and security

142. See Lavie & Young, *supra* note 25, at 36.

143. See Ahmed Abd' al-Mawjoud al-Shenawi, *supra* note 135, at 129.

144. See Lavie & Young, *supra* note 25, at 36.

vacuum induced by the 2011 uprising to establish publicly marked courthouses offering to restore some semblance of law and order.

POST-2011: EMERGING *SHARI'A* COURTS CHALLENGE LEGITIMACY OF '*URF*
AND STATE

Until the emergence of informal Islamic arbitration, '*urf* judges had enjoyed a lucrative monopoly on informal dispute resolution in North Sinai, and the rapid institutionalization of rival *shari'a* courts since 2011 has instigated economic as well as ideological competition between the two non-state legal orders. Meanwhile, increased cooperation between state and '*urf* courts has provoked resistance from the *shari'a* courts, which increasingly represent themselves as an autonomous system occupying a moral and religious high ground over state and tribal systems that they regard as corrupt and un-Islamic. As '*urf* courts began cooperating more closely with the state and faced allegations of corruption and bribery, *shari'a* judges began to challenge their moral and religious legitimacy. *Shari'a* judges pointed to traditional '*urf* practices such as *besha*,¹⁴⁵ in which a tribal judge requires an accused person to lick a red-hot piece of metal or stone and subsequently makes a determination of guilt or innocence by examining the condition of the tongue, as remnants of pre- and un-Islamic cultural traditions that contravene *shari'a*.¹⁴⁶

'*Urf* and *shari'a* courts have increasingly clashed over their divergent orientations toward Egypt's constitution and official justice system. '*Urf* judges emphasized the importance of tailoring their rulings to comply with state laws, favored increased coordination with state authorities, and have even lobbied for the creation of a special department within the Justice Ministry that would provide training and financial support to '*urf* courts.¹⁴⁷ In contrast, *shari'a* judges insist that Islamic law must always prevail in cases of conflict between *shari'a* and Egyptian law. Whereas '*urf* judges see their role as supplementing, not subverting, the work of state courts and the official justice system at large, *shari'a* judges are motivated by what they describe as a religious obligation to replace an official justice system that is not only un-Islamic, but also an agent for the political and economic disenfranchisement of the Bedouin.

6. CONCLUSION

Drawing on field research conducted in North Sinai in August 2013, this article has argued that the expansion of non-state Islamic judiciaries since Egypt's 2011 uprising can be explained to a large extent by two historical trends: (1) the Islamizing effects of state-sponsored development and labor migration policies on Bedouin society in North Sinai; and (2) growing disillusionment with state and tribal

145. See Larry W. Roeder, *Trial Law and Tribal Solidarity in Sinai Bedouin Culture: The Story of Besha*, 84 *ANTHROPOS* 230, 233 (1989).

146. See Ahmed Abd' al-Mawjoud al-Shenawi, *supra* note 135, at 132.

147. Interview with Sheikh Yehia al-Ghoul, *supra* note 54.

judiciaries viewed as complicit in the economic disenfranchisement of the Bedouin and expropriation of their lands. Adopting an interdisciplinary theoretical framework combining the concept of legal pluralism with a model of inter-institutional interaction drawn from political science, I argue that these historical factors encouraged the relatively recent institutionalization of non-state *shari'a* courts, which seek to offer an alternative to an official justice system viewed as exploitive and corrupt.

Noting that the concept of legal pluralism has been under-utilized in analysis of revolutionary and transitional change in the Middle East after 2011, this paper aspires to fill a gap in the literature through a case study of the deepening legal pluralism emerging in North Sinai as a result of the establishment of non-state *shari'a* judiciaries, especially since 2011. The observation that governments do not wield a monopoly over law offers a powerful framework for understanding patterns of instability, conflict, and violence in contemporary Arab and Islamic societies where popular uprisings have shaken the constitutional and legal foundations of state governments. The diminished capacity of transitioning states emerging from authoritarianism — in Egypt and across the region — has created space for the expansion of non-state legal orders offering an alternative framework for the delivery of justice and security that weakened governments have historically struggled to provide. The case of North Sinai offers comparative lessons for similarly fragile territories and states experiencing political transitions. Although security conditions in North Sinai present challenges for field research and access to information, it is the author's hope that this preliminary investigation will provide the basis for a more comprehensive study of legal pluralism in North Sinai.

APPENDIX

Explanation: Table 1 contains a sample of five cases from the ‘urf court administered by Sheikh Abdel Hady near the town of Sheikh Zuweid. Table 2 contains a sample of five cases from the House of Sharia Judgment in Arish, North Sinai. The letters “U” and “S,” attached to the case numbers, signify ‘urf and shari’a, respectively.

Table 1: ‘Urf Cases

SAMPLE OF CASES FROM AN ‘Urf COURT IN NORTH SINAI

Case #	Case description	Date/ duration	Type of case	Defendant	Plaintiff	Winner	Judgment
U1	Defendant was unable to pay back a L.E. 200,000 debt in cash, but offered to compensate with property. Creditor rejected offer and insisted on monetary repayment.	September 2013 (1 month)	Default on debt	Ermilat tribe	Ermilat tribe	Plaintiff	The judge offered two options: restitution of a building worth L.E. 200,000 or repayment in cash after 6 months and then take the money from the man. The creditor agreed to wait 6 months for repayment.
U2	Two men claimed ownership of land worth over L.E. 1 million. One stole a truck owned by one of the relatives of the other to force him to submit to ‘urf arbitration (an act of <i>wisaaga</i>).	November 2012 (4 months)	Land dispute	Sawarka tribe	Sawarka tribe	Ongoing	The judges said that the car owner must force his relative to sit for ‘urf judging regarding the land case or to sit instead of him.
U3	Unintentional manslaughter of a 7-year-old girl (member of Ermilat tribe) in a car accident. Driver was a member of Sawarka tribe.	2010 (2 months)	Man-slaughter	Sawarka Tribe	Ermilat Tribe	Plaintiff	Plaintiff was compensated with a monetary judgment equivalent to 100 camels.
U4	A tractor was taken as <i>wisaaga</i> by men from Sawarka tribe after a man from Tarabeen tribe asserted a claim to part ownership of the tractor. The claimant from Tarabeen was beaten and the tractor was returned to a Sawerka man who claimed to be the sole owner. The Tarabeen man brought the case on assault charges.	October 2013 (1 month)	Assault	Sawarka Tribe	Tarabeen	Settlement	The defendant was not found guilty because the plaintiff has also used violence, but the plaintiff did win a judgment of L.E. 3,000. The judges asked the plaintiff to host the defendant the next day as a gesture of reconciliation.
U5	A man was incarcerated for 20 years, during which time his daughter was raised by her grandfather. The grandfather agreed to a marriage proposal to a man from another tribe. The daughter married and had children, but when the father was released from jail he rejected the marriage and demanded its dissolution. Originally went to ‘urf judge, who referred the case to a shari’a court, saying the question must be resolved according to Islamic law. They went to a sheikh at the local board of <i>ifta</i> , who said that the father must consent to the marriage, or otherwise be dissolved. The case was sent to a Massoudi judge (a tribe that specializes in divorce and marital disputes).	2008	Divorce	Ehiwat tribe	Tarabeen tribe	Plaintiff	The husband was required to pay a fine of L.E. 260,000. The marriage was dissolved, but the couple later remarried.

Table 2: *Shari'a* CasesSAMPLE OF CASES FROM A *Shari'a* COURT IN NORTH SINAI

Case #	Case description	Date/ duration	Type of case	Defendant	Plaintiff	Winner	Judgment
S1	Defendant hit plaintiff and plaintiff's son, also damaging the plaintiff's vehicle.	May 2012 (1 month)	Assault/ Property Damage (vehicle)	Bedouin tribe	Arish family	Plaintiff	Tort damages/monetary: L.E. 51,000 for vehicle damage L.E. 100,000 for physical assault
S2	A woman sold land to a man who sold it to another person. The woman then claimed that she had canceled the sale contract and sold the same land to another person.	February 2012 (1 month)	Land dispute (woman)	Sawarka tribe	Arish woman	Defendant	Judge ruled against the female seller, saying her contract with the first buyer was enforceable.
S3	Three brothers beat a man severely. The victim was admitted to the intensive care unit and stayed in hospital for 2 weeks with a coma before dying. The 3 men were sentenced to prison for 10 years each.	March 2012	Murder	Non-tribe	Non-tribe	Victim's family	The prison sentences were translated into a monetary fine, added to a flat amount of compensation equivalent to 100 female camels. Each year of prison was considered equivalent to L.E. 20,000 for each defendant.
S4	A man claimed to be the exclusive owner of a piece of land he inherited from his father, including all of the buildings that had been constructed on it by different family members. His father's sisters claimed that they were entitled to a building on the land that had been built by their father. Written deeds supported the case of the female heirs.	October 2011 (1 month)	Inheritance/ Land	Arish family (male heir)	Arish family (female heirs)	Female heirs	The judge specified that the properties be fairly allocated among the heirs, male and female, according to <i>shari'a</i> .
S5	A husband left his wife without granting either a divorce or compensation. She brought the case to <i>shari'a</i> court to obtain a divorce and compensation required by severance of the marriage contract.	February 2013 (1 month)	Divorce	Arish husband	Arish wife	Plaintiff (wife)	The wife was granted a divorce and monetary compensation of L.E. 35,000.

FIGURES — IMAGES OF *SHARI'A* JUDGES**Fig. 1: Sheikh Hamdeen Abu Faisal**

Photo by author, taken at subject's private residence in Arish, North Sinai (August 11, 2013)



Fig. 2: Sheikh Assad al-Beik

Photo by author, House of Shari'a Judgment in Arish, North Sinai (August 10, 2013)



