



CUSTOMARY LAW AMONG THE BEDOUIN OF THE MIDDLE EAST AND NORTH AFRICA¹

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Introduction

Not long after the British conquered Baghdad in 1917, one of their officials had occasion to write a brief account of the ‘Uqaydat, a semi-nomadic tribe,² whose territory lay along the Euphrates in what is now eastern Syria. The official remarked that “like all Arabs they are fond of litigation and as it is an amusement they can now indulge in cheaply it forms one of their main pastimes” (Trench 1996, vol. 1, p. 708). The litigation to which the official referred was undoubtedly carried on in tribal rather than state courts, and generally followed customary rather than Islamic law. Disputes and their settlement do indeed occupy a great deal of attention in many Bedouin communities, and it is true that they can on occasion assume something of the aspect of a sport. But mostly, of course, litigation is a serious business, and what this and many similar remarks³ indicate is that customary law is a central feature of Bedouin culture. In this chapter I shall offer a brief account of that law as it was in the 20th century.

¹ The chapter that follows draws freely on two entries by the author in the ‘Encyclopaedia of Islam’ (new edition), *Tha’r* and *‘Uyf* (Stewart 2000a; 2000b). My thanks to Dawn Chatty, Michael Cook and Etan Kohlberg for invaluable comments on a draft of this chapter, and to Kate Prudden for exquisite editing.

² In what follows I shall use the word ‘tribe’ in the same way that it is usually used in the literature on the Bedouin—that is to say, without attempting to define it, and with little regard to consistency. Heroic attempts have been made to pin down the concept—see for instance Crone (1993) and the references given there—but without success.

³ A Briton who was stationed in the Aden protectorate wrote that: “There is nothing a Bedouin loves more than a nice piece of litigation. It is like Pavlova’s Swan to a balletomaine [sic]: the Derby to punters: the latest singer to adolescent girls. It is, apart from raiding and coition, their only earthly pleasure” (Allfree 1967, p. 38). See also the observations of General Pierre Denis (2001, pp. 17, 79), who worked in Southern Algeria, and of Major C. S. Jarvis (1931, p. 25), who was governor of Sinai.





In some Bedouin communities virtually every aspect of life is—or was until recently—regulated by customary law, but in many others it is not the only law in effect. The Bedouin may prefer to have certain areas of their lives ruled by Islamic law, separately administered from the customary law,⁴ and whether they like it or not they may find themselves also subject, to some degree or another, to the law of a state.

The term ‘Bedouin’ is used here broadly and loosely. It refers not only to all Arabic-speaking nomadic pastoralists, but also to those of their sedentary descendants who retain a substantial part of their ancestral culture. I shall therefore categorize the Arabic-speaking tribes of both Southern Iraq and Morocco as Bedouin, excepting only those few (such as the Jbala of Morocco) whose ancestors were clearly not nomads.

Space does not permit any discussion of either the evidential or the conceptual problems that arise from the material in this chapter, but they should always be borne in mind. Bedouin laws, like Bedouin dialects, tend to be fairly similar over very large regions, but generalizations that purport to cover a territory that stretches from Mauritania to Western Iran should be treated with some reserve. Information about Bedouin customary law is fairly adequate for two regions: one comprises Sinai, Palestine and Transjordan, the other the Western Desert of Egypt and Cyrenaica. For the rest, data are either sketchy or entirely lacking. Most of the general statements made in this chapter should therefore be qualified by some such expression as “generally speaking, and as far as the available information goes.” One can never infer from the absence of evidence that customary law is unimportant or non-existent in a given community. The ‘Uqaydat, for instance, were the subject of a useful monograph based on data collected in the 1930s (Charles 1939). But though there is every reason to believe that the tribespeople were just as litigious then as they had been twenty years before, the monograph makes no mention at all of their customary law.

Another caveat is also necessary: the author’s own first-hand experience with the customary law of the Sinai Bedouin may have led him

⁴ For an example, see Hayik (1936, p. 91), which relates to the Jubur of eastern Syria as they were in 1914; further examples in Stewart (2000b, p. 891).





to represent the law of other Bedouin, known to him only through the literature, as being more similar to Sinai law than it really is.⁵

We are concerned here with the Bedouin, but it should be observed that, generally speaking, no sharp distinction can be drawn between their customary law and that of the neighboring sedentary people. In the Mashriq,⁶ in fact, there is good reason to believe that a large part of the customary law of the sedentary population was adopted from the Bedouin. The main differences between the customary laws of the two populations are of an obvious kind. The Bedouin, in the nature of things, do not concern themselves with such subjects as oasis irrigation, the maintenance of terraces, or the organization of guilds, while the sedentary population, if it is fairly well controlled by some authority, has no laws about raiding and warfare. But where the sedentary population of the Mashriq is not controlled in this fashion—as in much of the Yemen—then its law (where it covers the same subject-matter as Bedouin law) differs no more from the Bedouin law than does the law of one Bedouin region from another.

Most of the material on the customary law of the Asiatic Bedouin that was published before about 1945 is summarized in Gräf (1952). A critical survey of the literature, including works about the law of the African Bedouin, will be found in Stewart (1987); an update is in preparation.

The Jural Community

In a region where the Bedouin form an important element of the population, they constitute a single jural community.⁷ In other words, they follow more or less the same customary law, they have recognized procedures for settling disputes between themselves, and generally

⁵ Unless otherwise indicated, all statements about the Sinai Bedouin made here are based on information gathered by the author in the field.

⁶ In what follows, the term Mashriq is used to include not only the Asiatic parts of the Arab world, but also Egypt, the Western Desert and Cyrenaica; the term Maghrib refers to the rest of North Africa. The other two Bedouin regions in Africa will be referred to respectively as the Sudan (which extends, in this usage, as far West as Lake Chad) and the Western Sahara (the *turāb al-bīdān*, whose borders are set out in Norris 1993, p. 611).

⁷ Gräf (1952, pp. 11ff.) proposes a narrower definition of the jural community (*Rechtsbereich*), but it is one that I do not think can be sustained.





speaking they extend legal recognition to each other, whether as individuals or as groups.⁸ In fact Bedouin groups continue to treat each other as legitimate bearers of rights and duties even when they are in a state of conflict with each other. As regards individuals, the fact that the parties to a dispute belong to different groups does not necessarily affect the legal relationships between them. For example, a dispute about the ownership of a camel between men from two different tribes might well be settled in just the same way as it would have been had they both belonged to the same tribe.

In many cases non-Bedouin will also be part of the jural community. So, for instance, in areas of the Mashriq dominated by the Bedouin the inhabitants of small towns regulated their relations with each other, and their relations with the surrounding Bedouin, to no small extent in accordance with the Bedouin customary law.

Bedouin law is not territorial but personal. A stranger does not enjoy its protection simply by virtue of having entered a region that is controlled by Bedouin. Indeed, strangers often have no rights at all, and may be robbed or enslaved at will.⁹ In order to be secure a stranger must enter into an appropriate relationship with someone who has the authority to extend legal protection. The stranger may be able to do so, for instance, by becoming the traveling companion or protégé of a member of the group that controls the territory in which the stranger finds himself.

⁸ Thus Hartley (1961, p. 178) remarks that “all tribes of the Hadhramaut . . . recognize a general code of conduct and a system of adjudication and judicial appeal which operates across tribal boundaries.” (These tribes included both nomadic and sedentary elements.) The riverine tribes of Iraq made agreements with each other that contained rules (*sawānī*) dealing with such details as the precise penalties that were due when a member of one tribe committed an offense against a member of another (Salim 1970, p.143n). The code published by Jamil (1935, pp. 68-82) reflects such an agreement among the tribes of Diyala province.

⁹ “The stranger lacked all defense, unless he integrated himself into the tribe” (Benachenhou 1950, p. 8, referring to a Moroccan tribe). Further references in Gräf (1952, p. 123 n.2). Non-Muslim sailors shipwrecked off the coast of the Western Sahara were frequently enslaved by the local Bedouin. Some Arabian Bedouin even enslaved Muslims (Barth 1983, pp. 184-187; Wikan 1982, p. 43; Anscombe 1997, p. 213, n.163). On the other hand, most travelers in the Mashriq in the 19th century agree that the Bedouin did not mistreat those whom they robbed. One such, having been stripped of his property by Htem in the Judaeian desert, remarked that Bedouin robbers were far less dangerous than European ones, and that “the Bedouin is really a humane robber” (Seetzen 1854-1859, vol. 2, pp. 247-248). Cf. Blunt (1985, p. 17).



*Sources of the Law**Custom*

The main source of Bedouin law is custom, much of it very ancient; and that custom, as was mentioned above, tends to be more or less the same over large regions. This is above all because the Bedouin are mobile. In the ordinary course of things individuals and groups are likely to move around in a considerable area, and in addition it is not uncommon for the allocation of territories between groups to change, whether as a result of peaceful migration or of war. Bedouin are therefore likely to have significant legal relations with a variety of individuals and groups outside their own territory, and this helps to prevent each group from developing a law that is radically different from the law of its neighbors.

Precedent

The formal settlement of disputes is generally a public matter, and the decision reached in a particular dispute usually enjoys some precedential value (cf. Musil 1928, p. 431). In regions where decisions are made by a single judicator¹⁰ there is often a degree of specialization. Certain judicators are experts in disputes involving violence, others in disputes involving honor, and so on. Where this is so, the position of the most authoritative judicator for a particular type of dispute is held by the members of a particular descent group.¹¹ So, for instance, in Western Arabia and in a large surrounding region, a judicator from the Biliy tribe has been recognized for many generations as the final authority in blood disputes, while somewhat to the north a judicator from the Masa'id tribe is recognized as the final authority in disputes involving honor (*'ird*). Decisions by such judicators have a high precedential value. Bedouin from many different tribes visit the homes of these high authorities for the settlement of difficult disputes, and this contributes to maintaining the uniformity of the law within the region.¹²

¹⁰ I use this term to refer to the person appointed by the parties to decide a particular dispute. See further below, section on procedure.

¹¹ This is well documented for Sinai, Palestine and Transjordan. 'Utaywa (1982, p. 261) gives details of a similar phenomenon among the Awlad 'Ali of the Western Desert, and it is also mentioned briefly by Mahjub (1997a, p. 249).

¹² I have described the situation as it was at the beginning of the 20th cen-



*Legislation*

A group can decide on its law by means of a consensus reached at a gathering of leading men.¹³ It was in this way, for example, that the Ahaywat of central Sinai, at some point in the third quarter of the 20th century, established certain rules regulating the appointment of judicators. Sometimes a group may agree on a whole body of laws. In such cases it is no doubt usually a matter not so much of introducing new law as of clarifying and confirming existing custom. According to widely-reported traditions of the Awlad 'Ali of the Western Desert of Egypt, their laws were formulated at a meeting at a place in the Marmarica called al-Haqfa.¹⁴ In this particular case, the law remained oral,¹⁵ but in some instances tribesmen have seen to it that their laws were recorded in writing.

In principle there is nothing to stop any group of Bedouin from formally changing its law. So, for instance, in 1961 the heads of twenty-five prominent lineages (*buyūt*) from various tribes in the vicinity of Marsa Matruh (Western Desert) gathered in order to agree on a new rule about the right that a man has to control the marriage of his father's brother's daughter (Mohsen 1971, p. 113).¹⁶ The extent to which the law can be changed will be limited, however, not only by the conservatism of the society, but also by the existing legal obligations of those who change their law and by the need for certain parts of the law of any group to mesh with the laws followed by the other groups in the jural community.

Interactions

The three sources of the law interact with each other in various ways. For example, in the course of the 20th century the Egyp-

ture; probably not all these final authorities were functioning at the end of the century.

¹³ A gathering held for this purpose is called *al-'amra* among some of the riverine tribes of Iraq (Salim 1970, p. 141).

¹⁴ 'Utaywa (1982, p. 247) dates the event to 1064 AH (AD 1653-1654).

¹⁵ The various codes of Awlad 'Ali law that have been published seem to be the work of government officials, and while this does not detract from their authenticity and value, it does distinguish them from those codes that were written down at the behest of those who gave them binding force.

¹⁶ See below, section on the 20th century and after, for examples of other Bedouin assemblies making similar changes in the law, and al-'Abbadi (1988, p. 209) for examples of other laws being changed in the same way by Jordanian Bedouin.





tian judicial system began to function among the Awlad 'Ali, and in certain instances men guilty of homicide were arrested by the police and tried by state courts. The question then arose of how this was to affect the payment of blood-money in the customary law. A number of the blood-money groups¹⁷ among the Awlad 'Ali adopted the rule that if a killer was arrested by the authorities, then his group would at the time pay only half the blood-money for which he had made it liable, the remainder falling due only if and when the killer regained his freedom and was found to be in good health. Within a period of twenty years this rule had become part of the general custom of the Awlad 'Ali, and so no longer had to be incorporated in the rules of each particular blood-money group (Mohsen 1971, pp. 51-52).

History

A word should be said about the historical, as opposed to the formal, sources of the law. It seems to be generally accepted that the customary law of the Asiatic Bedouin "goes back in the last resort to the customary law of the pre-Islamic Arabs" (Schacht 1964, p. 77, cf. p. 6).¹⁸ The Bedouin of Africa have legal systems that are somewhat different from those of the Asiatic Bedouin, and those differences can at least in part be explained as the result of the influence of the customary laws of the people who were there before the Arabs, notably the Berbers.

Many, perhaps all, systems of Bedouin customary law have to some degree been influenced by Islamic law. For example, the Bedouin of Sinai and surrounding regions use the Islamic term *qāḍi* to refer to their judicator, while the Bedouin of the Western Desert of Egypt seem to have adopted wholesale the classification of injuries used by Islamic law. Among the Asiatic Bedouin, at least, such influence seems to be generally superficial; when Islamic law becomes important among these Bedouin, it does so not by penetrating the system of customary law, but rather by being administered as a separate system.¹⁹

¹⁷ On which see below, section on homicide, battery and the blood-money group.

¹⁸ Similarly many others, e.g., Zanati (1992-1994, vol. 2, p. 217, cf. vol. 1, p. 4).

¹⁹ See above, introductory section.



*Persons and Agnation**Individuals*

The individuals with the most extensive rights are men. Some Bedouin communities adhere strictly to the principle that all men are equal before the law (Stewart 1988-1990, vol. 1, p. 3), while others do not. One indication is the *diyya* (blood-money for homicide). In much of the Mashriq it is the same for all men; among the riverine tribes of Iraq members of shaykhly lineages have much higher blood-money than ordinary men; in certain regions there are inferior groups whose members have lower *diyyas* than the members of superior groups; and in many places descendants of the Prophet have a higher *diyya* than others.

The status of women varies considerably from place to place, but it is always inferior to that of men. In some regions women are almost entirely stripped of legal personality,²⁰ to the point where though a woman may control some property (say some small stock), she cannot be said to own it, since she can always be deprived of it by either her guardian²¹ or her husband (depending on how the property came into her hands). In such regions a woman cannot bring an action, nor can an action be brought against her; she is not allowed to testify in court, and it is her guardian who must report her testimony, and if need be take an oath (or undergo an ordeal) in order to prove her veracity. In a personal sense, the guardian, when he brings an action for a wrong suffered by his ward, may be acting as her representative; but in law, he represents her no more than he represents his camel when he claims damages for some injury to it. The power of the guardian over the woman may be virtually unlimited. He can in many places kill or beat her with impunity, at least when she is not married (Stewart 1991).

Where we find that women have extensive rights, it is often because of non-Arab influence, as, for instance, among the Rgaybat of the Western Sahara (Denis 2001, pp. 18, 29, 55). In the Sudan women are truly the owners of certain property, above all the tent and household goods (Cunnison 1966, p. 44; Asad 1970, pp. 37-38; Young

²⁰ "Women have no jural identity" (Lancaster 1997, p. 45).

²¹ Her closest adult male agnate is her guardian. He is referred to as her *wali* or (in Cyrenaica) *'asim* (Colucci 1932, pp. 39, 44).





1996, p. 156, s.v. Tents).²² They are also viewed as the owners of significant quantities of stock (though still much less on average than the men). But a woman's menfolk often make demands on her, and "it is difficult for a woman to cross her husband or father habitually in this matter" (Asad 1970, p. 90).²³ Even among the Bedouin of the Mashriq, there are places where the customary law seems to have endowed women with more rights than the previous paragraph suggests, and in particular with more property rights (Henninger 1959, pp. 20-22).²⁴ A woman's jewelry may be something over which she has real control (Lancaster 1997, p. 66), but many Bedouin are so poor that this is not of great significance. If Islamic law penetrates a Bedouin society, it is likely to improve the legal status of women.

In many places the blood-money for a woman is only half that for a man, but it is notable that in Sinai and Palestine, where her legal status is low, her blood-money is four times a man's (provided that the injury is caused by a man). The payment, however, even when it is for physical injury rather than homicide, goes not to the woman herself, but to her guardian (who is free to hand it over to her if he so wishes).

Corporations

The Bedouin are very familiar with the idea of a group that has legal personality, i.e., one that claims rights and undertakes duties, and that is represented by one or more of its members in its dealings with other groups or individuals. I shall call such a group a "corporation." Within Bedouin society the two main types of corporation seem to be the territorial group and the blood-money group, and they are discussed in the next two sections.

The distinction between the individual and the corporation is in many parts of the Bedouin world—and perhaps everywhere—perfectly clear in the law. In Sinai, for instance, there will be no doubt at a trial or in a contract as to whether a given party is an individual

²² Women own the tents among some tribes of the Mashriq, e.g., the Al Murrah (Cole 1975, pp. 64, 70), but not among others, e.g., the Rwala (Musil 1928, p. 62).

²³ Asad makes this statement in the context of an extended and sensitive analysis of the nature of women's rights in stock.

²⁴ This carefully documented study is reprinted in Henninger 1989.





(or several individuals) or a corporation. Each individual, however, is a member of one or more corporations, and a central purpose of those corporations is to give their members support when they come in conflict with outsiders. I imagined above (see above, section on the jural community) a dispute about the ownership of a camel. Camels are almost everywhere individually owned, so that in the eyes of the law this will be a dispute between two individual men. But each man will usually be supported by a group to which he belongs. In my imaginary example, the parties belong to different tribes, and it is conceivable that each will succeed in mobilizing his tribe—or a substantial part of it—on his behalf. It is more likely, however, that each will be supported only by some smaller group within his tribe, so that in essence the situation is no different from what it would be if the disputants belonged to the same tribe. But in any case, this dispute, although formally a dispute between individuals, will, like most others of its kind, in actuality be to some greater or lesser degree a dispute between groups, frequently corporate ones.

Agnation

In all Bedouin societies special importance is attached to agnatic ties, above all in the contexts of law and politics. The rights and duties of a man or woman in relation to his or her agnates are markedly different from those in relation to non-agnates, and everyone—apart from slaves, refugees, and the like—belongs to a patrilineal descent group (or to several nested patrilineal descent groups). These groups are of great importance, and are closely related to the two types of corporation that we shall now discuss.

The Territorial Group

I apply this term to any fairly large group whose control of a certain area seems to be political rather than proprietorial. In the simplest case—of which the Ahaywat of Central Sinai are an example—the territorial group does not recognize any other body as having superior rights in the territory, and the rights of the group in the territory are generally recognized by neighboring tribes (though there may be disagreements about just where the borders run). The members of such a territorial group have first claim on any resources



within their territory.²⁵ The most important of the resources may be the pasture, but there are also others, notably the right of passage through the territory.²⁶ If the territory includes arable land, then it will often be difficult or impossible for outsiders to gain ownership of it.²⁷ Sometimes the arable is held by the group as a whole and periodically reallocated to its members;²⁸ where it is individually held, there are likely to be legal mechanisms that give the group some control over its alienation.²⁹

Every Bedouin group either claims a territory for itself, or forms part of a larger group that claims such a territory;³⁰ and in an area dominated by the Bedouin, virtually all the land—or at least all

²⁵ Secondary sources usually give the Bedouin term for their territory as *dīra*, but this word is by no means universally used. We also find, for instance, *bilād* in Sinai (Stewart 1988-1990, vol. 2, p. 205); *muwarrada* in the Hijaz (al-Harbi 2000, vol. 1, pp. 47, 77, et passim); *waṭan* in the Western Desert and Cyrenaica; *dār* in the Western Desert (where it is noted as a synonym of *waṭan*, al-‘Arabi 1980, p. 95), in Oman (Wilkinson 1987, p. 413) and in the Sudan (Cunnison 1966, p. 6); and *tuwāb* in the Western Sahara (Caratini 1989, vol.1, p. 19). The term *dīra* does not appear to be current in any of the regions just mentioned.

²⁶ Henninger (1959, pp. 14-16) gives extensive references relating to the Asiatic Bedouin.

²⁷ This point is made with particular emphasis in Michel’s study of the rural economy of pre-colonial Morocco (1997, pp. 265-266 et passim). He points to it as one of the factors that checked the growth of large estates.

²⁸ For details of how this is done, see, for instance, Musil (1907-1908, vol. 3, pp. 293-294), who deals with a Transjordanian tribe, and Boris (1951, pp. 11-20), who gives a Tunisian Bedouin text.

²⁹ In northern Palestine, for instance, such a sale had to take place in the presence of the shaykh of the group, who had to attach his seal to the deed of sale (Sonnen 1952, p. 163). On the Middle Euphrates, where the sale of land to outsiders was forbidden, any contract of sale or the like involving land had to be signed by the shaykh (Al Fir‘awn 1941, pp. 170-171). In central Sinai the agnates of the owner had pre-emptive rights, and the same is reported for the Awlad ‘Ali of the Western Desert (Cole and Altorki 1998, p. 200). Among the Fawakhir of Cyrenaica, where both pasture and arable are held by the group, cisterns and irrigated gardens may be privately owned, but it is explicitly forbidden to sell them to outsiders (Albergoni 1993, p. 114; 2000, p. 33).

³⁰ This is a generalization that ignores various complexities. For example, the Nahd tribe of Southern Yemen is mostly sedentary, but has one section of about a hundred men that consists of nomadic camel-herders whom we can only classify as Bedouin. The tribe as a whole does not have a continuous territory, and it is not clear what rights the nomadic section claim in the pasture lands that they use (Hartley 1961, pp. 30-32). Wilkinson (1987, p. 132) refers to the non-exclusive territorial rights of Omani Bedouin. His remarks are, at least in part, formulated with the appropriate caution (“a group like the ‘Awamir of the Oman desert *appear* [my emphasis] to have no exclusive *dār*”).



the water-sources—will be viewed as being held by one group or another.³¹ Sometimes the boundaries between the different territories are drawn with remarkable precision (see Stewart 1986 for an example), but even in such cases, the members of a tribe are by no means confined to their own territory. In many instances a distinction can profitably be drawn between the area in which members of a tribe normally nomadize (its range) and the area that the group claims to hold (its territory), the former being much larger than the latter (Seddon 1981, p. 60). As long as two neighboring groups are on good terms, neither will normally object to members of the other crossing its borders, whether in transit or in order to take advantage of the pasture (Henninger 1959, p. 15, n.33).³² The range of a tribe may include land occupied by sedentary people. The Bedouin of the Algerian Sahara, for instance, regularly drove their stock north in the summer, entering regions occupied by cultivators. The nomads either had prescriptive rights to use particular areas for pasture, or acquired the relevant rights from time to time by contract.³³

A Bedouin group that has superior rights in a territory (the suzerain) may allow other groups (the dependents) to occupy permanently some part of the territory. This is a theme with innumerable variations. The dependent groups may be sedentary or nomadic; often, though not always, they are inferior in status to the suzerain, and they may have to offer it tribute or services. Generally speaking, the dependents enjoy extensive rights in the land that they hold, and can themselves be referred to as territorial groups. Some dependent tribes, for instance the Mrabtin as-Sadgan of North-East Africa, do not have suzerain rights in any territory; other tribes hold some land as suzerains and some land as dependents.³⁴ In North-East Africa,

³¹ There are occasional exceptions, e.g., the Dhafrah area of the United Arab Emirates (Kelly 1964, p. 35; Heard-Bey 1996, p. 45), or the desert of Suez (Burckhardt 1822, p. 462).

³² To the references given in Henninger 1959 (p. 15, n.33) might be added, for instance, Janzen (1986, p. 65) on Dhofar; Shuqayr (1916, p. 404) on Sinai; and F. S. Vidal (quoted in Hart 1962, p. 516) on Arabia in general. Hart states that Vidal's remarks "apply to the letter" also in the Western Sahara.

³³ We know a good deal about the movements of the tribes, and about how the French regulated those movements (Lehuraux 1931), but virtually nothing about the relevant customary law.

³⁴ So, for instance, the Tarabin in Sinai. Most of their land they hold as suzerains, but one detached section of the tribe holds territory as dependents of the Ahaywat; they do not, however, pay any tribute, and they are not regarded as inferior to their suzerain (Stewart 1986, p. 15).





and perhaps generally, the dependent tribes strengthened their position in the 19th and 20th centuries, so that their dependency has become little more than nominal.

Territorial groups vary considerably in their organization. Let me give two examples. The Ahaywat, in the first half of the 20th century, controlled about 15,000 square kilometers in Sinai and the Negev, and numbered perhaps a couple of thousand souls. They viewed themselves as being almost all descended in male line from a single common ancestor, and they recognized a single paramount shaykh, who came from a descent group that had held the office for several generations (and that still holds it today). The Bani Guil, in the same period, controlled a territory of about 26,000 square kilometers in the north-east of Morocco, and they numbered about 13,000. Like the Ahaywat, they recognized no territorial divisions within the tribe (Rachik 2000, pp. 61, 66, 79). Their component sections, however, viewed themselves as being of very varied origin, and the Beni Guil as a whole had no permanent chief (Rachik 2000, pp. 15, 60-62). Yet they too functioned as a corporate group: we find the Beni Guil writing letters to the Sultan and making agreements with neighboring territorial groups, and when they wanted to fight, they could place themselves temporarily under a single leader (Rachik 2000, pp. 20, 62, 73). Some of the differences between the Ahaywat and the Beni Guil seem to be characteristic of their respective regions. In Asia the territorial group usually has a permanent leader, the office being held by a particular descent group, whereas in North Africa there are a number of instances of territorial groups with no permanent leadership,³⁵ or with no single leader.³⁶ It is also perhaps more common in North Africa than in Asia to find territorial groups whose members make no bones about the fact that they are of diverse origins.

³⁵ For example, the Doui Menia of north-east Morocco (Dunn 1977, p. 61) and the Rgaybat of the Western Sahara (Seiwert 1981, pp. 79, 83; Caratini 1989, vol. 2, pp. 162-169).

³⁶ For example, the territorial groups among the Awlad 'Ali of the Western Desert of Egypt, on which see below.



*Homicide, battery and the blood-money group*

A Bedouin tribe is generally a community without public authority. In the last analysis, a tribesman depends for the safety of his person, and that of his womenfolk, children and property, on the support of certain groups to which he belongs. The law takes account of this fact in various ways. One general principle is that a group that supports a man is also held liable for his misdeeds. In the context of homicide and battery, this liability can take one of two forms—retaliation or composition. Both are the subject of elaborate legal regulation.

Retaliation

Assume that two men, K and V, are members of two different groups of the type that I shall call “vengeance groups.” If K kills V, then it is generally speaking legal for any member of V’s group to kill any member of K’s group. The effect of such retaliation will usually be to extinguish whatever claim V’s group had on K’s group as a result of the original homicide. Endless vendettas—of the kind reported, for instance, from some traditional societies of Southern Europe—are not characteristic of the Bedouin. If there is a retaliatory killing, then it will usually bring a homicide dispute to an end.

Composition

Most homicides are settled not by retaliation, but by composition after the victim’s group has agreed to a truce (Stewart 2000a). This is because those not directly involved in the dispute will generally favor a peaceful settlement, and because the law includes various institutions (e.g., asylum) that help those who want to prevent further violence. Lesser forms of violence often lead to both retaliation and composition. This can occur when both parties suffer some injury. The party that suffered less ends up paying something to the party that suffered more.

The amount of blood-money due for a particular injury varies according to the circumstances. If there has been a homicide, for instance, not only the relationship of the victim to the perpetrator will matter, but also whether the deed was intentional or not, whether in self-defense, whether the killer attempted to conceal the fact that he performed the deed, and so on. The rules provide guidelines for the negotiation of the precise terms of the composition. In some



places there are experts (the *qaṣṣāṣ* in Sinai, the *naẓẓār* in the Western Desert) who help to determine the amount of blood-money due in each particular case of battery.

The Blood-money Group

Those who are liable for a composition payment generally constitute what I have called the “blood-money group.”³⁷ The members of such a group are obligated to each other to participate in any blood-money payment that becomes due to a non-member as a result of the action of a member. Correspondingly, if a member of the group receives blood-money, then all the other members of the group have a right to some part of it.

Only men belong to the group. New members are recruited either by birth (the son of a member becomes a member upon reaching adulthood) or by agreement with the existing members. The size of the group is highly variable. In the Western Desert and Cyrenaica blood-money groups have hundreds of members, whereas in central Sinai ten or fifteen is a respectable number. There may also be considerable variation in size within a single tribe.

A distinctive feature of the Bedouin blood-money group is that its members are often united by an agreement, the blood-money pact.³⁸ The agreement determines, among other things, the precise

³⁷ Marx (1967) uses the term ‘co-liable group,’ which is at least equally appropriate. In Sinai the word *damawīyya* (Stewart 1988-1990, vol. 2, p. 210) refers only to this group, while the word *khamṣa* (Stewart 1988-1990, vol. 2, p. 282), which is widely attested among the Asiatic Bedouin, can refer both to this group and to others. The terms *qaḍḍābat al-janbiyya* (‘those who grasp the dagger’), *qaḍḍābat al-‘aṣā* and *massākat al-‘aṣā* (‘those who grasp, or hold, the stick’) are used among the Bedouin of north-east Arabia (Mahjub 1997b, p. 266). In Cyrenaica and the Western Desert a member of such a group is an ‘*amīr*’ (Colucci 1927, pp. 263-264; Mahjub 1974, pp. 201, 326, 326), and the plural ‘*umarā’ al-dam*’ is used to refer to the group as a whole (Obermayer 1968, pp. 172, 210, 229; Mahjub 1974, p. 326). The terms for a blood-money group in the Western Sahara are ‘*aṣaba*’ (Caro Baroja 1955, p. 18; Caratini 1989, vol. 2, pp. 188-189) and *ahsab* (presumably *ahsāb*, Dubié 1941, p. 8). The use of ‘*aṣaba*’ in this context is also recorded from the Western Desert (Obermayer 1968, p. 146). In Iraq there is apparently no special term for the group as such, but the term *waddāya* (sing. *waddāy*) is recorded as referring to the members of the group (Salim 1970, pp. 139, 146f.).

³⁸ Called *mdāmāh* in Sinai (Stewart 1988-1990, vol. 2, p. 210), ‘*amār al-dam*’ in Cyrenaica and the Western Desert (Colucci 1927, pp. 31ff.; 1929, pp. 262ff.; Albergoni 1993, p. 116; the members of the pact may be referred to as *ahl al-‘amār*, Mahjub 1974, p. 214). Both these terms (like the English word ‘pact’) can also be used to refer to the group whose members are united by the agreement.



division of payments and receipts; for instance, a perpetrator (often with his closest agnates) will pay a third, and a victim (or the victim's agnate/agnates) will receive a third, while the remainder will be divided equally among the other members.³⁹ The perpetrator's and the victim's fractions may differ from each other in size. Thus in one Iraqi village, the members of each blood-money group shared equally in any payment they had to make, so that a perpetrator's fraction was the same as that of any other man in the group; but a victim's fraction was much larger (Salim 1970, pp. 146-147). In a North African case we know that the remainder was not divided equally; instead, each member paid (and received?) in accordance with his wealth.⁴⁰ A blood-money pact may also cover a variety of matters unconnected with physical injury. Sometimes it will contain rules governing the behavior of members to each other.⁴¹ In Cyrenaica and the Western Desert the blood-money group is also often a territorial group, and in one document from Cyrenaica rules relating to the territory are mingled with those relating to blood-money (Albergoni 1993; 2000).⁴²

The existence of blood-money pacts is firmly attested among the Bedouin of the Western Sahara, of Cyrenaica and the Western Desert, of Sinai,⁴³ of the Hijaz,⁴⁴ and also among the tribes of Southern Iraq.⁴⁵ It can be inferred with confidence for the Bedouin of the Negev

³⁹ This was a common rule in Sinai, and has been recorded also as far afield as Iraq (Al Fir'awn 1941, p. 49) and the Sudan (Cunnison 1966, p. 159).

⁴⁰ Recorded in Cyrenaica by Albergoni (1993 p. 119).

⁴¹ See articles 2 and 7 of the pact translated by Mohsen (1971, pp. 45-46, given in Arabic by Mahjub 1974, pp. 214-215); and various articles in the pacts translated by Obermayer (1968, pp. 179-182).

⁴² The document is, however, a peculiar one; it reflects a blood-money pact, but was perhaps not drawn up at the behest of the members of that pact.

⁴³ Transcriptions and translations have been published of several oral blood-money pacts and one written one (references in Stewart 1988-1990, vol. 1, p. 233, s.v. Blood-money groups-pacts).

⁴⁴ Al-Harbi (2000, vol. 1) gives the texts of a number of such pacts.

⁴⁵ The blood-money groups of the riverine tribes of Iraq had well-developed rules, many of which have been reported in detail (see especially al-Jalali 1947, pp. 94-135). But we do not, in general, know just how such a set of rules becomes binding on a particular group. Is it (as elsewhere) essentially by virtue of an agreement between the members of the group? Salim's remark about the *'amra* (n. 13 above) implies that the answer is yes, but he was referring to a tribe in which the office of shaykh had been abolished. In many places, however, the Iraqi shaykhs were powerful figures, and it may be that in some groups their voices were the decisive ones. It is suggestive that many of the rules known to us are concerned





and of Transjordan, and with less confidence for the tribes of the Sudan.⁴⁶ Pacts have also been noted among the sedentary tribes of North Yemen,⁴⁷ and in two towns of the Fertile Crescent, Nazareth (in 1854)⁴⁸ and Najaf (in 1915).⁴⁹ The likelihood is that in all these cases the institution was adopted from the Bedouin. Blood-money pacts were probably to be found in most Bedouin communities, and if they have not left much trace in the literature, it may be, above all, because they tend to be kept secret.⁵⁰ Otherwise well-informed accounts of Bedouin society often make no mention of the pacts, even in places where we know that they exist (see, for instance, Al-'Arif 1933 and Marx 1967 on the Negev; or Peters 1990 on Cyrenaica). In fact it was only in 1927, with the work of Massimo Colucci, that they were first clearly described in print.⁵¹

The form used in making the pact varies. In some places we hear of an oath taken on the Qur'an (Cunnison 1966, p. 160), in others of a sacrifice (Caro Baroja 1955, p. 22; Caratini 1989, vol. 2, p. 188).⁵² In Asia the most common form is a three-party contract.⁵³ In

with the penalties for an offense against a leader or one of his agnates, and that such penalties are much higher than those for offenses against others.

⁴⁶ The evidence from the Humr suggests that the notion of a pact existed, though the practice was rather different from what is known from better-documented regions (Cunnison 1966, p. 160; Cunnison 1972). Pacts of the usual kind are to be found among the Somali (Lewis 1961, p. 315, s.v. dia-paying groups). They no doubt adopted them, like so much else of their culture, from the Arabs.

⁴⁷ "A whole tribe may . . . try explicitly to constitute itself as a vengeance group. They agree in writing . . . Such agreements are comparatively rare and are often fragile" (Dresch 1989, p. 85; cf. Abu Ghanim 1991, p.259). The implication of Dresch's remark seems to be that groups smaller than a whole tribe give rise to blood-money groups more frequently than do whole tribes. The blood-money group also exists in South Yemen, and among the Nahd it usually has twenty to thirty members (Hartley 1961, pp. 76-77). Hartley does not mention pacts, but I have little doubt that they existed.

⁴⁸ Steppat (1974) gives the Arabic text (drawn from a printed source) together with a German translation.

⁴⁹ Text in English translation (drawn from a British official source) in Batatu (1982, pp. 19-20) and again in Nakash (1994, p. 283).

⁵⁰ The very first article of a pact from the Western Desert states that "the content of this document should be kept as a secret" (Mohsen 1971, p. 45; cf. Mahjub 1974, p. 214). Similarly, we are told that in a rural area of North Yemen "the written undertakings of 'tribal' association were hidden from the gaze of outsiders" (Mundy 1995, p. 49).

⁵¹ Colucci's work was largely neglected by his successors, though some of them (notably Evans-Pritchard and Peters) could have learned much from it.

⁵² Caratini (1989, vol. 2, p. 188) adds that those who joined a new blood-





the Western Desert there seems to be merely a formless agreement between the leaders (*‘awāqil*) of the descent groups whose menfolk belong to the blood-money group.⁵⁴

Blood-money groups may be nested one within another. The Ahaywat of Sinai, for example, set up a pact in the early 1970s that covered the whole tribe. It dealt with arrangements in the case of an inter-tribal blood dispute, though without in any way affecting the functioning of the various blood-money groups in the (far more frequent) cases of disputes within the tribe (Stewart 1988-1990, vol. 1, pp. 181-182.). The Ahaywat follow the rule that if a man from one tribe kills a man from another, then, all else being equal, any man of the killer's tribe is a legitimate object of vengeance (cf. Burckhardt 1831, vol. 1, pp. 320-321); though the Ahaywat also have (oral) treaties with certain neighboring tribes which provide that between the parties an inter-tribal homicide or battery is treated as if it were intra-tribal, i.e., the only groups involved are the blood-money groups of perpetrator and victim.

In most places a man may only belong to more than one blood-money group if the groups to which he belongs are nested within each other.⁵⁵ Because a man's blood-money group affiliation is so important, the process of joining or leaving a group is often governed by elaborate rules, which ensure, among other things, that the man's change of affiliation is known to those around.

Quite often members of a group will be obliged to participate in any payment for which one of their number becomes liable as a consequence of a delict, excepting only certain specified ones. Thus an old pact from the Hijaz specifically excludes four classes of delict, among them sexual offenses (a common exclusion) and attacks on government officials (Al-Harbi 2000, vol. 1, p. 52). Such exclusions

money group also "signed a document drawn up by the *qadi* according to the traditional practices."

⁵³ The third party is a guarantor. For details, see below, section on honor, contract and protection.

⁵⁴ The published blood-money pacts from the Western Desert had affixed to them the signatures or seals of the *‘awāqil*. It is not clear whether the pact was executed in this way, or whether the signatures or seals merely authenticated the record of a transaction that had already been executed. In any event, many pacts were oral, and the sources say nothing of formalities that accompanied their formation.

⁵⁵ Among the Humr of the Sudan, however, "groups which co-operate in paying blood-money overlap" (Cunnison 1966, p.160). It is not clear just how this works in practice.





do not affect the liability of the blood-money group to the victim. So, for instance, if a member of one group commits a sexual offense against the daughter of a member of another, then the perpetrator's whole group bears liability. The fact that the perpetrator's group has a rule that exempts its members from any obligation to participate in payments for offenses of this type is irrelevant to the victim's group. The latter's rights are against the offender's group as a whole. If it is a matter of paying amends for this offense, and the perpetrator himself cannot or will not meet the debt, then his group as a whole will have to produce the sum. Later, if they can, those who put up the money may reimburse themselves from the offender.

The blood-money group and the vengeance group seem in most places to be identical, but it may be that where blood-money groups are large, only their sub-groups function as vengeance groups.

Blood-money groups are closely linked to descent groups. In the simplest case a particular blood-money group will consist of all and only the adult male members of a particular descent group. But quite often, especially in larger groups, there will be men of the particular descent group who have joined another blood-money group, and men from other descent groups who have joined the particular blood-money group. In one extreme example, only 103 out of 436 men in a blood-money group belonged to the corresponding descent-group; all the rest were outsiders (Mohsen 1971, pp. 33, 52, 66). The implication is that the Bedouin do not view rights and duties of the kind that concern us here as being based directly on kinship. Where pacts exist, these rights and duties are, in the eyes of the law, based on contract (except, perhaps, in the case of very close agnates such as brothers and direct ascendants and descendants).

This is not to minimize the importance of agnatic ties. A small blood-money group that consists more or less exclusively of agnates is—or at least, should be—marked by an intense solidarity that is produced more by kinship than by contract. Its members will be expected to extend active support to each other in any dispute, and their obligations are not limited to those explicitly dealt with in their pact (Stewart 1988-1990, vol. 2, p. 93). By way of an analogy one might think of marriage in modern Western societies. The law has much to say about the relationship between husband and wife, but the ideal marriage is not one in which the couple offer each other support only to the minimum extent prescribed by the law.



*Marriage, the Family and Succession**Marriage*

In many places, the power to give a woman in marriage lies in the hands of her guardian, and (at least in the case of a first marriage) he will not usually consult her wishes. This is the situation, for instance, in Sinai, in Southern Iraq, in the Western Desert (Mohsen 1971, p. 106), and among the Rashayda of the Sudan (al-Hasan 1974, p. 70 n.1); it was equally so in those African Bedouin communities where children were regularly married before puberty.⁵⁶ Elsewhere, however, for instance among the Shammar and 'Aniza tribes of northern Arabia, considerable weight is attached to what the young woman herself desires (Henninger 1943, p. 20; Lancaster 1997, p. 50).

Even where the girl's guardian is all-powerful in relationship to his ward, his freedom to dispose of her may well be limited by his agnates. There is a marked reluctance to permit marriage outside the descent group, and there are (or were) in many places rules that allowed a man to control in some way the marriage of his female paternal cousin.

Polygamy is permitted in most places, but frowned on or forbidden in the Western Sahara.

Marriage generally appears as a contract between the woman's guardian and the groom. Usually there is a bride-price, though sometimes one bride is exchanged for another. In most places the bride-price goes to the guardian, but in various Sudanese tribes it goes to the bride's mother.⁵⁷ Among many Bedouin the young couple set up their own tent more or less immediately. The new household may at this stage be nominally independent, but in practice it will probably remain close, both physically and otherwise, to that of the groom's father (provided that he is still alive). Among the Al Murrah of South-east Arabia, though the young couple have their own tent, they actually form part of the same household as the groom's father (Cole 1975, pp. 65-66). In the Sudan, in contrast, the bride

⁵⁶ For instance, among the Kababish of the Sudan (Asad 1970, p. 58) and the Ouled Nail of Algeria (Ubach and Rackow 1923, pp. 174-177).

⁵⁷ The sum involved is not large (Cunnison 1966, pp. 44n., 95; Asad 1970, p. 62).





often continues to live with her parents, and it may be only after she has borne one or even two children that the groom can take her to live in his father's camp (Asad 1970, pp. 59-60; Ahmad 1974, pp. 48-49).

Marriage gives the husband important rights (notably to his wife's labor and to her children), but her legal ties to her natal agnatic group remain stronger in some ways than her ties to her husband.⁵⁸ If a woman suffers, or inflicts, some actionable injury, then it will generally not be her husband, but her guardian who will undertake any legal proceedings that may follow; and if she is guilty of some misdeed, it is her agnates who will pay for it.⁵⁹ If the woman receives contradictory orders from husband and guardian, it is usually the guardian whom she will obey.

The husband's power over his wife has definite boundaries. He is generally allowed to beat her,⁶⁰ but not usually to the point of causing serious injury. He has the right to repudiate his wife at will, but in many cases the wife can bring it about that he is forced to repudiate her, provided, at least, that she has the support of her guardian. It is the guardian, in fact, who is a woman's main defense against mistreatment by her husband; it is to him that she will usually flee if she wants her husband to divorce her. In some areas, if the guardian is unable or unwilling to help a woman against her husband, a notable may take her part (Mohsen 1967; Lancaster 1997, p. 60). Where this practice does not exist (as in Sinai) a woman can find herself hopelessly trapped between a bad husband and a bad guardian.

If the marriage ends, a woman can normally return to her guardian's home.⁶¹ Children belong to their father and their father's agnates, and a divorced mother will usually be forced to part with them sooner or later. This fact often ties a woman to a husband

⁵⁸ At least in most places. Benachenhou (1950, p. 9) writes that among the Zaër of Morocco "all ties were broken between the bride and her family." If this is correct, it is no doubt the result of Berber influence.

⁵⁹ Hence wide-spread sayings to the effect that while it is the woman's husband who benefits from her, it is her agnates who suffer for her misdeeds (Cunnison 1966, p. 93; Musil 1907-1908, vol. 3, p. 368; cf. Musil 1928, p. 494).

⁶⁰ Though in some places he may meet with disapproval, even severe disapproval, if he exercises this right without extreme provocation (Doughty 1888, vol. 1, pp. 231f.; Asad 1970, p.82).

⁶¹ Except, presumably, in tribes like the Zaër, where marriage dissolves her ties with her natal group.





she might otherwise leave. Among some Arabian tribes, however, it is not unknown for a divorced woman with children to continue to live in the same camp as the children's father, her ex-husband (Doughty 1888, vol. 1, p. 222; Cole 1975, p. 66). In the case of a widow, there are usually arrangements that allow her to remain with her children, though such arrangements may demand the assent both of the husband's adult male agnates and of her own. Marriage to a brother of her late husband is a common solution, but there are also others.⁶²

Sexual Offenses

In the Mashriq, and probably not only there (cf. Ahmad 1974, p. 50), a sexual offense against a woman is generally viewed as an offense against the honor (*'ird*) of her agnates. The notion of a sexual offense is often broadly defined, and may include any activity, even a flirtatious conversation, that has sexual overtones. The fact that the woman has consented does not obviate the offense, though it may mitigate the penalty. In a number of places an unchaste woman is in danger of being killed by her agnates.⁶³

Marriage, at least in the Mashriq, does not radically alter a woman's situation with respect to sexual offenses. In that region adultery is in the law primarily an offense against the honor of her guardian (and her agnatic group in general). Where this is the rule, the husband may get no amends at all (as in Sinai and areas to the east); or he may get amends only if he divorces the wife (a common rule among the riverine tribes of Iraq); or (as in the Western Desert) he may always have a right to amends, though the sum may not be large. Some of the African Bedouin, however, follow the rule that "a married girl's sexual misdemeanours . . . are the concern only of her husband" (Asad 1970, p. 58).⁶⁴

⁶² For details of an ingenious arrangement once to be found in the Hijaz, Palestine and Transjordan, see Stewart (1998); for a similar one, this time among the Ouled Nail of Algeria, see Ubach and Rackow (1923, p. 205).

⁶³ This is not, however, universal. We can also find Bedouin, e.g., some sections of the Ouled Nail and the Amour of Algeria, who were notoriously permissive with regard to their unmarried daughters.

⁶⁴ The same rule is implied by a case reported by Cunnison (1966, pp. 155-156).



*The Family*

The nuclear family (husband, wife and unmarried children) forms the core of the household in most places, and as such is a highly important element in the social and economic organization of the tribe. In the eyes of the law, however, it barely exists. The law sees only the ties between husband and wife, father and children. The nuclear family is not a corporate entity, and where the emphasis on agnation is at its strongest (as for instance in Sinai), the law extends almost no recognition to the relationship between mother and child.

What seems to be an unusual pattern is recorded for the Al Murrah of South-east Arabia. As was indicated above, a man of this tribe who marries when his father is still alive normally joins his father's household. "Each household has its own herd [of camels] . . . Individual members of the household sometimes own a few of the herd's animals as their own private property, but most of the animals of any herd are held communally by the group as a whole" (Cole 1975, p. 69). Here, then, the extended family functions as a corporation.

Succession

The transfer of property from one generation to the next is often a gradual process. In some places it is customary to give every infant (male or female) a gift of stock at birth, and to give more later if possible; elsewhere the first gift comes not at birth, but still in childhood.⁶⁵ With the passage of time the child's control of these animals (or their offspring) becomes more and more perceptible. At marriage a son, and to a lesser degree often a daughter, will be given further stock. When a man dies, the customary law will generally ensure that his widow receives nothing. His daughters may be a little more fortunate, but most of the property (and in particular, all the land, if there is any) will go to his sons, usually in equal parts (Henninger 1959, pp. 28-31; Ubach and Rackow 1923, p. 206).

⁶⁵ Author's observations in Sinai. Other references to the practice in the Mashriq are given in Henninger (1943, p. 125). For the Sudan, see, for example, Asad (1970, p. 47), Ahmad (1974, p. 42), Asher (1986, p. 99) and Young (1996, p. 62). For the Western Desert, Obermeyer (1968, pp. 103-104).

*Procedure*

Bedouin procedure is marked by a strong desire to achieve justice. Forms exist, and they are used, but it would be quite unacceptable if justice were not done simply because a man failed to fulfill some purely formal condition. Any dispute can be brought before a court. There are, to be sure, certain well-known causes of action, but the plaintiff is not limited to these.

Another aspect of the desire for justice is the tenacity with which each side will pursue its claim. The courts, at least in Sinai, and probably among most of the nomadic Bedouin of Asia, while always happy to promote a settlement, will, if the case goes to trial, in the end find for one party or the other. As the Sinai Bedouin say, “A judicator’s decision cannot satisfy both parties” (*al-ḥaqq mā byirdiy ithmayn*). The idea that peace within the community is more important than justice is not one that has great appeal to the Bedouin.

The Bedouin of Sinai, the Syrian desert and Arabia appear to have broadly similar procedures. The account that follows is based on data from Sinai, where the customary law is particularly well-developed, and for which the fullest information is available.

Procedure here is adapted to a society without central authority. Adjudication takes place only by agreement between the parties. In this the blood-money groups play a crucial, though not always an obvious, role. A man may be reluctant to defend himself in court, but nevertheless agree to do so for fear that the blood-money group of his opponent might otherwise resort to force. And even if the potential defendant does not himself fear violence, it may well be that the other members of his blood-money group will. Their support is crucial to him, not just in this dispute, but generally, and if they tell him that he should appear, then it will be difficult for him to refuse.

The parties to a dispute must first reach agreement on a precise definition of the issue(s) in dispute between them (including who will be plaintiff, *tālib*, and who defendant, *matlūb*, with regard to each issue) and on the identity of the judicator⁶⁶ who is to hear the case. They will at the same time agree on the identity of two other judicators,

⁶⁶ In some areas he is called a *qādī* (Stewart 1988-1990, vol. 2, p. 220), in others an *‘arīf(a)* (Gräf 1952, p. 191 gives references, to which may be added Cole 1975, p. 124).





each of whom is assigned to one party; if either party is dissatisfied with the decision of the first judicator, then he can demand that the issue be tried again before his second judicator. Once these points have been settled, a date is fixed for the trial. The plaintiff undertakes that if his suit is dismissed, he will not bring the same action again, and the defendant undertakes that if it is he who loses, then he will execute the judicator's decision. Everything that has been agreed on is given legal force by means of the three-party contract.

The judicator has some of the characteristics of a judge (his decisions can be used as precedents and trials are normally public) and some of those of an arbitrator (he has only such powers as are given to him by the parties). The parties are free to ask anyone they want to act as the judicator in their case; but they will usually select from a pool of men in the community who are recognized as judicators, by virtue either of frequently acting as such, or of having been formally appointed as such, e.g., by a gathering of the elders of the tribe. As was noted above (see above, section on sources of the law), there are also certain descent groups which by tradition supply judicators who are considered the highest authority (*manhā*) for the settlement of disputes relating to their respective specialties.

The trial usually takes place at the judicator's home, in the presence of the parties, their supporters, and anyone else who wants to attend. The proceedings are adversarial; parties may be represented by an attorney (*kabīr*). The judicator is entitled to a fee (*rizqa*) from each party; the losing party must afterwards reimburse the victorious party for this payment. The plaintiff makes a formal pleading (*hujja*), the defendant responds with his own pleading and the judicator formally summarizes the pleadings. There follows an informal, and often heated, discussion in which all present may participate. The judicator will give everyone time to say what they have to say, but eventually he will have heard enough. He then renders a formal judgment (*haqq*) in which he finds for either plaintiff or defendant.

Each party must formally state, immediately after the judgment, either that he accepts it, or that he wants the case tried again before his second judicator. In all, a case may be tried by up to three successive judicators, but as soon as two judgments coincide, the matter is concluded. The judicator's responsibilities end with his judgment, execution being a matter for the parties.

The riverine tribes of Iraq form a distinct group among the Asiatic





Bedouin.⁶⁷ Here too we find the office of judicator,⁶⁸ here too the man appointed to it is said to be chosen by the parties, and here too it tends to be hereditary, perhaps with some specialization (Al Fir'awn 1941, pp. 20, 138). But the three-party contract, so important elsewhere among the Asiatic Bedouin, is apparently unknown.⁶⁹ This may be connected with the fact that in many places there are powerful shaykhs, of a kind not common elsewhere. They can ensure that the parties take their dispute to a judicator and that they execute the latter's decision (Al Fir'awn 1941, pp. 138n., 144). The shaykhs themselves might decide cases (Fernea 1970, pp. 53, 93), sometimes with the aid of advisors (Salim 1970, p. 200). Most trials probably took place in the tribal guest-house (*muḏīf*), though there is also mention of trials at the judicator's home (Al Fir'awn 1941, p. 137, emphasizes that the judicator receives no payment of any kind). The exact procedures have not been described. Re-trials were apparently not uncommon, but the notion of specialized judicators possessing higher authority than ordinary ones seems to be absent.

Procedures of the type that have just been described, in which disputes are tried in a formal public hearing before one man, do not seem to be attested as a common mode of dispute settlement in the customary law of any African Bedouin. Here disputes are settled by other means, for instance by negotiation, by mediation or by decision of a council (*jamā'a*). The processes of negotiation and mediation among the Bedouin of the Western Desert have been described in some detail (see especially Mohsen 1971, pp. 61-91).⁷⁰

⁶⁷ The (once) semi-nomadic Syrian tribes whose territories centered on the Euphrates and its tributaries should perhaps be included in this group.

⁶⁸ He is called a *al-farīda* (Westphal-Hellbusch and Westphal 1962, p. 253; al-Maliki 1992, p. 199) or *al-farīd* (Al Fir'awn 1941, p. 138) or *al-fārid* (Al Fir'awn 1941, pp. 137-38); pl. *farāda* (Al Fir'awn 1941, pp. 21, 22, 24 et passim). These terms are related to *farḍ* pl. *furūd*, which is the local term for a judicial decision (Al Fir'awn 1941, p. 20). The term *'arīf*, which was noted above, is also known in Iraq, with its plurals *arāf* (Al Fir'awn 1941, p. 138) and *'urrāf* (Al Fir'awn 1941, pp. 23-24). Batatu (1982, p. 85) writes *al-farīda al-'arīfa*, but this may be the result of his conflating two distinct terms. Salim (1970, p. 200) makes no mention of a judicator in his account of dispute settlement among the Bani Asad. This suggests that the office was not found among all the riverine tribes.

⁶⁹ Guaranties are occasionally referred to, but there is no mention of a pledge of honor (Al Fir'awn 1941, pp. 103, 165-169; Jamil 1935, p. 82; al-Khalidi 1978, p. 68).

⁷⁰ Brief recent accounts will be found in Mahjub (1997a, pp. 249-250) and Hüsken and Roenpage (1998, pp. 58-59).





We know less about councils. They were to be found, for instance, among the Rgaybat of the Western Sahara and the Doui Menia of eastern Morocco (Dunn 1977, pp. 60-61). Judicial councils are apparently the result of Berber influence, and are not known among the Asiatic Bedouin.

Evidence

Bedouin customary law is markedly rational. Although belief in witchcraft, the evil eye, and the like, exists to some degree in many Bedouin communities, these are rarely matters that lead to litigation;⁷¹ the contrast with, say, customary law in sub-Saharan Africa is striking. Where possible, decisions are based on natural evidence (testimony, footprints, written documents, etc.). Oaths (individual or collective) are generally resorted to only in the absence of such evidence. This is also true of ordeals, of which the most common is the *bish'a* or *bal'a*. The party who undergoes it (normally the defendant) licks an iron object that has been heated in the fire, and if his tongue remains unscathed, he is taken to have spoken the truth. Ordeals are rare among the African Bedouin,⁷² but are found among many of the Asiatic Bedouin (though not among the riverine tribes of Iraq).

Redress

Among the Asiatic Bedouin, if the plaintiff wins, the judicator may order the defendant to pay amends to the plaintiff, or he may order the defendant to make symbolic amends (e.g., by publicly retracting a defamatory statement), or both; he may also order the defendant to undertake some other action, e.g., divorce his wife, hand over possession of a piece of land. Awards are often substantial, sometimes even ludicrous, and a victorious plaintiff will frequently renounce part or even all of the material amends due to him.

On occasion the defendant may be condemned to suffer physical punishment, but this is generally merely notional, and is in practice commuted to a payment to the plaintiff. Among the riverine tribes of

⁷¹ Bates (1915, p. 728) notes that in the Western Desert a man may claim compensation for injury or loss sustained as a result of the evil eye.

⁷² The only instances I have noted are in Kordofan (Reid and Maclaren 1936, p. 159) and in the Western Sahara (Dubié 1948, p. 18).





Iraq, and apparently only there, it was common practice for amends to be in the form of one or more women handed over as brides to the plaintiff's group; elsewhere women were handed over in this way only as part of the settlement for a homicide, and although the practice is widely attested, it was probably nowhere very common.

The notion of a penalty imposed by a public authority seems to exist in the Mashriq only where there is a relatively powerful leader. There were riverine tribes in Iraq among which the shaykh could fine, whip, exile and even jail a miscreant (see, for instance, Salim 1970, pp. 156-157).⁷³ The institution of a fine payable to a body representing the community, which is prominent in Berber customary law, is virtually unknown in the Mashriq; but it has been recorded, for instance, among the Arabic-speaking (though originally Berber) tribes of Southern Tunisia (Deambroggio 1903, p. 96) and among the Rgaybat of the Western Sahara (Ibn 'Abd al-Hayy 1992, p. 82, or Caratini 1989, vol. 1, p. 210 for a French translation). It may possibly have been common in the Maghrib.

Honor, Contract and Protection

Commerce is not highly developed among the Bedouin, and as far as our knowledge extends, the contracts for transactions such as sale, hire and employment (for instance, of herdsmen or sharecroppers) are of no special legal interest. In general, they seem to be formless agreements, and little is known about the actions to which they can give rise.⁷⁴

Contract, however, is not limited to the sphere of commerce. As in some other societies where central authority is weak or nonexistent, contract is important in the context of legal procedure and politics. We mentioned above that the relations between members of a blood-money group are often—perhaps always—regulated by

⁷³ Al Fir'awn (1941, p. 177) states explicitly that the shaykh could punish a miscreant even without having received a complaint.

⁷⁴ Most of the relevant publications come from North Africa. The French ethnographic literature includes Salmon and Bruzeaux (1905), Vaffier-Pollet (1906), Milliot (1911), and Berque (1936). Maunier (1998) is a more theoretical study that touches on the subject. References to the Italian literature, which relates to Libya, will be found in Shinar (1983, pp. 415-422). Ethnographies often contain some relevant data; for a particularly full account, see Asad (1970, 71-74).





contract, and also that in many communities a dispute can only be adjudicated on the basis of an agreement between the parties. Where that agreement is legally binding we may call it a contract.

Agreements—and perhaps contract—are also important in the construction of larger political units. The simplest account of Bedouin political organization, the segmentary lineage model, claims that all Bedouin political groupings, other than those based on the domination of the weak by the strong, are patrilineal descent groups. According to the model, when groups unite (temporarily or permanently) for political purposes, they do so entirely on the basis of agnatic proximity.⁷⁵ But this view, while still influential, is no longer generally accepted (if, indeed, it ever was). This is not the place to consider the factors that actually lead to the formation of political units among the Bedouin; we will only point out that many such units have no tradition of common descent. Instead the Bedouin view them as being based on agreements—sometimes cast in contractual form—between representatives of various groups. These groups themselves are likely either to be descent groups, or composed of descent groups, or closely linked to descent groups.

The Three-party Contract

The best-known contract of the procedural and political type is one that we have already encountered. I refer to it as the three-party contract,⁷⁶ and it is widely used among the Asiatic Bedouin.⁷⁷ The core of this transaction is a pledge of honor. The guarantor, who undertakes to the obligee that the principal will do (or forbear to do) something, deposits his honor⁷⁸ with the obligee. The guarantor's honor is talked of as if it were a physical object; he says that he has

⁷⁵ For a classic presentation of this model in a Bedouin context, see Evans-Pritchard (1949, pp. 54-61).

⁷⁶ This contract is treated at length in Stewart (2003). To the references given there should be added Bailey (1993) and al-Harbi (2000). The latter shows that the contract was also used in the Hijaz (e.g., vol. 1, pp. 51ff.).

⁷⁷ The use of guarantors (“damen pl. douman”) to ensure the execution of a decision by arbitrators (“douas pl. douaouiis”) is recorded for the Zaër of Morocco (Benachenhou 1950, p. 8, without further details); but it would be rash to infer from this the existence in the Maghrib of the same type of three-party contract as is known in the Mashriq.

⁷⁸ Referred to as his *ird* or his *wajh*, lit. ‘face.’ As was noted above, the first of these words is also used to refer to honor in a sexual context.





given it to the obligee, and the obligee says that he holds it. If the principal fails to perform, then the guarantor must either persuade him to do so or else perform in his stead (or, if this is not possible, offer compensation). If the guarantor fails to perform, then the obligee can (roughly speaking) destroy his honor. The obligee does this by “blackening the guarantor’s face.” The classic way of doing so is by flying a black flag and saying “May God blacken so-and-so’s face.” This procedure can also be used against men who are accused of any of a variety of other dishonorable deeds.

A striking feature of the three-party contract is that while the obligee has a powerful legal sanction against the guarantor, he has none at all against the principal. It is because of this that a guarantor is necessary for the formation of the contract, in contrast to contracts of the kind familiar from more modern legal systems, in which the surety is merely an accessory.

Since Bedouin place a high value on their honor, the three-party contract is rarely violated, and is constantly used in legal affairs. It is employed not only in forming blood-money groups and in making arrangements for a trial, but also in an endless variety of other legal contexts, among them quitclaims, inter-tribal agreements and even divorce. Among the Sinai Bedouin it is by far the most common act in the law, and the same is probably true of the other systems that make use of it. It is noteworthy, however, that this form of contract is not generally used for commercial purposes.

Honor and Protection

In the three-party contract, the guarantor undertakes that something will (or will not) happen; honor is the means by which his power to do this finds legal expression. There are other institutions, equally characteristic of a society in which the state is weak or non-existent, that operate in the same way. A man’s honor is at stake when he extends his protection, say to a guest or to a protégé,⁷⁹ and when he acts as a traveling companion,⁸⁰ especially in his own tribal ter-

⁷⁹ *Jār*, *ṭanīb*, *qaṣīr*; in the Western Desert *naẓīl*; for other relevant terms, see for instance Landberg (1920-1942, pp. 1090-1092) s.v. *raḥ*; Palva (1978, p. 94) s.v. *zabūn*. The distinction made between a guest and a protégé is not always sharp.

⁸⁰ *Raḥīq*, *khawī* (Musil 1928, pp. 440-441), also *musīr* (Hasanayn 1967, p. 414, referring to the riverine tribes of Iraq), *sayyir* (in Yemen), and *zaḥḥāt* (in Morocco; Michel 1997, pp. 426-428).





ritory. In this context, as in the contract, honor is often referred to among the Asiatic Bedouin as 'face' (*wajh*).⁸¹ Protection may be extended to inanimate objects (e.g., to pastureland, to camels that are under threat of seizure). An offense against a protected person (or the owner of a protected object) is also an offense against the protector, so that the offender will be liable to pay amends to both. A man who does not fulfill obligations of this kind—for instance, one who fails to defend (or worse still, harms) a protégé—brings upon himself deep dishonor.

Among the Bedouin of Sinai it is the same kind of honor (*'ird*) that suffers whether a man fails in his role as guarantor, or as protector, or as guardian of the chastity of his female ward; and this seems also to be true for various other Asiatic Bedouin. What little we know suggests that matters may be otherwise in Africa. It is said, for instance, that in the Western Desert "'ird can only be lost by the misconduct of women" (Abou-Zeid 1966, p. 256). The implication is that failure, for instance, to stand by a protégé results in damage to a different type of honor, perhaps the one known as *sharaf*, but it would be incautious to draw definite conclusions from the very limited data that we presently possess.

Offenses against Honor

Probably all Bedouin societies offer redress for offenses against a man's honor (using the term here in the general sense of his right to be treated with respect).⁸² The details, however, vary considerably from place to place.

In Sinai and adjacent regions there is a special type of judge, called a *Manshad*, who deals with all and only offenses against a man's *'ird*, irrespective of whether the offense arises from sexual interference with his ward, or from harming his protégé, or from wrongfully blackening him. The penalty imposed by the *Manshad* (which is itself called a *manshad*) is almost always a heavy one. Offenses

⁸¹ It is unclear to what extent 'face,' in the sense of honor, is used in Africa. It was noted among the Bedouin of the Western Desert by Abou-Zeid (1966, p. 255), but only by him. Abou-Zeid seems to view it as distinct from *'ird*. 'Face' is reliably reported in the Sudan (Young 1996, pp. 99, 145, with no mention of *'ird*), but from a tribe that arrived relatively recently from Arabia.

⁸² The arguments for this analysis of honor are set out in Stewart (1994), and more briefly in Stewart (2000c).





against *ʿird* are here clearly distinguished from other types of affronts to dignity (e.g., verbal insults, blows that cause no physical injury), the penalties for which are much lighter.

Among the riverine tribes of Iraq, and probably also among the Bedouin of South-West Arabia, the corresponding penalty is called the *hashm*.⁸³ It too is awarded for offenses against *ʿird* (Hasanayn 1967, pp. 413-415; Salim 1970, p. 30). It is probably awarded for all such offenses, but it is also awarded for some offenses that do not seem to be connected with *ʿird*. In the Western Desert and Cyrenaica the Bedouin have the *kabāra* and the *maʿtab* (al-Jawhari 1961, pp. 189, 197f., 204, 210) or *ʿatab* (Colucci 1927, pp. 31, 33; 1932, p. 42); we do not know what term, or terms, these Bedouin use for the offended honor.

The *kabāra* and the *hashm* (unlike the *manshad*) may be imposed, for a given offense, in addition to amends of some other kind. So, for instance, in the middle Euphrates region, if a man kills a woman, the same blood-money (*diyya*) is due as for the killing of a man; but in addition the killer becomes liable for a *hashm*, consisting either of a woman (handed over as a bride to the victim's group) or of a payment in money (equivalent to ten pounds sterling) (Al Firʿawn 1941, p. 54).⁸⁴

The 20th Century and After

During the last two centuries state authorities have gained almost complete control of the Bedouin. The state may move slowly, it may make tactical concessions, it may even try to recruit the tribes for its own ends,⁸⁵ but its long-term aim must be to destroy their political and legal systems. Some institutions have proved relatively easy to suppress. Slavery, inter-tribal warfare and the payment of tribute (*khūwa*) (on which see Stewart 2004) have all vanished, except perhaps in areas of civil war (notably the Sudan). The law relating to these institutions has therefore become obsolete and has been neglected in this brief account.

The authorities would also have been happy to suppress the blood-

⁸³ The *hashm* is well-attested among the sedentary tribes of north Yemen, so it seems likely that it is also used among the neighboring Bedouin.

⁸⁴ Al Firʿawn notes here that if the woman is killed by her husband, no *hashm* is due, only the *diyya*.

⁸⁵ As, for instance, in the last phase of Baʿth rule in Iraq (Baram 1997).





feud, but while this was possible in certain regions—it seems, for instance, to have been achieved among at least some of the Algerian Bedouin at an early date (Ubach and Rackow 1923, p. 218)⁸⁶—it has not yet been accomplished in others.⁸⁷ These and other practices are often deeply rooted, and the servants of the state who come in contact with the Bedouin are generally well aware of the fact. Broadly speaking, the states, after having attained overall control of the Bedouin, have adopted one of three approaches to the customary law.

The first is all-out, frontal attack. It is possible that something of this sort was attempted at certain times and places in the Arabian peninsula, whether by the Wahhabis in Saudi Arabia, or by the Zaydi imamate in North Yemen, or by the Marxist regime of South Yemen. Detailed information is lacking, but if such attempts were made, then they were exceptional.

The second approach was one particularly favored by colonial regimes. From early in the 20th century, governments in the Mashriq issued regulations setting up special courts that administered customary law in those regions where it seemed appropriate.⁸⁸ These courts were mostly abolished during the third quarter of the century. The judges in the state customary law courts were usually local men, and their decisions were based largely on the traditional law of the area of their jurisdiction. The procedures followed in these courts were, however, generally new and alien. The tribal law courts seem to have been particularly well-established in Iraq (where their beginnings go back to the late Ottoman period), and it is not always easy to distinguish in the literature on Iraq between autochthonous procedures and those introduced by the authorities.

Tribal law regulations of this kind were Janus-faced. They gave a measure of recognition to the customary law, but they also included mechanisms designed to ensure that servants of the state could review,

⁸⁶ French policy with respect to Arab (as opposed to Berber) customary law in North Africa remains to be investigated; for a superficial sketch of the French administration of justice among the Arab tribes of 19th century Algeria, see Frémeaux (1993, pp. 229-264).

⁸⁷ This is true even in countries with strong central governments such as Egypt and Israel. See, for instance the accounts of blood-feuds among Bedouin in an Israeli city given by Kressel (1996), or among Bedouin of the Western Desert in Müller-Mahn (1989, p. 154).

⁸⁸ References to the literature on this subject will be found in Stewart (1987), to which should be added Jamil (1935).





and if necessary modify, decisions of customary law courts. In this way, for instance, the Iraqi tribes were forced more and more to settle their disputes by paying cash rather than by handing over women.

The third approach is one of informal coexistence between the state authorities and the customary law. Our information on this subject comes mainly from three countries, Egypt, Israel and Jordan, but it is likely that similar conditions obtain elsewhere. The servants of the state are primarily concerned to preserve public order. They have no interest in bringing additional civil disputes before the state courts, and are content to allow these to be settled by the customary law. Even when a criminal offense has occurred, they do not always insist on implementing the law of the state, provided that no outsiders are involved. In such cases the authorities often take care to be well-informed about what is going on, for instance by sending a representative to observe, or even to further, the negotiations between the parties; but if the outcome seems to the authorities reasonable, then either no further steps will be taken, or subsequent official proceedings will take account of whatever settlement was reached between the parties.⁸⁹ In essence, this is an informal version of the second approach.

The customary law itself has adopted new rules as a result of the growing power of the state. One example was given above (in the section on sources of the law), where we described how the Awlad 'Ali deal with the situation in which a killer is arrested by the authorities. The same topic is covered by certain Jordanian tribal law codes from the 1970s, with particular reference to the possibility that the killer may be executed by the state (Abu Hassan 1987, pp. 494-95, 499, 503, 511). Additional examples are the Awlad 'Ali rules relating to the settlement of disputes arising from smuggling and to the hire of lawyers for the benefit of tribesmen involved in state legal proceedings (Mohsen 1971, p. 52).

Bedouin law has also changed in response to various other aspects of the contemporary world. The Awlad 'Ali now have their own law about motor vehicle accidents (Müller-Mahn 1989, p. 153),⁹⁰ and this topic is treated at length in the above-mentioned Jordanian

⁸⁹ Relevant case material from the Awlad 'Ali will be found in Müller-Mahn (1989, pp. 152-155). Similar proceedings have been documented from Upper Egypt, e.g., Ben Nefissa (1999) and Nielsen (1998). For Israel, see Tsafir (forthcoming).

⁹⁰ For details of particular cases, see Ismāil 1975, pp. 292-295.





codes. Some of the Awlad 'Ali arbitrators have become experts on modern commercial transactions (Müller-Mahn 1989, p. 153), and the Jordanian codes offer rules regarding the payment of blood-money in situations where the victim enjoyed employee insurance (Abu Hassan 1987, pp. 495, 504, 512).

Sometimes one may suspect that it is a change in values that has led to a change in the law. As was mentioned above (in the section on legislation), a number of Western Desert groups modified the old rules that allowed a man to control the marriage of his female paternal cousin, and we know of Bedouin in Iraq and in Jordan who have done the same.⁹¹ Two of the Jordanian codes of the 1970s show some inclination to limit the liability of the blood-money group, especially in the case of sexual offenses (Abu Hassan 1987, pp. 495, 505); a third one, however, comes out firmly against this tendency (Abu Hassan 1987, pp. 512, 514).

Those who have written about the customary law of the Awlad 'Ali in recent years all agree that it is still an important feature of their life; and the same can be said of other Bedouin tribes in Egypt, Israel, the Palestinian Authority and Jordan. In the Maghrib the law may be entirely extinct,⁹² but elsewhere the odd bits of information that emerge from time to time suggest that it continues to exist. Blood-money payments (*faṣl*), for instance, are still part of ordinary life in rural Iraq (Baram 1997, pp. 13-14; Jabar 2003, p. 95; Cambanis 2005). Substantial sections of the population of the Arab world still do not accept the principles on which state law is based, as for instance in the treatment of homicide and physical injury. Furthermore, certain transactions that the Bedouin view as valid are accorded no recognition by the state courts. This applies not only to transactions related to illegal activities (e.g., smuggling), but also in some places to those relating to personal status (for instance, exchange marriage) and land.⁹³ And finally, even in dealing with

⁹¹ For Iraq, see al-Maliki (1992, p. 202), al-Khalidi (1978) and Jamil (1935, pp. 148-49); for Transjordan, Chelhod (1971, p. 114).

⁹² In his account of one of the few remaining nomadic Arab tribes of Morocco Rachik (2000, p. 51) suggests, without quite saying, that the customary law went out of use in the last quarter of the 20th century.

⁹³ On the Bedouin, see Hüsken and Roenpage (1998, p. 63). But this is only one instance of a phenomenon that is widespread not only in the Arab world, but also elsewhere: the existence of a customary law dealing with real estate that is radically different from the state law (De Soto 2000).



disputes that might in principle be brought before a state court, the Bedouin will often prefer their own system as being faster, cheaper and more honest. The likelihood is that Arab customary law—both among Bedouin and non-Bedouin—will, at least in some places, last well into the 21st century.

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