

LEGAL PLURALISM IN NORTH SINAI: MAP-
PING THE RISE OF NON-STATE ISLAMIC
COURTS

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Abstract

The concept of legal pluralism, defined as the coexistence of multiple legal orders within a common geographical area, is underutilized in analysis of revolutionary and transitional change in the Middle East, but nonetheless offers a powerful framework for explaining how and why states lose their monopoly on the production and enforcement of law. Nowhere is the significance of legal pluralism more apparent than in Egypt's Sinai Peninsula, where non-state shari'a courts emerged in the post-revolutionary security vacuum in 2011 and quickly established themselves as the most credible providers of law and order in areas of North Sinai that had been largely abandoned by the Egyptian government. In addition to challenging the sovereignty of the Egyptian state, shari'a courts 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.

This paper, based on field research conducted in the governorate of North Sinai in August 2013, attempts to map the triadic interactions between the three distinct legal systems – shari'a, 'urf, and state – that coexisted and competed within the same territorial area during the period of time from the January 2011 revolution until September 2013. Using an interdisciplinary approach that combines theories of legal pluralism and historical institutionalism, this paper first identifies two primary historical explanations for the emergence of shari'a courts: (1) the Islamizing effects of state-sponsored

development and labor migration policies on Bedouin society in North Sinai starting in the 1980s; and (2) growing disillusionment with state and tribal judiciaries viewed as complicit in the authoritarianism of former president Hosni Mubarak's government. Second, this paper addresses the resurgence of militant Salafism in North Sinai following the Egyptian military's return to power in July 2013 and argues that the subsequent exclusion of moderate Islamists from the formal political process has had the effect of channeling opposition activity into non-state institutions, including shari'a courts, which are increasingly functioning as platforms for resistance against government authorities.

About the Author

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To the extent that scholars and policymakers have been concerned with the legal and constitutional dimensions of the Arab uprisings, their attention has been directed primarily toward the formal institutions of state-manufactured law. Analysis has focused on the activities of high courts, parliaments, and the administrative apparatus of official justice systems, while largely declining 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, is underutilized in analysis of revolutionary and transitional change in the Middle East but nonetheless offers a powerful framework for explaining how and why states lose their monopoly on the production and enforcement of law. 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 that offer an alternative framework for justice and security.

Nowhere is the significance of legal pluralism more apparent than in Egypt's Sinai Peninsula, where non-state shari'a courts emerged in the post-revolutionary security vacuum in 2011 and quickly established themselves as the most credible providers of law and order in areas of North Sinai that had been largely abandoned by the

Egyptian government. By 2013, one shari'a judge estimated that the shari'a courts had absorbed 75 percent of the caseload once handled by Egypt's official justice system.ⁱ Although the return of military rule in July 2013 has severely curtailed the activities of North Sinai's shari'a courts – particularly after several prominent shari'a judges were arrested on charges of inciting violence in September 2013ⁱⁱ – the rapid rise of this unofficial Islamic justice system in the two years after the revolution is a powerful example of the growing importance of non-state actors as providers of justice and security in countries undergoing transitions.

In addition to challenging the sovereignty of the Egyptian state, shari'a courts 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. This paper, based on field research conducted in the governorate of North Sinai in August 2013, attempts to map the triadic interactions between the three distinct legal systems – shari'a, 'urf, and state – that coexisted and competed within the same territorial area during the period of time from the January 2011 revolution until September 2013.ⁱⁱⁱ

Data gathered from cases and interviews reveals a stark contrast between the behaviors of the two non-state legal systems of the shari'a and 'urf courts toward the Egyptian government and its official justice system during the period of concern. Whereas shari'a judges rejected the authority of the state and expressed their desire to achieve complete autonomy from it, 'urf judges were pursuing a strategy of integration and accommodation

with the official justice system. Using an interdisciplinary approach that combines theories of legal pluralism and historical institutionalism, this paper first identifies two primary historical explanations for the emergence of shari'a courts and their antagonistic relationship with the Egyptian state: (1) the Islamizing effects of state-sponsored development and labor migration policies on Bedouin society in North Sinai starting in the 1980s; and (2) growing disillusionment with state and tribal judiciaries viewed as complicit in the authoritarianism of former president Hosni Mubarak's government. Second, this paper addresses the resurgence of militant Salafism in North Sinai following the Egyptian military's return to power in July 2013 and argues that the subsequent exclusion of moderate Islamists from the formal political process has had the effect of channeling opposition activity into non-state institutions, including shari'a courts, which are increasingly functioning as platforms for resistance against government authorities. Although the research for this case study was conducted prior to the advent of the Islamic State (IS), its findings remain relevant in the context of current efforts by IS to gain territorial control over the Sinai Peninsula^{iv} and reports that it has established at least one shari'a court in North Sinai as of March 2015.^v Beyond the case of North Sinai, this paper sheds light on the ways in which conditions of social and economic exclusion tend to empower non-state actors – including insurgent groups – in regions where government authorities are perceived as ineffectual and illegitimate.

A Brief History of Informal Justice in North Sinai

The phenomenon of informal dispute resolution is not new to Egypt's geographically isolated Sinai Peninsula, where, in the absence of a strong state government, the predominately Bedouin population has long governed itself through tribal institutions. Although the approximately twenty tribes that reside in North Sinai – the northernmost of the peninsula's two administrative governorates – have operated their own customary courts for hundreds of years, only in recent years have these non-state judiciaries begun to adopt an increasingly Islamic character. After a period of quiet institutionalization under the rule of former president Hosni Mubarak, during which self-appointed and -trained Salafi arbitrators who described themselves as shari'a judges began to adjudicate disputes in private homes, these judges took advantage of the security vacuum induced by the 2011 uprising to establish brick-and-mortar courthouses operating in plain view of Egyptian authorities. Although these makeshift shari'a courts lack traditional enforcement mechanisms and their judgments are not recognized or implemented by the Egyptian government, the Salafi groups with which they are closely affiliated attempt to promote compliance through social pressure, intimidation, and the mobilization of community policing units (*lijan shaabiya*) that draw inspiration from Saudi Arabia's Committee for the Promotion of Virtue and Prevention of Vice.^{vi}

The rise of shari'a courts since the 2011 uprising has been enabled by two parallel trends: the growing influence of Salafi Islamist movements in the Sinai Peninsula and the deteriorating capacity of state institutions. His-

torically, the Egyptian government and its justice system have never been able to assert full control over the 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.^{vii} The Bedouin population has long harbored separatist tendencies 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 Israel^{viii} – that have struggled to 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 traditional system of orally transmitted customary law with pre-Islamic origins ('urf).^{ix} Despite the Bedouin community's resentment and distrust of the central government, cooperation between customary 'urf courts and the official justice system has been documented since the 1980s. Mubarak's government tolerated the tribal 'urf courts largely out of pragmatism – as a way of reducing the burden on state institutions by outsourcing the administration of justice to local leaders and their informal systems of social control. One anthropologist working in North Sinai in the late 1980s found significant evidence of integration between the government and tribal justice systems, including stamped referral slips indicating that police departments had transferred certain cases from state to 'urf courts for resolution.^x This overt cooperation became increasingly intensive under Mubarak's rule, during which state authorities in

North Sinai made efforts to certify ‘urf decisions in order to render them enforceable by the local administrative bureaucracy.^{xi} 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.

As in other tribal-based societies in the Middle East, the development of ‘urf law in North Sinai was driven not by religious ideology but by the necessity of formulating predictable rules to regulate disputes in the absence of any reliable central authority capable of invoking the force of the state to maintain order.^{xii} Although ‘urf law has pre-Islamic origins and is administered by tribal judges who tend to identify only loosely as Muslim, demographic changes in the Sinai Peninsula beginning in the 1980s contributed to the Islamization^{xiii} of the Bedouin population and created conditions conducive to the institutionalization of shari’a courts.

The Rise of Sharia Courts Since 2011

The Sinai Peninsula has always been considered a lawless and semiautonomous region, but the 2011 uprising precipitated a further devolution of power and legitimacy away from the weakened government and toward non-state institutions, providing alternative mechanisms for dispute resolution and law enforcement, including not only the preexisting ‘urf courts but also a newly institutionalized form of non-state judiciary: shari’a courts.

Emboldened by the collapse of Mubarak’s government in

2011, shari'a judges who had previously operated underground throughout the 1990s and 2000s under Mubarak's rule – to avoid detection by a state security apparatus that regarded Islamists as a threat to the regime's political survival – took the unprecedented step of establishing marked brick-and-mortar courthouses and publicly advertising their services. Between the popular uprising in January 2011 and the return of military rule in July 2014, at least fourteen shari'a courts were established in North Sinai alone, with others reportedly operating in areas closer to the Nile Delta "mainland" of Egypt, including the coastal cities of Port Said and Ismailiya.^{xiv}

The shari'a courts established after the 2011 uprising were a new and destabilizing addition to the landscape of informal justice in North Sinai and quickly absorbed much of the work that was previously done by state or 'urf courts. The expansion of the shari'a courts was further accelerated by the repeated closure of many state courts and police stations in North Sinai in response to escalating armed attacks against government targets in the aftermath of the revolution.^{xv} Within three years of the resignation of former president Hosni Mubarak in February 2011, shari'a courts – which provided voluntary arbitration services free of cost, in contrast to 'urf courts, which often charge upwards of US \$7,000 to resolve a single case^{xvi} – 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 businesspeople, and even Egyptian government employees.^{xvii} It had become clear that shari'a courts, although they were ideologically aligned with and, in many cases, directly

administered by local Salafi leaders, were increasingly being used by non-Islamists because of their reputation for efficiency and integrity in contrast with an official justice system notorious for its corruption and brutality.^{xviii} In addition to their moral advantage over state courts, the shari'a judges of North Sinai were increasingly viewed favorably in comparison with their 'urf counterparts, who not only charge exorbitant fees for their services but have also developed a reputation for accepting bribes and allowing favoritism and tribal loyalties to influence their judgments.^{xix}

The deepening of a pluralistic legal order in North Sinai has important implications for the legitimacy of Egypt's governing institutions. Non-state judiciaries are not necessarily antagonistic toward or destabilizing of governments, as illustrated by the historically cooperative relationship between the Egyptian government and tribal 'urf courts, which have long pursued a strategy of integration rather than confrontation with the official justice system and have recently gone so far as to advocate constitutional reforms that would codify an official legal status for 'urf law.^{xx} However, in the case of non-state shari'a courts in North Sinai, self-appointed Islamic judges explicitly rejected not only the secular aspects of Egypt's legal and constitutional system but also the moderate interpretation of Islam promoted by the official religious establishment, al-Azhar.^{xxi}

Although the non-state Islamic justice system relied on a voluntary model of arbitration and was used primarily to administer monetary civil penalties known as ta'zir^{xxii} for tort claims, property, and marital disputes, shari'a judges 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). Shari'a courts benefited from their association with Salafi community-policing groups known as popular committees (lijan shaabiya), which helped to promote compliance with court decisions through social pressure in the post-revolutionary security vacuum. Although the popular committees purported to be unarmed, one Salafi leader in Rafah claimed that the Gama'a Salafiyya group had mobilized its own paramilitary wing to enforce shari'a judgments.^{xxiii} Although the activities of North Sinai's shari'a courts have been severely curtailed by escalating counterterrorism measures since July 2013, the Islamic State's recent annexation of the Sinai-based jihadist group Ansar Beit al-Maqdis suggests that unofficial Islamic courts could be reestablished in the near future. In March 2015, a shari'a court reportedly established by ISIL's branch in Sinai issued its first ruling, convicting two men of highway robbery and ordering that their hands be cut off according to the punishment prescribed by the Quran.^{xxiv}

Historical Origins of Islamization

In a region where non-state 'urf judiciaries have long coexisted symbiotically with the Egyptian government, what conditions explain the emergence of a separate system of non-state Islamic courts that aspire to create a fully autonomous legal order and whose long-term goal is the outright replacement of state law with shari'a? Although the institutionalization of shari'a courts acceler-

ated rapidly in the legal and security vacuum induced by the collapse of Hosni Mubarak's police state in 2011, the contemporary Islamization of North Sinai's pluralistic legal order is a historically contingent process that began decades ago with the implementation 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.

Following Israel's withdrawal from the Sinai Peninsula in 1975, the Egyptian government launched a massive development campaign to capitalize on the region's natural resources and strategic access to the Suez Canal.^{xxv} 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 1,000,000, by encouraging labor migration from overpopulated areas in the Nile Valley.^{xxvi} 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 tourist destination.^{xxvii}

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, in addition to being barred from military service.^{xxviii} 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.^{xxix} 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.^{xxx} Increasingly, the Egyptian government was viewed as a parasitic occupier pursuing exclusionary macroeconomic growth at the expense of the local population.

Over time, the economic and territorial disenfranchisement of the Bedouin gave rise to strong antigovernment 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 tenfold by incentivizing labor migration resulted in the introduction of a non-native population that included religious-conservative elements. Among the hundreds of thousands of la-

bor migrants were Egyptians educated at private Islamic schools and public universities known for the Islamist orientation of their faculty, including Zagazig University.^{xxxii}

Furthermore, these resettlement plans proposed the creation of approximately twelve new towns and an intrusive system of roads that did not conform to traditional zones of tribal authority.^{xxxiii} Scholars of tribal societies in the Middle East have long observed a correlation between the phenomena of sedentarization and Islamization in previously nomadic or pastoral societies, and some have suggested a causal link between these two processes.^{xxxiii} For example, 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.^{xxxiv} Also supporting the presence of a causal relationship between sedentarization and Islamization, Aharon Layish has suggested that the breakdown of tribal hierarchies and solidarity networks that occurs as when nomadic groups are disaggregated into family units and settled in individual homes leads them to look to alternative sources of moral and spiritual authority outside of the tribe.^{xxxv} This case study finds similar patterns in North Sinai, where sedentarization appears to have corresponded to a decline in the influence of tribal elites in the face of competition from religious leaders and mosques.

The Islamizing effects of state-sponsored development projects were compounded by the politically repressive practices of the Mubarak government, which arbitrarily detained thousands of Bedouin on suspicion of involvement in bombings targeting Red Sea resorts in 2004 and 2006.^{xxxvi} This combination of economic exploitation, political marginalization, and violent repression contributed to a toxic climate of mutual suspicion and animosity between the Sinai Bedouin and the Egyptian government. The result was a sharp erosion of confidence in the legitimacy of state institutions. As the population of North Sinai became increasingly distrustful of the central government of Hosni Mubarak, many shifted their allegiance to an emerging grassroots Salafi movement offering essential public services – including community policing and dispute resolution – that the central government was failing to deliver.

By the 1990s, Salafi organizations such as *Ahl al-Sunna wa'al-Gama'a* had established a large following in North Sinai, particularly in more densely populated areas such as the city of Arish, where tribal loyalties are weaker and semi-urban, sedentarized communities are more susceptible to the influence of religious ideology. Among the early intellectual leaders of these Salafi groups were self-trained clerics, who came to be known as *shari'a* judges through their skillful resolution of disputes, first in private homes but later – after the 2011 revolution – in publicly marked courthouses that operated in plain view of state authorities. *Ahl al-Sunna wa'al-Gama'a* was actively involved in the administration of *shari'a* courts in North Sinai during the period of concern for this case study, as evidenced by the fact that its branch office in Arish was founded by a prominent *shari'a* judge who

also presided over the House of Shari'a Judgment (the two organizations occupied adjacent offices on the same floor of a building in downtown Arish at the time of field research).

Shari'a courts continued to expand their operations under the rule of Islamist president Mohamed Morsi, which was prematurely cut short by a popularly backed military coup on July 3, 2013. Despite the military's efforts to weaken the Salafi movement in North Sinai by arresting several prominent Salafi leaders and shari'a judges in the months following Morsi's overthrow, this crackdown has had the effect of further galvanizing Islamists around the detainees, whose incarceration has been leveraged as a propaganda tool. For example, the Facebook page of the Salafi group Ahl al-Sunna wa'al-Gama'a has disseminated photographs of three detained shari'a judges with the slogan "Freedom to the heroes of Sinai."^{xxxvii} Although the activities of shari'a courts in North Sinai have been curtailed by the arrests of these judges, Salafi movements have historically adapted quickly to conditions of repression and may adapt to the current crackdown by continuing their activities underground.

Methodology and Theoretical Framework

This case study incorporates interviews conducted in the governorate of North Sinai in August 2013 as well as local media reports, Egyptian government reports, and qualitative data gathered from accounts of disputes litigated in non-state courts since 2011 (see tables 1 and

2). Interviewees include two shari'a judges, four 'urf judges, as well as lawyers and litigants with experience resolving disputes in state as well as non-state courts in the areas of Arish, Sheikh Zuweid, and Rafah.

Field research in North Sinai indicated that shari'a courts and 'urf judiciaries were pursuing polar-opposite strategies in North Sinai: the former rejected the authority of the Egyptian state and were seeking autonomy from it, while the latter were pursuing greater integration between tribal customary law and the official justice system. Proceeding from this observation, this paper attempts to explain the divergent behaviors of these parallel non-state judiciaries with 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 variation in the orientations of non-state judiciaries toward the state is demonstrated clearly in North Sinai, where shari'a courts have explicitly rejected the authority of both the official justice system and the state-regulated religious established 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.^{xxxviii} Why do 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 the question of why some non-state institutions cooperate with state authorities while others oppose them.^{xxxix} The following discussion attempts to bridge these two theoretical approaches to explain the opposite orientations of North Sinai's 'urf and shari'a courts toward the Egyptian state and official justice system.

Legal Pluralism: A Theory of Coexistence Between State, 'urf, and Shari'a Law

The concept of legal pluralism,^{xl} 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 African contexts but is underutilized in analysis of the Arab uprisings. To the extent that scholars have addressed legal questions raised by Egypt's transition, 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 claim 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."^{xli} Official judicial and legal institutions have been key protagonists 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 immu-

nized executive decisions from judicial review in 2012, and the most recent rewriting of the constitution following Morsi's overthrow in 2013.^{xlii} While the laws and 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”^{xliii} – 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.

A state-centric approach to the study of law fails to capture fully the complexity of Egypt's legal landscape, which has long been animated by the interactions between three parallel legal orders – state law, shari'a, and customary 'urf – that 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 numerous interpretive schools of thought.^{xliv} State institutions, including the Supreme Constitutional Court and the official religious establishment represented by 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 nonetheless these government institutions face resistance and competition from non-state religious authorities that challenge the official Islamic discourse.^{xlv} 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 promoted by Egypt's

official religious establishment and advocate for a strict literalist interpretation of the original divinely revealed sources of law, the Qur'an and Sunna.

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."^{xlvi} 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."^{xlvii}

In the case of North Sinai, the interactions and conflicts between the two non-state legal orders of 'urf and shari'a have been shaped by 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 judiciary,^{xlviii} 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 all the more apparent. In the context of a clear erosion in 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 extrajudicial killings by civilian vigilantes,^{xlix} community policing initiatives,^l and the growing popularity of non-state courts applying customary 'urf, as well as shari'a.^{li} All of these exercises of law by non-state actors make clear that Egypt's multipolar legal landscape cannot be adequately understood through the traditional paradigm of legal centralism and is more amenable to a legal pluralistic approach.^{lii}

Modeling Behavioral Variation Between Non-State Judiciaries

The concept of legal pluralism described above offers an explanation for the coexistence of two distinct non-state legal orders in North Sinai, but it does not provide a framework for understanding variation in their behavior toward the Egyptian government. 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 as "complementary," "competing," and "substitutive."^{liii} 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.^{liv} 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 – have pursued opposite strategies of integration and autonomy in their relations with the Egyptian government and official justice system.

Mapping the Triadic Interactions Between State, ‘urf, and Shari’a Courts

Field research in North Sinai in August 2013 revealed a stark difference in the orientations 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 even lobbied for the creation of a special department within the Justice Ministry that would provide training and financial support to ‘urf courts.^{lv} 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 saw their role as supplementing, not subverting, the work of state courts, shari’a judges were motivated by what they described as a religious obligation to replace an official justice system that was, from their perspective, 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.^{lvi} 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, the harshest of Islamic criminal punishments, including "cutting the hand or the neck or lashing the back or stoning ... because we do not have a full Islamic state, yet."^{lvii}

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, including 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. There was at least one notable exception of a shari'a court litigating a murder case in 2012, and there were indications that informal enforcement mechanisms, such as the social pressure exerted by popular committees, were gradually enabling shari'a courts to take on more serious cases once considered beyond the scope of their authority.

According to one shari'a judge, Sheikh Assad al-Beik, in cases in which a court specifies a hudud punishment but does not have the power to enforce it, the court instead applies a more lenient ta'zir^{lviii} punishment—usually a monetary fine—while informing the defendant of the hudud punishment to which he would hypothetically be subject in a full Islamic state.^{lix} 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 (kafil),^{lx} 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).^{lxi} The following section will describe the divergent behaviors of 'urf and shari'a courts with reference to the categories of inter-institutional interaction described above.

'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 main-

tain security and deliver essential public services.^{lxii} At the same time, ‘urf courts also resemble 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.^{lxiii}

The symbiotic relationship between ‘urf courts and the Egyptian state has deep historical roots. The Bedouin of North Sinai have always considered themselves an autonomous and self-governing society, and, for the most part, the successive empires and governments that have laid territorial claims to the peninsula have allowed tribal groups to adjudicate their own disputes through ‘urf for two main reasons. First, state bureaucracies have lacked the capacity and legitimacy needed to enforce compliance with state laws. Second, from a practical economic perspective, governments have found it more efficient and cost effective to outsource a range of state administrative functions to tribal leaders than to attempt to micromanage governance of the Sinai. 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.^{lxiv} 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.^{lxv} 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.^{lxvi} Mubarak created a Bedouin Affairs Department 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 sheikhs. According to an 'urf judge and prominent elder in the Sawarka 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.^{lxvii} 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.^{lxviii}

'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.^{lxix} 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 Seek Autonomy from the State

While 'urf courts have historically pursued a strategy of integration with a state that simultaneously seeks to co-opt them, 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. 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 the shari'a judge Sheikh Assad al-Beik explained, "The people are calling for shari'a judgment because the state courts are broken."^{lxx} Another shari'a judge, Sheikh Hamdeen Abu Faisal, also described 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.”^{lxxi} This relatively nonconfrontational 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 may superficially 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—said that he 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 conservative than the moderate Islamist political program of the Muslim Brotherhood, which al-Beik criticized for its tendency toward moderation and compromise with secular forces.^{lxxii} During the time period of concern for this case study, the shari’a courts of North Sinai functioned as competing institutions insofar as they were promoting a vision of Islamic statehood that diverges sharply from the relatively modest Islamic provisions contained in the Egyptian constitution.^{lxxiii}

Shari’a Courts Challenge Islamic Legitimacy of State Religious Establishment

Consistent with their rejection of the Egyptian government’s authority and legal legitimacy, the shari’a courts have also challenged the religious legitimacy of the official Islamic establishment, al-Azhar, which has historically cooperated with the state and shares its 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.”^{lxxiv}

Despite al-Azhar’s recent efforts to secure greater institutional and financial independence from the Egyptian government, it has never aspired to the level of autonomy that the shari’a courts of Sinai have attempted to claim for themselves.^{lxxv} Of greater importance to al-Azhar than institutional independence is its desire to be

recognized as Egypt's supreme moral and religious authority – a status it succeeded in codifying in the draft 2013 constitution.^{lxxvi} 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 (the plural form of “fatwa”)^{lxxvii} – was the only organization legally authorized to issue fataawa, in response to concerns that non-state Islamist movements with radical views were threatening the interpretive exclusivity of the official Islamic establishment. 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.”^{lxxviii} Autonomous law-making by non-state shari‘a courts in North Sinai – exemplified by Sheikh Abu Faisal’s symbolic trial of General Abdul Fattah al-Sisi^{lxxix} – 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 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 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].”

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After 2011, there was concern within al-Azhar and the state judiciary that the self-taught shari’a judges of North Sinai were extremists promoting a warped and inauthentic version of shari’a to advance their Islamizing social agenda. For example, Sheikh al-Azhari stated that the shari’a judges lacked 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.^{lxxxix} 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 that could not have been anticipated during the Prophet’s lifetime.^{lxxxii}

Sheikh Hamdeen Abu Faisal, a shari’a judge who – until his arrest in September 2013 – presided over 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 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.”^{lxxxiii} 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 Qur’an and Sunna as understood by our ancestors in the first three centuries of Islam.”^{lxxxiv} The shari’a judges’ rejection of the official religious establishment, al-Azhar, along with its moderate interpretation of Islam, is an important dimension of the antagonistic relationship between shari’a courts in North Sinai and the Egyptian government.

Antagonism and Rivalry Between Shari’a and ‘urf Courts

Not only have shari’a courts rejected the authority of the official justice system, but over time they have also increasingly challenged the religious and moral legitimacy of ‘urf courts by emphasizing those courts’ 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 LE 50,000 (approximately US \$7,156).^{lxxxv} Shari’a judges, in comparison, said that they did not charge fees and prided themselves on the voluntary nature of their services, which they regarded as essential to the neutrality and integrity of the adjudicative process. Sheikh Assad al-Beik emphasized that the House of Shari’a Judgment is staffed entirely by vol-

unteers 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 explained, “As long as they take money they can be influenced by bribes.”^{lxxxvi}

The rivalry and antagonism between ‘urf and shari‘a courts in North Sinai can be attributed in large part to deep ideological 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.^{lxxxvii} 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 nineteenth century, ‘urf was finally recognized as a formal source of law.^{lxxxviii} As contact and dialogue between the two legal systems intensified, ‘urf and shari‘a influenced each other in a mutually constitutive relationship, resulting in the gradual Islamization of customary law.

Despite these movements toward convergence, integration between the two systems has been accompanied by rivalry, and the ‘urf and shari‘a judiciaries of North Sinai have clashed over their incommensurable orientations toward Islam. While the Bedouin of North Sinai generally identify as Muslims,^{lxxxix} 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.”^{xc} 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 questioned the religious legitimacy of their ‘urf counterparts by accusing them of issuing “un-Islamic” judgments.^{xcii}

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. As ‘urf courts began cooperating more closely with the state and faced allegations of corruption and bribery, shari‘a judges increasingly questioned their moral and religious legitimacy. Shari‘a judges pointed to traditional ‘urf practices such as *besh*,^{xciii} in which a tribal judge requires an accused person to lick a red-hot piece of metal or stone and makes a determination of guilt or innocence by examining the condition of the tongue, as remnants of pre-Islamic cultural traditions that contravene shari‘a.^{xciii}

Non-state Islamic courts in North Sinai have appealed to supporters by challenging the Islamic legitimacy of ‘urf

courts, which have historically endorsed the moderate interpretation of Islam promoted by the state religious establishment, al-Azhar. Since the military's return to power in July 2013, several of the most powerful tribes in the area – and the 'urf judges affiliated with them – have voiced strong support for al-Azhar's role as a counterweight to radical Islam, in order to distance themselves from militant groups that have been targeted by the military's crackdown. A leading sheikh in the Sawarka tribe publicly announced in March 2014 that the tribe had donated 42,000 square meters of land to establish a new branch of al-Azhar's university system in North Sinai.^{xciv} Although 'urf judges interviewed in North Sinai insisted that their judgments are entirely consistent with state as well as Islamic law, their close ties to state institutions, including the official religious establishment, have exposed them to legitimacy challenges from shari'a judges, who accuse the 'urf courts of promoting al-Azhar's inauthentic brand of state-sponsored Islam.^{xcv}

Antagonism between the two non-state judiciaries has intensified since July 2013, after which several 'urf judges publicly endorsed a violent counterterrorism campaign targeting Islamists in Sinai.^{xcvi} Shari'a judges interviewed in North Sinai accused their 'urf counterparts of reporting, often inaccurately, on the activities of Salafi leaders to state authorities. In one encounter that was suggestive of strong sympathy at the very least – and probably an indication of overt cooperation – between the tribal elite and security and military establishments, one 'urf judge interviewed in Arish had his cell-phone ringtone programmed to play the official anthem of the Egyptian military.^{xcvii}

The close and symbiotic relationship between the ‘urf and state systems is a by-product 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 system as a means of enabling the enforcement of ‘urf judgments by state authorities.^{xcviii} 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,^{xcix} encouraging ‘urf courts to perform the gap-filling function associated with the category of complementary non-state institutions described previously. The increasing integration of state and ‘urf courts has provoked resistance from the shari’a courts, which in the aftermath of the 2011 revolution began to frame themselves as an alternative legal order occupying a moral and religious high ground over state and tribal systems that they regarded as corrupt and un-Islamic.

Repression and Radicalization After July 2013

With the collapse of Mubarak’s regime in 2011 and subsequent weakening of state institutions in North Sinai, shari’a courts capitalized on the security vacuum to promote an alternative system of justice and law enforcement. But after a period of rapid expansion under the permissive government of former president Mohamed Morsi, the restoration of military rule in July 2013 and the ensuing counterterrorism campaign have sharply curtailed the activity of the shari’a courts. Articulating a traditional Salafi ideology that promotes Islamic law as

an independent source of morality and justice outside of an illegitimate government, shari'a judges condemned the return of what they describe as a "police state" and increasingly seek to represent themselves as defenders of democracy and rule of law against an unlawful coup.^c

While shari'a courts 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, they began to take an increasingly radical stand against the state in the aftermath of the July 2013 military coup. In the months following Morsi's removal, Islamists sought to capitalize on the dubious legality of the military's intervention to portray the Muslim Brotherhood as an advocate for democracy and constitutionalism. This narrative emphasizing the illegal nature of the military's takeover resonated powerfully in Sinai, where shari'a judges explicitly promoted Islamic law as the only remedy for a broken justice system that they did not trust to investigate or prosecute state-perpetrated crimes.^{ci} 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,^{cii} 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.^{ciii}

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 dis-

torting his views, insisting that his symbolic ruling was purely rhetorical.^{civ} Until the 2013 military coup, Salafi leaders in North Sinai had been careful to renounce violence, but following the launch of a major counterterrorism 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. 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.^{cv} As the military intensified its campaign to subdue a rising Islamist insurgency in North Sinai, shari'a judges began to express sympathy and outright support for the extremists groups that they had previously disavowed. On August 14, 2013, a Sinai-based jihadist posted a photograph of a church that militants firebombed in retaliation for violence against Morsi supporters in Cairo. The prominent shari'a judge Sheikh Abu Faisal noted his approval in a comment: "May God prevent it from ever returning."^{cvi}

Since July 2013, the Egyptian military has appeared to be replicating many of the repressive state policies that fueled Islamization and radicalization in the 1980s and 1990s. The increasingly violent confrontation between the state and Islamists in North Sinai has reinforced the shari'a courts' aspirations for an autonomous and independently enforceable Islamic legal order. Although the counterterrorism campaign has led to the arrest of several shari'a judges and forced others into hiding,^{cvii} non-state Islamic judiciaries have previously demonstrated their ability to operate successfully under conditions of

repression during the Mubarak era and are likely to continue to challenge the religious and legal legitimacy of both the state and the 'urf justice systems, despite their temporarily weakened position.

Appendix 1: ‘Urf Cases

Sample of Cases from an ‘Urf Court in North Sinai

Case U1

- Start date/duration: September 2013 (1 month)
- Type of case: Default on debt
- Case description: Defendant was unable to pay back an LE 200,000 debt in cash, but offered to compensate with property. Creditor rejected offer and insisted on monetary repayment.
- Defendant: Member of Ermilat tribe
- Plaintiff: Member of Ermilat tribe
- Winner: Plaintiff
- Judgment: The judge offered two options: restitution of a building worth LE 200,000 or repayment in cash after 6 months, before taking the money from the man. The creditor agreed to wait 6 months for repayment.

Case U2

- Start date/duration: November 2012 (4 months)
- Type of case: Land dispute
- Case description: Two men claimed ownership of land worth over LE 1,000,000. One stole a truck owned by one of the relatives of the other, to force him to submit to ‘urf arbitration (an act of wisaaga). The judges said that the car owner must compel his relative to appear at the ‘urf court for adjudication.
- Parties: Two members of the Sawarka tribe.
- Judgment: Case still ongoing.

Case U3

- Start date/duration: 2010 (2 months)
- Type of case: Manslaughter
- Case description: Unintentional manslaughter of a 7-year-old girl (member of Ermilat tribe) in a car accident. Driver was a member of Sawarka tribe.
- Defendant: Member of Sawarka tribe
- Plaintiff: Member of Ermilat tribe
- Winner: Plaintiff
- Judgment: Plaintiff was compensated with a monetary judgment equivalent to 100 camels.

Case U4

- Start date/duration: October 2013 (1 month)
- Type of case: Assault
- Case description: A tractor was taken as wisaaga by men from the Sawarka tribe after a man from the Tarabeen tribe asserted a claim to part ownership of the tractor. The claimant from Tarabeen was beaten and the tractor was returned to a Sawarka man who claimed to be the sole owner. The Tarabeen man brought the case on assault charges.
- Respondents: Members of the Sawarka tribe
- Claimant: Member of the Tarabeen tribe
- Judgment: Settlement. The defendant was not found guilty because the plaintiff had also used violence, but the plaintiff did win a judgment of LE 3,000. The judges asked the plaintiff to host the defendant the next day as a gesture of reconciliation.

Case U5

- Start date: 2008
- Type of case: Divorce
- Case description: A man was incarcerated for 20 years, during which time his daughter was raised by her grandfather. The grandfather agreed to a marriage

proposal from 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. The case originally went to an ‘urf judge, who referred it 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 ifta’ (a council that issues religious edicts), who said that the father must consent to the marriage, or otherwise the marriage must be dissolved. The case was sent to a judge from the Massoudi tribe, which specializes in divorce and marital disputes.

- Respondent: Member of the Ehiwat tribe
- Claimant: Member of the Tarabeen tribe
- Winner: Claimant
- Judgment: The husband was required to pay a fine of LE 260,000. The marriage was dissolved, but the couple later remarried.

Appendix 2: Shari'a Cases

Sample of Cases from a Shari'a Court in North Sinai

Case S1

- Start date/duration: May 2012 (1 month)
- Type of case: Assault/ property damage (vehicle)
- Case description: Defendant hit plaintiff and plaintiff's son, also damaging the plaintiff's vehicle.
- Respondent: Member of a tribe (unspecified)
- Claimant: Arish family
- Winner: Claimant
- Judgment: Tort damages/monetary: LE 51,000 for vehicle damage and LE 100,000 for physical assault.

Case S2

- Start date/duration: February 2012 (1 month)
- Type of case: Land dispute (female property owner)
- Case description: 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.
- Respondent: Member of Sawarka tribe
- Claimant: Female resident of Arish
- Winner: Respondent
- Judgment: Judge ruled against the female seller, saying her contract with the first buyer was enforceable.

Case S3

- Start date: March 2012
- Type of case: Murder
- Case description: 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 dy-

- ing. The three men were sentenced to prison for 10 years each.
- Defendants: Three residents of Arish area
 - Plaintiff: Family of victim from Arish area
 - Winner: Victim's family
 - Judgment: 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 LE 20,000 for each defendant.

Case S4

- Start date/duration: October 2011 (1 month)
- Type of case: Inheritance/land dispute
- Case description: 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.
- Parties: Female and male heirs to an estate in Arish
- Winner: Female heirs
- Judgment: The judge specified that the properties be fairly allocated among the heirs, male and female, according to shari'a.

Case S5

- Start date/duration: February 2013 (1 month)
- Type of case: Divorce
- Case Description: A husband left his wife without granting either a divorce or compensation. She brought the case to shari'a court to obtain a divorce and compensation required by severance of the marriage contract.
- Parties: Husband and wife (residents of Arish)
- Winner: Wife

- Judgment: The wife was granted a divorce and monetary compensation of LE 35,000.

Figures: Images of Shari'a Judges

Sheikh Hamdeen Abu Faisal

Photo by author, private residence in Arish, North Sinai
(August 11, 2013)



Sheikh Assad al-Beik

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



ⁱ Mara Revkin, “Sharia Courts of the Sinai,” *Foreign Policy*, September 20, 2014, http://mideastafrica.foreignpolicy.com/posts/2013/09/20/sharia_courts_of_the_sinai.

ⁱⁱ “Military Spokesman: Arrest of 15 Takfiris, ‘Abu Faisal’ the Most Prominent Among Them” [author’s own translation], *El-Fagr*, September 19, 2013, <http://www.elfagr.org/427943>.

ⁱⁱⁱ I have chosen September 2013 as the cutoff date for this case study, because during that month, several prominent shari’a judges were arrested in a security crackdown that has severely curtailed the activities of unofficial Islamic courts in North Sinai.

^{iv} “Sinai terrorists linked with ISIS decapitate 10 alleged Israeli and Egyptian spies,” *Jerusalem Post*, March 11, 2015, <http://www.jpost.com/Arab-Israeli-Conflict/Sinai-terrorists-linked-with-ISIS-decapitate-10-alleged-Israeli-spies-390574>.

^v Mohamed al-Akhrasi, “Sharia Court Affiliated with Wilayat Sinai Applies First Hadd Punishment on Two Highway Robbers” [author’s own translation], *Al-Mawkef*, March 28, 2015, <http://almawkef.com/news/i/7532/%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%B4%D8%B1%D8%B9-%D8%A7%D9%84%D8%AA%D8%A7%D8%A8%D8%B9%D8%A9-%D9%84%D9%88%D9%84%D8%A7%D9%8A%D8%A9-%D8%B3%D9%8A%D9%86%D8%A7%D8%A1-%D8%AA%D8%B7%D8%A8%D9%82-%D8%A3%D9%88%D9%84-%D8%AD%D8%AF-%D8%B9%D9%84%D9%89-%D8%A3.html>.

^{vi} In December 2012, a North Sinai-based Salafi group calling itself the “Association for the Promotion of Virtue and Prevention of Vice” distributed leaflets threatening to impose “harsh” punishments on anyone caught selling drugs or cigarettes. “Leaflets Attributed to ‘Vice and Virtue’ Group Threaten Drug and Cigarette Dealers with Punishments” [author’s own translation], *Al-Masry al-Youm*, December 26, 2012, <http://www.almasryalyoum.com/news/details/267624>.

^{vii} Clinton Bailey, *Justice Without Government* (Yale University Press: New Haven, 2009).

^{viii} Smadar Lavie and William C. Young, “Bedouin in Limbo: Egyptian and Israeli Development Policies in Southern Sinai,” *Antipode*, Vol. 16, No. 2 (1984), pp. 34-44.

^{ix} ‘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. Clinton Bailey, *Justice Without Government* (Yale University Press: New Haven, 2009), p. 164. In contrast, the shari’a courts are more closely affiliated with ideological Salafi 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 not affiliated 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.

^x Larry W. Roeder, “Tribal Law and Tribal Solidarity in Sinai Bedouin Culture: The Story of Besha,” *Anthropos*, Vol. 84 (1989), p. 233.

^{xi} Interview with ‘urf judge Sheikh Abdel Hady in Sheikh Zuweid, North Sinai (August 11, 2013).

^{xii} Clinton Bailey, *Justice Without Government* (Yale University Press: New Haven, 2009), p. 164.

^{xiii} 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. Aharon Layish, “The ‘Fatwa’ as an Instrument of the Islamization of a Tribal Society in Process of Sedentarization,” *Bulletin of the School of Oriental and African Studies*, Vol. 54, No. 3 (1991), pp. 449-59. 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 of 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. 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.

^{xiv} Interview with shari’a judge Sheikh Assad al-Beik, House of Sharia Judgment, in Arish, North Sinai (August 10, 2013).

^{xv} Interview with Sinai-based journalist Muhamed Sabry in Arish, North Sinai (August 9, 2013).

^{xvi} Heba Fahmy, “Sharia Tribunals on the Rise in North Sinai,” *Egypt Independent*, November 17, 2012, <http://www.egyptindependent.com/news/sharia-tribunals-rise-north-sinai>.

^{xvii} Interview with shari’a judge Sheikh Hamdeen Abu Faisal, Arish, North Sinai (August 11, 2013); interview with shari’a judge Sheikh Assad al-Beik, House of Sharia Judgment, in Arish, North Sinai (August 10, 2013); interview with Anwar Ahmed Mohamed, a 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.

^{xviii} 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. (Interview with Anwar Ahmed Mohamed, telecommunications entrepreneur who litigated a business dispute through a shari'a court in 2013, Arish, North Sinai, August 10, 2013). A comparison of tables 1 and 2 suggest that, at least until August 2013, shari'a had been resolving cases faster on average than 'urf courts.

^{xix} Mohannad Sabry, "Islamic Law Rises as Sinai Lacks Order in the Courts," *The Washington Times*, August 22, 2012, <http://www.washingtontimes.com/news/2012/aug/22/islamic-law-rises-as-sinai-lacks-order-in-the-cour/?page=all>.

^{xx} Sherine Abd' al-Sayid and Rabab al-Shazli, "Representatives of Sinai Tribes to Submit Grievances to the Committee of Fifty" [author's own translation], *Al-Mesryoon*, September 30, 2013, <http://almesryoon.com/%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9/258655-%D9%85%D9%85%D8%AB%D9%84%D9%88-%D9%82%D8%A8%D8%A7%D8%A6%D9%84-%D8%B3%D9%8A%D9%86%D8%A7%D8%A1-%D9%8A%D8%B7%D8%B1%D8%AD%D9%88%D9%86-%D9%85%D8%B4%D9%83%D9%84%D8%A7%D8%AA%D9%87%D9%85-%D8%B9%D9%84%D9%89-%D9%84%D8%AC%D9%86%D9%87-%D8%A7%D9%84%D8%AE%D9%85%D8%B3%D9%8A%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A8%D8%B9%D8%A7%D8%A1-%D8%A7%D9%84%D9%82%D8%A7%D8%AF%D9%85>.

^{xxi} 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* (Said Amir Arjomand & Nathan J. Brown, eds., 2013).

xxii Ta'zir may be defined as “prevention, correction, or chastisement” and includes all crimes for which the Qur’an or Sunna does 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 criminal. Kristin Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford University Press: Oxford, 2009), p. 29.

xxiii See Osama Khaled, “Salafi Group in Sinai Establishes a Committee to Resolve Disputes ... 6,000 Armed Men to Enforce Rulings” [author’s own translation], *al-Masry al-Youm*, August 9, 2011, <http://www.almasryalyoum.com/node/484797>.

xxiv Mohamed al-Akhrasi, “Sharia Court Affiliated with Wilayat Sinai Applies First Hadd Punishment on Two Highway Robbers” [author’s own translation], *Al-Mawkef*, March 28, 2015, <http://almawkef.com/news/i/7532/%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%B4%D8%B1%D8%B9-%D8%A7%D9%84%D8%AA%D8%A7%D8%A8%D8%B9%D8%A9-%D9%84%D9%88%D9%84%D8%A7%D9%8A%D8%A9-%D8%B3%D9%8A%D9%86%D8%A7%D8%A1-%D8%AA%D8%B7%D8%A8%D9%82-%D8%A3%D9%88%D9%84-%D8%AD%D8%AF-%D8%B9%D9%84%D9%89-%D8%A3.html>.

xxv Ministry of Planning & International Cooperation, “The Prospects and Challenges of Sinai’s Development,” *The Center for Project Evaluation and Macroeconomic Analysis*, Vol. 11 (2012), pp. 1-5, <http://www.pema.gov.eg/FileUpload/Publication/Files/483.pdf>.

xxvi USAID, “Sinai Development Study, Phase I: Final Report,” *A Strategy for the Development of Sinai* (March 1985), http://pdf.usaid.gov/pdf_docs/Pnaas536.pdf.

xxvii Nicholas Pelham, “Sinai: The Buffer Erodes,” *Chatham House* (2012), <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/pr0912pelham.pdf>.

xxviii *Id.*, p. 2.

xxx Smadar Lavie and William C. Young, "Bedouin in Limbo: Egyptian and Israeli Development Policies in Southern Sinai," *Antipode*, Vol. 16, No. 2 (1984), pp. 34-44.

xxx Nicholas Pelham, "Sinai: The Buffer Erodes," *Chatham House* (2012), <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/pr0912pelham.pdf>.

xxx Ehud Yaari, "Sinai: A New Front," *The Washington Institute for Near East Policy*, January 2012, <http://www.washingtoninstitute.org/uploads/Documents/pubs/PoolicyNote09.pdf>.

xxxii USAID, "Sinai Development Study, Phase I: Final Report," *A Strategy for the Development of Sinai* (March 1985), p. 80, http://pdf.usaid.gov/pdf_docs/Pnaas536.pdf.

xxxiii In a study of the settling of the population of agricultural lands in fifteenth-century Punjab (now Pakistan), Karin De Vries notes that the sedentarization of the previously nomadic pastoral population "went hand in hand with Islamization." Karin De Vries, "Pirs and Pastoralists: Along the Agrarian Frontier of Multan, 1886-1947," *International Institute for Asian Studies Newsletter*, Vol. 24 (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[s] the process of Islamization." Ronnie Ellenblum, *Frankish Rural Settlement in the Latin Kingdom of Jerusalem* (Cambridge University Press: Cambridge, 2003), p. 256.

xxxiv Elizabeth Waithanji, *Gendered Impacts of Sedentarization of Nomads on the Somali Community in Mandera Central Division of Northeastern Kenya* (Dissertation, 2008), p. 9.

xxxv Aharon Layish, "The 'Fatwa' as an Instrument of the Islamization of a Tribal Society in Process of Sedentarization," *Bulletin of the School of Oriental and African Studies*, Vol. 54, No. 3 (1991), pp. 449-59, 454.

xxxvi “Egypt Revolution Leaves Sinai Increasingly Lawless,” *BBC News*, June 1, 2011, <http://news.bbc.co.uk/2/mobile/programmes/newsnight/9501505.stm><http://news.bbc.co.uk/2/mobile/programmes/newsnight/9501505.stm>.

xxxvii Ahl al-Sunna wa’al-Gama’a Facebook page (September 19, 2013) <https://www.facebook.com/photo.php?fbid=387903638003874&set=a.129857863808454.21346.129847417142832&type=1&theater>

xxxviii Sherine Abd’ al-Sayid and Rabab al-Shazli, “Representatives of Sinai Tribes to Submit Grievances to the Committee of Fifty” [author’s own translation], *Al-Mesryoon*, September 30, 2013, <http://almesryoon.com/%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9/258655-%D9%85%D9%85%D8%AB%D9%84%D9%88-%D9%82%D8%A8%D8%A7%D8%A6%D9%84-%D8%B3%D9%8A%D9%86%D8%A7%D8%A1-%D9%8A%D8%B7%D8%B1%D8%AD%D9%88%D9%86-%D9%85%D8%B4%D9%83%D9%84%D8%A7%D8%AA%D9%87%D9%85-%D8%B9%D9%84%D9%89-%D9%84%D8%AC%D9%86%D9%87-%D8%A7%D9%84%D8%AE%D9%85%D8%B3%D9%8A%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A8%D8%B9%D8%A7%D8%A1-%D8%A7%D9%84%D9%82%D8%A7%D8%AF%D9%85>.

xxxix Gretchen Helmke and Steven Levitsky, “Informal Institutions and Comparative Politics: A Research Agenda,” *Perspectives on Politics*, Vol. 2 (2004), p. 728.

^{xl} 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. John Griffiths, “What Is Legal Pluralism?” *Journal of Legal Pluralism and Unofficial Law*, Vol. 24 (1986), pp 1-55.

^{xli} 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: Law, Politics, and Economic Development in Egypt* (Cambridge University Press: Cambridge, 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. Clark Lombardi and Nathan Brown, "Do Constitutions Requiring Adherence to Sharia Threaten Human Rights?: How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law," *American University International Law Review*, Vol. 21 (2006), pp. 379-435.

^{xliii} David Kirkpatrick, "Egypt Court Overturns Mubarak Conviction," *New York Times*, January 13, 2013, http://www.nytimes.com/2013/01/14/world/middleeast/egyptian-court-grants-hosni-mubarak-a-new-trial.html?_r=0; David Kirkpatrick, "President Morsi in Egypt Seizes New Powers," *New York Times*, November 22, 2013, <http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html>; and David Kirkpatrick, "Army Ousts Egypt's President; Morsi Is Taken Into Military Custody," *New York Times*, July 3, 2013, <http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html>.

^{xliiii} Neil Walker, "The Idea of Constitutional Pluralism," *The Modern Law Review*, Vol. 65, No. 3 (2002), pp. 317-359.

^{xliv} See Intisar Rabb, "Ijtihad," in *The Oxford Encyclopedia of the Islamic World*, *Oxford Islamic Studies Online*, December 1, 2013, <http://www.oxfordislamic-studies.com/article/opr/t236/e0354>, noting that "the merely 'probable' status of the legal rulings and the myriad jurists performing *ijtihād* with varying levels of competence resulted in the existence of multiple and varying juristic opinions (*ikhṭilāf*)."

^{xlv} Nathan J. Brown, "Egypt and Islamic Shari'a," *The Carnegie Endowment for International Peace*, May 15, 2012, <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-shari-a-guide-for-perplexed/argb>.

^{xlvi} Aharon Layish, "Introduction" in *Legal Documents from the Judean Desert* (Aharon Layish, ed., 2011), p. xvii.

xlvii *Id.*, p. 7.

xlviii Nathan J. Brown, "Egypt's Judges in a Revolutionary Age," *The Carnegie Endowment for International Peace*, February 2012, http://carnegieendowment.org/files/egypt_judiciary.pdf.

xlix Mara Revkin and Yussef Auf, "Egypt's Fallen Police State Gives Way to Vigilante Justice," *The Atlantic*, April 3, 2013, <http://www.theatlantic.com/international/archive/2013/04/egypts-fallen-police-state-gives-way-to-vigilante-justice/274616/>.

^l Mara Revkin, "The Egyptian State Unravels," *Foreign Affairs*, June 27, 2013, <http://www.foreignaffairs.com/articles/139541/mara-revkin/the-egyptian-state-unravels>.

^{li} Mara Revkin, "Sharia Courts of the Sinai," *Foreign Policy*, September 20, 2014, http://mideastafrica.foreignpolicy.com/posts/2013/09/20/sharia_courts_of_the_sinai.

^{lii} John Griffiths, "What Is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law*, Vol. 24 (1986), pp. 1-55.

^{liii} Helmke and Levitsky, p. 729.

^{liv} Helmke and Levitsky note that competing non-state institutions are often found in postcolonial 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. Helmke and Levitsky, p. 728-29.

^{lv} Interview with 'urf judge Sheikh Yehia al-Ghoul, Arish, North Sinai (August 10, 2013).

^{lvi} Interview with shari'a judge Sheikh Hamdeen Abu Faisal, Arish, North Sinai (August 11, 2013)

^{lvii} Mara Revkin, “Outsourcing Justice in the Sinai: Shari’a Courts Thrive in the Shadow of a Weak State,” *The Atlantic Council, EgyptSource*, March 12, 2013, <http://www.atlanticcouncil.org/blogs/egyptsource/outsourcing-justice-in-the-sinai-sharia-courts-thrive-in-the-shadow-of-a-weak-state/>.

^{lviii} Ta’zir includes all crimes for which the Qur’an or Sunna does 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 criminal. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge University Press: Cambridge, 2005).

^{lix} Interview with shari’a judge Sheikh Assad al-Beik, House of Sharia Judgment in Arish, North Sinai (August 10, 2013).

^{lx} 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. Kamal al-Hilw and Said Mumtaz Darwish, *Customary Law in North Sinai* (American University in Cairo: Cairo, 1989), p. 104.

^{lxi} *Id.*, p. 111.

^{lxii} Helmke and Levitsky, p. 729.

^{lxiii} Interview with ‘urf judge Sheikh Hamdi Gouda, Arish, North Sinai (August 9, 2013).

^{lxiv} Bailey, p. 10.

^{lxv} For example, 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.” Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (Routledge: London, 1995), pp. 62-63.

^{lxvi} Nicholas Pelham, “Sinai: The Buffer Erodes,” *Chatham House* (2012), <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/pr0912pelham.pdf>.

^{lxvii} Interview with ‘urf judge Sheikh Abdel Hady, Sheikh Zuweid, North Sinai (August 11, 2013).

^{lxviii} Sara Arafa and Sami Magdey, “Investigation: Sharia Committees: An Alternative to the Judiciary in Sinai” [author’s own translation], *al-Masrawy*, May 27, 2013, <http://www.masrawy.com/News/reports/2013/may/27/5627339.aspx>.

^{lxix} Sherine Sherine Abd’ al-Sayid and Rabab al-Shazli, “Representatives of Sinai Tribes to Submit Grievances to the Committee of Fifty” [author’s own translation], *Al-Mesryoon*, September 30, 2013, <http://almesryoon.com/%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9/258655-%D9%85%D9%85%D8%AB%D9%84%D9%88-%D9%82%D8%A8%D8%A7%D8%A6%D9%84-%D8%B3%D9%8A%D9%86%D8%A7%D8%A1-%D9%8A%D8%B7%D8%B1%D8%AD%D9%88%D9%86-%D9%85%D8%B4%D9%83%D9%84%D8%A7%D8%AA%D9%87%D9%85-%D8%B9%D9%84%D9%89-%D9%84%D8%AC%D9%86%D9%87-%D8%A7%D9%84%D8%AE%D9%85%D8%B3%D9%8A%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A8%D8%B9%D8%A7%D8%A1-%D8%A7%D9%84%D9%82%D8%A7%D8%AF%D9%85>.

^{lxx} Interview with shari’a judge Sheikh Assad al-Beik, Arish, North Sinai (August 10, 2013).

^{lxxi} Sara Arafa and Sami Magdey, “Investigation: Sharia Committees: An Alternative to the Judiciary in Sinai” [author’s own translation], *al-Masrawy*, May 27, 2013, <http://www.masrawy.com/News/reports/2013/may/27/5627339.aspx>.

lxxii Phone interview with shari'a judge Sheikh Assad al-Beik (January 6, 2013).

lxxiii Since 1980, Egypt's constitutions (including the one most recently introduced, in 2013) have identified "the principles of Islamic shari'a" as "the main source of legislation," but Egypt's Supreme Constitutional Court has nonetheless interpreted this language to provide at least some protections for the rights of women and religious minorities. Lombardi and Brown, p. 379.

lxxiv Interview with shari'a judge Sheikh Assad al-Beik, House of Sharia Judgment in Arish, North Sinai (August 10, 2013).

lxxv Nathan J. Brown, "Post-Revolutionary Azhar," *Carnegie Endowment for International Peace* (2011), http://carnegieendowment.org/files/al_azhar.pdf.

lxxvi Nathan J. Brown and Michele Dunne, "Egypt's Draft Constitution Rewards the Military and Judiciary," *Carnegie Endowment for International Peace*, December 4, 2013, <http://carnegieendowment.org/2013/12/04/egypt-s-draft-constitution-rewards-military-and-judiciary/gvc8>.

lxxvii Nathan J. Brown and Said Arjomand, eds., *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran* (SUNY Press: 2013), p. 283.

lxxviii Yasmine Saleh, "Al Azhar: Only Dar Al Ifta Can Issue Fatwas," *The Daily News Egypt*, May 1, 2007, <http://www.masress.com/en/dailynews/101613>.

lxxix Mara Revkin, "Martyrdom and Revenge in the Sinai Peninsula," *Washington Post*, August 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.

lxxx Sara Arafa and Sami Magdey, "Investigation: Sharia Committees: An Alternative to the Judiciary in Sinai" [author's own translation], *al-Masrawy*, May 27, 2013, <http://www.masrawy.com/News/reports/2013/may/27/5627339.aspx>.

lxxxi *Id.*

^{lxxxii} Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (Cambridge University Press: Cambridge, 2012), p. 91.

^{lxxxiii} Interview with shari'a judge Sheikh Hamdeen Abu Faisal, Arish, North Sinai (August 11, 2013).

^{lxxxiv} Sara Arafa and Sami Magdey, "Investigation: Sharia Committees: An Alternative to the Judiciary in Sinai" [author's own translation], *al-Masrawy*, May 27, 2013, <http://www.masrawy.com/News/reports/2013/may/27/5627339.aspx>.

^{lxxxv} Heba Fahmy, "Sharia Tribunals on the Rise in North Sinai," *Egypt Independent*, November 17, 2012, <http://www.egyptindependent.com/news/sharia-tribunals-rise-north-sinai>.

^{lxxxvi} Interview with shari'a judge Sheikh Assad al-Beik, House of Sharia Judgment in Arish, North Sinai (August 10, 2013).

^{lxxxvii} Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press: Cambridge, 2002), p. 40.

^{lxxxviii} Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press: Oxford, 1964), p. 62.

^{lxxxix} Ehud Yaari, "Sinai: A New Front," *The Washington Institute for Near East Policy*, January 2012, <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote09.pdf>.

^{xc} Interview with Sheikh Yehia al-Ghoul, Arish, North Sinai (August 9, 2013).

^{xci} Interview with 'urf judge Sheikh Abdel Hady, Sheikh Hamdi Goudi in North Sinai (August 11, 2013), accusing "fundamentalist" shari'a judges of capitalizing on the political discontent of the Bedouin to promote Islamization. Interview with shari'a judge Sheikh Hamdeen Abu Faisal, Arish, North Sinai (August 10, 2013), 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.

^{xcii} Roeder, p. 233.

^{xciii} Ahmed Abd' al-Mawjoud al-Shenawi, *Social Control and Problems Related to Changes in Society and Customs* [manuscript on file with author, author's own translation], (2002), p. 132.

^{xciv} Mohamed Hussein, "Opening of a New Azhar Institute in North Sinai" [author's own translation], *al-Youm al-Saba'a*, March 10, 2014, <http://www.1.youm7.com/News.asp?NewsID=1549348#.UzbOrK1dVQo>.

^{xcv} Interview with 'urf judge Sheikh Yehia al-Ghoul, Arish, North Sinai (August 9, 2013); interview with 'urf judge Sheikh Hamdi Gouda, Arish, North Sinai (August 9, 2013); interview with 'urf judge Sheikh Abdel Hady, Sheikh Zuweid, North Sinai (August 11, 2013).

^{xcvi} Interview with 'urf judge Sheikh Yehia al-Ghoul, Arish, North Sinai (August 9, 2013).

^{xcvii} Interview with 'urf judge Sheikh Yehia al-Ghoul, Arish, North Sinai (August 9, 2013).

^{xcviii} Lavie and Young note that the Mubarak government "dramatically increased the number of sheikhly offices" in order to render these sheikhs "clients of the administration." Lavie and Young, p. 36.

^{xcix} Clinton Bailey describes 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 Bedouin. Clinton Bailey, *Justice Without Government* (Yale University Press: New Haven, 2009), p. 11.

^c Mara Revkin, "Martyrdom and Revenge in the Sinai Peninsula," *Washington Post*, August 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.

^{ci} Id.

^{cii} El Sayed Gamal El Din, “Son of Brotherhood Supreme Guide Dies in Cairo Clashes,” *Ahram*, August 17, 2013, <http://english.ahram.org.eg/NewsContent/1/64/79278/Egypt/Politics-/Son-of-Brotherhood-Supreme-Guide-dies-in-Cairo-cla.aspx>.

^{ciii} Facebook page of Sheikh Hamdeen Abu Faisal, Facebook, last accessed December 8, 2013, <https://www.facebook.com/abofesalfesal?fref=ts>

^{civ} Amal Saleh, “Fatwa of the Head of the Sharia Courts in Sheikh Zuweid Encouraging Assassinations and Spilling the Blood of al-Sisi” [author’s own translation], *Al-Youm al-Saba’a*, September 10, 2013, <http://www1.youm7.com/News.asp?NewsID=1243588&SecID=12&IssueID=0>.

^{cv} Id.

^{cvi} Mara Revkin, “Sharia Courts of the Sinai,” *Foreign Policy*, September 20, 2013, http://mideastafrica.foreignpolicy.com/posts/2013/09/20/sharia_courts_of_the_sinai.

^{cvi} Interview with North Sinai-based journalist Muhamed Sabry (October 8, 2014).

Yale