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Law and other-spaces: legal geographies of the Sinai peninsula

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The American University in Cairo

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SINAI PENINSULA

A Thesis Submitted to the

Department of Law

in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law

By

Tracy Allison Young

June 2013

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Tracy Young

Supervised by Professor Usha Natarajan

ABSTRACT

In recent years, Egypt's Sinai Peninsula has joined an unfortunate category of what I call 'Outlaw spaces': spaces that are characterized and understood as being shaped by crisis, chaos and collapse. Outlaw spaces –which include the "black holes," the "breeding grounds," the "security vacuums" and the "no man's lands" that have proliferated in the post-9/11 era—are constructed through the interplay of both legal and imaginative geographies. Mapping and labeling certain zones as lawless, chaotic and dangerous is deceptive. There is nothing natural about Outlaw spaces and it is not always clear where they begin and where they end. While Outlaw spaces are imagined as law-*less*, law may still be present – even abundant – in the space but works in strategic ways and along specific trajectories. Whether Outlaw spaces are dangerous, lawless, chaotic or not, the drawing of boundaries and labeling of the spaces they demarcate amounts to a forceful exercise of power and has important implications for the ways in which the space will be regulated, not regulated or selectively regulated through law. Conceiving a space to be outside the law not only creates truths about that space, it also seeks to provide an explanation for the nature of these spaces and in doing so, asserts the opposite qualities of *in*-law spaces that are constructed in their opposition. These processes of mapping, zoning, dividing and labeling of space are not just a tool for the use or non-use of law within a space, they also seek to provide a narrative for why the imperial eye of law has failed in its efforts to infinitely extend its reach to sanction and transform the Other. Rather than sanctioning, transforming or rebuilding Outlaw spaces, they may instead be simply contained, controlled, exploited or ignored.

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I. Introduction

Vast areas of Egypt's Sinai desert have descended into lawlessness in recent months, providing fertile ground for small cells of extremist militants that have emerged from the shadows and quietly established training camps near the Israeli border.[1]

Egypt's Sinai Peninsula [...] is now drawing comparisons to the ungoverned tribal regions of Pakistan as networks of Bedouin tribes, Sinai's criminal elements and radical Islamists have begun to capitalize on Egypt's post-revolution security vacuum by increasingly engaging in drug and arms smuggling, human trafficking and terrorism. The escalating lawlessness in the Sinai risks turning the region into a powder keg.[2]

The Sinai is turning into a kind of Wild West...[3]

We drove down a bumpy dirt road a few kilometers from the Egypt-Gaza border close to the Egyptian town of Sheikh Zuweid. We drove through olive, peach and almond orchards and passed an occasional low-lying cement brick house with laundry lines fluttering, goats and children looking to see who was coming down the road. Around the next bend in the road, a very different sight came into view. Perched at the top of a hill was a three-story condominium-style house with a brick red Chinese pagoda roof. A vertical pane of metallic blue windows reflected the North Sinai sun back into our eyes as we passed. "That's the house of a trafficker," the North Sinai Bedouin man who rode with me in the car told me. When I asked whether these were arms traffickers or human traffickers, he responded, "Some of them traffic weapons, some of them traffic Africans. I don't know which one they do, but everyone knows who is making money around here." Other pagoda style roofs could be seen on the skyline across Egypt's eastern border region, a trend for those who have recently come into money from lucrative cross-border trade.

"Trafficking in Africans," as it is often called in North Sinai, is in reference to a phenomenon that has emerged in recent years in which sub-Saharan African migrants and asylum-seekers en route to Israel via Egypt's Sinai Peninsula are kidnapped by their

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[1] Ernesto Londoño, *In Egypt's Sinai Desert, Islamic Militants Gaining New Foothold,* WASHINGTON POST, (July 13, 2012), *available at* http://articles.washingtonpost.com/2012-07-13/world/35488579_1_islamic-militants-north-sinai-israeli-forces.

[2] Mark Udall, *Sinai Chaos Threatens Egypt-Israel Security*, CNN, (July 12, 2012), *available at* http://edition.cnn.com/2012/07/12/opinion/udall-sinai.

[3] Ori Lewis, *Egypt's Sinai Turning into Wild West: Israeli PM,* REUTERS, (April 24, 2012), *available at* http://www.reuters.com/article/2012/04/24/us-israel-egypt-sinai-idUSBRE83N0EP20120424.

would-be smugglers who demand increasingly exorbitant ransoms for their release.[4] The kidnappers use torture, rape and organ extraction to coerce relatives of their victims – primarily Eritreans fleeing their country's military dictatorship - to pay the demanded ransom.[5] In a twist to the smuggling-turned-trafficking narrative,[6] many individuals who have been swept into the vast trafficking network whose branches reach into Sudan, Eritrea and Ethiopia never intended to migrate in the first place, but were kidnapped from their homeland or from a refugee camp in northeastern Sudan and brought to the Sinai.[7] It is here, in the borderlands surrounding the towns of Rafah and Sheikh Zuweid, that many of them are held while their families try to furnish the funds to secure their release. Even for those migrants whose smugglers merely provide transportation and assistance for an agreed upon fee, the journey across the Sinai to Israel may prove lethal. The shoot-to-stop policy enacted by Egyptian border guards against those crossing into Israel has turned the border into a kill-zone.[8]

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[4] As of summer 2012, ransoms are reported to have reached as high as $50,000 USD per person. *See* MIRJAM VAN REISEN, MERON ESTEFANOS AND CONNY RIJKEN, HUMAN TRAFFICKING IN THE SINAI: REFUGEES BETWEEN LIFE AND DEATH 30 (September 26, 2012) http://www.eepa.be/wcm/human-rights/3177-human-trafficking-in-the-sinai-refugees-between-life-and-death.html.

[5] *Id.* at 12, 21, 38-41. *See* also Fred Pleitgen, *Refugees Face Organ Theft in the Sinai,* CNN, (November 3, 2011), *available at* http://thecnnfreedomproject.blogs.cnn.com/2011/11/03/refugees-face-organ-theft-in-the-sinai/ Gianluca Mezzofiore, *Eritrea's Forgotten Refugess: Kidnapped, Tortured, Ransomed and Killed in Sinai,* INTERNATIONAL BUSINESS TIMES, (April 9, 2013), *available at* http://www.ibtimes.co.uk/articles/455019/20130409/eritrean-sinai-refugees-egypt-sudan.htm.

[6] One possible legal analysis of the situation faced by migrants in the Sinai is that while their journey begins as what would be defined as human smuggling, when the initial 'business agreement' is broken and exploitation in the form of kidnapping, extortion, torture, rape or organ extraction enter the picture, the situation may instead be defined as human trafficking. Other analyses would argue that what is happening in the Sinai does not qualify as human trafficking and would still be defined as human smuggling. Theoretically, someone who fits the definition of a victim of trafficking contained in the Trafficking Protocol and the 2010 Egyptian legislation written to implement the law at the domestic level would receive additional protections and support from the state. In reality, however, the Egyptian Anti-trafficking law has only been applied to a select number of cases related to domestic workers in urban areas and to child brides trafficked out of Egypt. See Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention (15 November 2000), A/RES/55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (15 November 2000), A/RES/55/25, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Dec.25, 2003.

[7] RACHEL HUMPHRIS, REFUGEES AND THE RASHAIDA: HUMAN SMUGGLING AND TRAFFICKING FROM ERITREA TO SUDAN AND EGYPT (November 2012) http://www.unhcr.org/51407fc69.html.

[8] *See*, for example, Human Rights Watch, *Sinai Perils: Risks to Migrants, Refugees, and Asylum Seekers in Egypt and Israel*, (2008) http://www.hrw.org/reports/2008/11/12/sinai-perils-0; REBECCA FURST-NICHOLS AND KAREN JACOBSEN, AFRICAN MIGRATION TO ISRAEL: DEBT, EMPLOYMENT AND REMITTANCES (September 2011) https://wikis.uit.tufts.edu/confluence/download/attachments/42011548/migration-israel.pdf?version=1&modificationDate=1297104037000.

A few kilometers after passing the pagoda-roofed house we arrived at our destination, a nice but modest house just off the dirt road overlooking a large olive grove. It was the home of a Bedouin sheikh who offers refuge to individuals who have escaped from their kidnappers or who have been released by their captors after their families were able to provide the ransom demanded. The sheikh told us that a group of fourteen Eritreans had just left his house earlier that week, making their way back to Cairo where they would either apply for asylum or continue their journey elsewhere. He pointed out a large room with pillows, blankets and cushions where the Eritreans had stayed. This was no underground hideout or secret back room and had big open-air windows looking out over the hills, just meters from the main road. As we sat drinking tea in the courtyard outside I asked the sheikh, who is known in the community for the assistance he provides, if the traffickers had ever confronted him for his work or if they had ever come to his house to retrieve their "goods." "No," he responded without hesitation, "this would never happen. Anyone who sleeps in my house is my guest. According to Bedouin *urfi* law they cannot cross onto my land or enter my house or harm my guests. They would never dare."

<center>***</center>

I came to this thesis through an interest in this story, in the human trafficking and smuggling of sub-Saharan African migrants through the Sinai. In 2011, I was working for a Cairo-based organization providing legal assistance to refugees and asylum-seekers in Egypt and many of my clients had friends or relatives who had been kidnapped at some point along the route to Israel.[9] In the months that followed the withdrawal of Egyptian security forces from the Sinai in February 2011, the story of kidnapping and trafficking in the Peninsula received considerable attention from international media and human rights organizations.[10] Articles, exposés and documentaries told of unbridled

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[9] Many recognized refugees living in Cairo decide to continue on to Israel due to the difficult economic situation in Egypt. Egypt is party to the 1951 Refugee Convention but which has made a reservation to the Article 17 allowing recognized refugees to engage in wage-earning employment in their country of asylum. Additionally, the security situation in Cairo during the 2011 uprising and the months that followed was particularly difficult for refugees and asylum seekers, many of whom lack identification or whose UNHCR cards were not recognized by the police and military personnel manning the large number of checkpoints around the city at that time. Convention Relating to the Status of Refugees, art 17, 189 U.N.T.S. 150, *entered into force* April 22, 1954.

[10] Some human rights organizations have been following the plight of migrants in the Sinai since 2008. *See*, for example, Sinai Perils *supra* note 8, Amnesty International, *Egypt Deadly Journeys through the*

www.manaraa.com

criminal networks, torture, rape and death with the occasional story of rescue or escape.[11] Some of the reports, which continue to be published today albeit with less frequency, lament the Egyptian government's inaction in stopping the traffickers, but acknowledge the limitations placed on the military and security forces under the 1979 Peace Treaty with Israel. A typical human rights report on the subject echoes the story told by the international media, describing the plight of those held by traffickers, their reasons for travel and their horrific experiences in the Sinai.[12] The authors then go on to outline the extensive legal framework[13] applicable to the problem, to criticize the Egyptian

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Desert, (2008) http://www.amnesty.org/ar/library/asset/MDE12/015/2008/en/3254d528-6ae8-11dd-8e5e-43ea85d15a69/mde120152008en.pdf.

[11] *See* for example Phoebe Greenwood, *Egyptian authorities look the other way as Bedouin kidnap refugees,* THE GUARDIAN, (February 14 2012), *available at* http://www.guardian.co.uk/world/2012/feb/14/egypt-bedouin-kidnap-refugees-israel; Emily Alpert, *African refugees kidnapped, brutalized in Sinai, report says,* LA TIMES, (April 3, 2013), *available at* http://www.latimes.com/news/world/worldnow/la-fg-wn-eritrean-refugees-brutalized-20130403,0,6113119.story; Jerome Taylor, *Forgotten: The Stolen People of the Sinai*, THE INDEPENDENT, (January 20, 2012), *available at* http://www.independent.co.uk/news/world/africa/forgotten-the-stolen-people-of-the-sinai-6292201.html; Fred Pleitgen and Mohamed Fadel Fahmy, *Bedouin Successes Fighting People Traffickers,* CNN, (September 19, 2012), *available at* http://thecnnfreedomproject.blogs.cnn.com/category/death-in-the-desert/; Sarah Lynch, *Sinai Becomes Prison for African Migrants,* NY TIMES, (October 31, 2012), *available at* http://www.nytimes.com/2012/11/01/world/middleeast/01iht-m01-sinai-migrants.html?pagewanted=all&_r=0.

[12] *See* for example Sinai Perils *supra* note 8, Human Rights Watch, *Egypt: End Sinai Nightmare for Migrants*, 05 September 2012, *available at* http://www.hrw.org/news/2012/09/05/egypt-end-sinai-nightmare-migrants, Human Rights Watch, *Egypt: End Traffickers' Abuse of Migrants,* 09 December 2010, *available at* http://www.hrw.org/news/2010/12/09/egypt-end-traffickers-abuse-migrants, Amnesty International, *Egypt: Deadly Journeys Through the Desert,* 2008*, available at* http://www.amnesty.org/ar/library/asset/MDE12/015/2008/en/3254d528-6ae8-11dd-8e5e-43ea85d15a69/mde120152008en.pdf, Physicians for Human Rights, *'Hostages, Torture, and Rape in the Desert: Findings from 284 Asylum Seekers about Atrocities in the Sinai'* 2011, http://www.phr.org.il/uploaded/Phr-israel-Sinai-Report-English-23.2.2011.pdf.

[13] The content of the suggested legal framework varies by report but may include Egypt's "detailed and strong" anti-trafficking law, Arab Republic of Egypt People's Assembly Law No. 64 of 2010 regarding Combatting Human Trafficking, as well as international instruments such as the Protocol against the Smuggling of Migrants by Land, Sea and Air *supra* note 6; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children *supra* note 6; the Convention Relating to the Status of Refugees *supra* note 9; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987; Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981; International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171; Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, *entered into force* June 20, 1974. Beyond this exhaustive list, one report contains a section entitled Application of the Legal Framework in which the writer goes through a series of legal acrobatics to fit the situation in the Sinai into distinct profiles with applicable international norms. One such profile is "Trafficking in Persons for the Purpose of Debt Bondage and Forced Begging" in which the author makes a rather convoluted argument that the practice of forcing refugees held hostage

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government for not upholding their legal obligations under the treaties and protocol in question, and to encourage them to take the legal measures necessary to address the problem.[14]

This story, however, is only part of a larger narrative within media and human rights reports in recent years, one that frames the injustices occurring in the Sinai as the human toll of a larger context of lawlessness and chaos in the Peninsula following the uprising that toppled President Mubarak in early 2011. The kidnapping and trafficking of migrants emerges alongside reports of a host of other illicit and dangerous activities in the Peninsula: gunmen attack checkpoints and police stations, militants bomb the gas pipeline that runs through the Peninsula, heavy weapons and explosives exit Egypt through tunnels under the eastern border and Islamic militants enter the country through the same tunnels. The Sinai has been described in some news reports as a potential breeding ground for militant Islam, a safe haven for Al-Qaeda and global terrorism and even a new Wild West.[15] In light of these dynamics, some have declared the current situation on the Peninsula to be a security vacuum that could threaten regional peace.[16]

Reading these reports on the Sinai, one cannot help but notice the ways in which they echo descriptions of a number of other spaces around the globe, in what seems to have become a global narrative of ungovernable spaces of lawlessness and chaos. Following the attacks of September 11th, 2001, the 9/11 Commission released an expansive list of "terrorist sanctuaries" that included spaces of many scales: regions of countries, countries themselves, entire regions of the globe and even "European cities with expatriate Muslim communities."[17] In the years that have followed, this sort of spatial reordering has

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in the Sinai to call their relatives for ransom money qualifies as forced begging, which "has been explicitly included in the trafficking definition in some countries and has now been adopted as a possible form of exploitation in the EU Trafficking Directive (2011/36), thereby extending the trafficking definition." *Refugees between Life and Death supra* note 4 at 57-61.

[14] *See, e.g.,* Refugees between Life and Death *supra* note 4; Deadly Journeys *supra* note 12; Hostages, Torture and Rape *supra* note 12.

[15] Lewis *supra* note 1; Mohamed Fadel Fahmy, *Egypt's Wild West*, FOREIGN POLICY, (August 24, 2011), *available at* http://www.foreignpolicy.com/articles/2011/08/24/egypts_wild_west.

[16] *See, e.g.* Arab Center for Research and Policy Studies, *Sinai: From Absence of State to Political Pawn,* (August 14, 2012) *http://english.dohainstitute.org/release/d9de757f-5b99-4dcd-82c7-74a6b2595f33#* (last visited February 15, 2013); NICOLAS PELHAM, SINAI: THE BUFFER ERODES (September 2012) http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/pr0912pelham.pdf.

[17] The report lists the following spaces as terrorist sanctuaries: the Afghanistan border region; southern or western Afghanistan; the Arabian Peninsula, especially Saudi Arabia and Yemen, and the nearby Horn of

produced Rogue States, the Axis of Evil, and "breeding grounds" of all scales that left un-addressed threaten to generate terror. International headlines tell us that Libya's south teeters towards chaos,[18] Mali's north breeds terror,[19] Guantanamo is a legal black hole,[20] and Waziristan is a no man's land.[21] Failed states, failed cities and failed neighborhoods proliferate as we learn of yet more spaces of lawlessness: Rio slums are ruled by drug gangs and militias, neighborhoods in Lagos exist outside state control and post-Hurricane Katrina New Orleans descended into disorder. In recent years, Egypt's Sinai Peninsula has been shuffled into this ill-fated category of spaces shaped by crisis, chaos and collapse in which the "hundreds of bodies"[22] of Eritrean migrants reported in the media can only be seen as an unfortunate human toll in an void of uncaused lawlessness and violence.

    This spatial imagination of the Sinai prevents us from seeing and understanding certain aspects of what is happening on the Peninsula. By viewing the Sinai as ungovernable, we fail to see the selective and strategic ways that the Egyptian state intervenes in the space. The characterization of the Sinai as lawless precludes us from seeing that there is, in fact, an abundance of law in the Peninsula and that the exceptional regulation of the Sinai through domestic and international law has contributed to the construction of the Peninsula as a space that is outside and Other to Egypt's center. By seeing the space as a chaotic security vacuum, we miss the opportunity to see and to challenge the economic and political structures of power at work in the Sinai. This thesis seeks to disrupt the narrative of the Sinai that has emerged since the uprisings that toppled President Mubarak in 2011 and to shed light on the relationships of power in the

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Africa, including Somalia and extending southwest into Kenya; Southeast Asia, from Thailand to the southern Philippines to Indonesia; West Africa, including Nigeria and Mali; and European cities with expatriate Muslim communities." THE 9/11 COMMISSION REPORT 366-367 (November 27, 2002) www.9-11commission.gov/report/911Report.pdf.

[18] Jeffrey Fleishman, *Libya's south teeters toward chaos,* LA TIMES, (March 30, 3013), *available at* http://www.latimes.com/news/nationworld/world/middleeast/la-fg-libya-dangerous-20130331,0,4597838.story.

[19] John Price, *Northern Mali a breeding ground for terrorists long before the current crisis,* WASHINGTON TIMES, (February 20, 2013), *available at* http://www.washingtontimes.com/news/2013/feb/20/northern-mali-a-breeding-ground-for-terrorists-lon/?page=all.

[20] Anthony Mason, *Guantanamo: Legal Black Hole,* AMNESTY INTERNATIONAL (November 30, 2010) *available at* http://www.amnesty.org.au/hrs/comments/24286/.

[21] Daud Khattak, *No Man's Land,* PRAGUE POST, (March 20, 2013), *available at* http://www.praguepost.com/news/15747-no-mans-land.html.

[22] Mike Thompson, *Sinai torture for Eritreans kidnapped by traffickers,* BBC NEWS, (March 6, 2013), *available at* http://www.bbc.co.uk/news/world-africa-21670929.

Peninsula in ways that may provide a better understanding not just of the Peninsula, but of the other no man's lands, black holes and breeding grounds around the globe that regularly appear in the international news.

While the notion of the Sinai as a troubled space has received intense attention in recent years, a history of war and occupation on the Peninsula have meant that the Sinai has simultaneously embodied and absorbed many of the long-standing tensions between Egypt and Israel and in the larger region. This thesis explores the ways in which the Sinai and its population have been simultaneously included and excluded from Egypt along particular political, legal and economic lines. I propose that the relationship between Egypt and the Sinai has rendered the Peninsula as a space that is different from the rest of Egypt, a part of—yet somehow outside of –Egyptian territory, an Other-space to Egypt's center.

The perceived Otherness of the Sinai has often animated and justified efforts by the Egyptian government to domesticate and transform the space through law, though these efforts often appear to be partial and incomplete. In this thesis, I argue that the Sinai has been constructed not just as an Other-space, but as an *Outlaw* space whose dangerous and threatening nature both justifies and requires measures that call not only for sanctioning and transforming the space, but also for containing, controlling and even ignoring it. I further propose that this dynamic is not unique to the Sinai but is indicative of a contemporary moment in the relationship between law and space that operates on many scales. The construction of spaces as lawless and chaotic, I propose, serves specific purposes in relation to the strategic use of law. Outlaw spaces reinforce the characteristics of spaces constructed in their opposition, they justify the exceptional behavior of the state within those spaces and they allow for certain strategic and selective uses of law in the space to the exclusion of others, facilitating the active underdevelopment of those spaces as natural resources and profits are funneled out and further distracting from the resulting poverty and marginalization within those spaces.

Chapter II of this thesis considers the relationship between Egypt and the Sinai and the ways in which the two spaces have been co-constructed as a modern nation-state and as a frontier zone. Chapter III examines the various legal geographies of the Sinai through the lens of the relationship between international law and the Other. Chapter IV

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explores the role of imaginative geographies in the processes of mapping, zoning, dividing and constructing space as Outside and Outlaw. Chapter V concludes by briefly exploring the implications for not only the Sinai, but also spaces beyond the Sinai such as the black holes, the breeding grounds and the no man's lands that have proliferated in the post-9/11 era.

II. Egypt and the Sinai: The Making of a Nation-State, the Construction of a Frontier Zone

The relationship between the Sinai Peninsula and the Egyptian State is one that has long been characterized by the state's efforts to exert control over its population, resources, territory and borders in the Peninsula. But it is equally characterized by the tendency of the Sinai – its population, territory and eastern borders—to resist, defy or evade this domestication. From the early stages of modern state formation starting with the rule of Mehmet Ali Pasha in 1805 to the period following the resignation of President Mubarak in 2011, this relationship has been contested and renegotiated according to economic and strategic necessities.

In this Chapter, I examine the ways in which the machinery of the modern Egyptian nation-state has been used in attempts to domesticate the population, territory, and resources of the Sinai and the role that law has played in these processes. While this domestication has been crucial to shaping the relationship between the Peninsula and the Egyptian state it has also been selective, partial and incomplete. Interventions in the Sinai are focused on securing the state's strategic and economic interests but have never strived for full integration into Egypt. While a comprehensive history of the relationship between the Sinai and the Egyptian State is beyond the scope of this thesis, this Chapter elucidates the role of the Peninsula in the construction of the modern Egyptian nation-state and the simultaneous production of the Peninsula as a frontier zone.

A. Of Citizens and Territory: Producing the Modern Egyptian Nation-State

Having come into power in what was a highly globalized world with several empires competing for domination, Mehmet Ali Pasha had to carefully strategize in order to assert himself as the sole ruler of Egypt. By 1805, the Pasha had successfully transformed himself from the governor of an Ottoman province to the sole ruler of Egypt and made significant efforts to build a centralized state and assert Egypt's autonomy from the Ottoman Empire. Crucial in this process of modern state-formation at the time was the

ability of the government to define its borders[23] and to demonstrate full control over its population and resources.

Mehmet Ali's government made rigorous efforts to expand and solidify its rule over Egypt. To achieve this, it "employed every possible means in order to penetrate the public, external and institutional spheres, and to permeate the consciousness of as many social groups as possible."[24] This meant strengthening military, judicial and bureaucratic institutions, increasing government reach into urban spaces such as markets and mosques and extending the government's reach into the rural areas and the desert peripheries of the country.[25] Mehmet Ali sought to settle the tribes in his newly established territory whose leaders represented centers of power and whose population was seen to be problematic, unpredictable and a threat to the stability of central rule.[26] The state sought to shift loyalties from tribe to the state to better control the population, but also to help protect against enemy threats that could endanger the Pasha's newly established rule. Also at stake was the government's ability to implement ambitious agrarian and economic reforms and to ensure the security and free operation of trade routes, the economic lifelines of the country.

While they represented a minority of the total tribal population in Egypt at the time[27] those in the desert periphery and border regions presented additional challenges to the regime and were often regarded with suspicion and fear. The Bedouin tribes of the Sinai were of particular concern to the Pasha as their presence in the eastern frontier zone gave them the power to disrupt important trade routes to Asia and to open Egypt to

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[23] The official location Egypt's northeastern frontier during various phases of Mehmet Ali's rule is debated but the tribes of the Sinai acknowledged Mehmet Ali's authority form the beginning of his rule and were punished when they disobeyed him. See Yitzak Gil-Har, *Egypt's North-Eastern Boundary in Sinai*, 29 MIDDLE EASTERN STUDIES 138, 135-148 (1993).
[24] REUVEN AHARONI, THE PASHA'S BEDOUIN: TRIBES AND STATE IN THE EGYPT OF MEHEMET ALI, 1805-1848, 2 (Routledge 2007).
[25] *Id.*
[26] Mehmet Ali carried out physical settling of Egypt's tribes through the adoption of measures designed restrict the movement of nomadic and semi-nomadic groups. The regime's land distribution policy rewarded sheikhs who persuaded tribes to settle in particular areas and restricted their movement between provinces for the first time in history. *Id.* at 212-213, 214.
[27] The majority of the tribes in question were located in the Nile Delta and Upper Egypt.

potential invaders.[28] At the same time, the Pasha saw Sinai Bedouins as valuable allies who could assist him in his plans to expand his rule to territories further east.[29]

The relationship between Mehmet Ali's government and Sinai tribes was characterized by co-existence through both conflict and cooperation. The government recognized the power of rebellious tribes to disrupt government activities, assist enemy regimes and threaten security of trade and transportation. By adopting an administrative policy that provided economic and political incentives to those who would cooperate, Mehmet Ali was able to develop mutually beneficial relationships with tribal members who in turn assisted him in military, economic and administrative efforts.[30] Members of the tribal elite then used this relationship to increase their own power and influence as the regime became more dependent on their cooperation. The state's bureaucratic machinery thus produced citizens in the Sinai that were within the reach and control of the central government in Cairo, but whose relative independence and resistance to full domestication meant that they could never fully be brought within the realm of the law.

This period set an important precedent in the relationship between the Sinai and the Egyptian state. Mehmet Ali's government went to great lengths to assert the fixed territoriality of the Egyptian nation-state but the Sinai, long a corridor of migration for tribes, traders and migrants, seems to have defied these efforts. Hundreds of years later, cross-border familial, tribal, economic, linguistic and political links have remained strong and hundreds of underground tunnels crisscross Egypt's eastern border bringing people, goods and weapons to and from the Sinai. The machinery of the Mehmet Ali regime extended its reach to the Sinai and made rigorous efforts at shifting loyalties from the tribe to the state in order to produce citizens whose relationship to the state could be regulated through law. The Pasha established elaborate administrative bureaucracies to

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[28] *Id.* at 5, 31, 102.

[29] During Mehmet Ali's military campaigns to al-Sham (current day Syria, Lebanon, Israel and Palestine), Hejaz and the Arabian Peninsula Sinai tribes served as horsemen and camel-drivers, captured army deserters, transported equipment and supplies, and provided security for military convoys. While some tribes cooperated fully, others attacked and robbed caravans traveling along the al-Sham road. Those who deserted the army and were often given refuge by the very sheikhs the government relied on to provide men for military service. *Id.* at 169, 195, 203.

[30] Beyond physical settling, Mehmet Ali's regime sought to control Egypt's tribes through the development of a centralized administrative bureaucracy. The Pasha appointed special officials, generally from among the Ottoman-Egyptian elite of his regime, to manage tribal affairs within a given province or tribe. These officials carried out the edicts and directives of the central regime and generally dealt with tribal affairs, assisting the Pasha in carrying out punishments and sanctions when necessary. *Id.* at 163, 168.
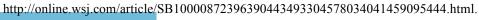
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facilitate this relationship but it was ultimately the tribes in the Sinai who were able, in many ways, to determine their relationship to the state using their peripheral location and ability to disrupt trade routes as leverage. Today, the lack of government control in the Sinai and the continued, and some would argue increasing,[31] operation of tribal courts in the Sinai has marked its population as still not fully domesticated by the law that rules the rest of the country.

The geographic location of the Sinai directly affected its relationship to Mehmet Ali's central government, whose efforts to establish and assert its identity as a modern nation-state required that it demonstrate control over its territory, population, resources and borders. The geostrategic and economic importance of the Sinai has only increased in the period following Mehmet Ali's rule, and the residents of the Sinai have retained the power to exert significant political and economic pressure on the central government.

B. A Buffer, a Highway, an Oil Field and a Beach Paradise: The Economic Stakes of the Sinai

The economic value of the Sinai would only increase with the opening of the Suez Canal in 1869, with the subsequent discovery of oil, natural gas and mineral deposits in the century that followed and again with the development of the Peninsula's Red Sea coast for tourism in the 1990s. As a territory, the Peninsula has been spatially valuable in several ways: as a corridor or "highway" through which goods and resources can pass, as a territorial buffer to the Suez Canal at its western edge, and as a site of immense profits from both natural resource extraction and tourism.

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[31] While the Egyptian government condones and sometimes denies the existence of informal or unauthorized judicial authorities in the Sinai, tribunals and reconciliation councils operating on Bedouin law have long been used to settle disputes in the Peninsula. Some news sources have reported an increase in these tribunals following the 2011 uprisings during which many state institutions, including civilian courts, ceased to operate. Attention has also been drawn to the emergence of Sharia tribunals in North Sinai, which are operated by Salafi leaders and based on Islamic jurisprudence. Sharia tribunals issued occasional decisions during the Mubarak regime but operated underground to avoid crackdown by the state security apparatus. Heba Fahmy, *Sharia tribunals on the rise in North Sinai,* EGYPT INDEPENDENT, (November 17, 2012), *available at* http://www.egyptindependent.com/news/sharia-tribunals-rise-north-sinai; Mara Revkin, *Islamic justice in the Sinai,* FOREIGN POLICY: THE MIDDLE EAST CHANNEL, (January 11, 2013), *available at* http://mideast.foreignpolicy.com/posts/2013/01/11/islamic_justice_in_the_sinai; Matt Bradley, *Makeshift Islamic courts fill the void in the Sinai,* WALL STREET JOURNAL, (November 02, 2012), *available at* http://online.wsj.com/article/SB10000872396390443493304578034041459095444.html.

The construction of the Suez Canal at the geographic junction between the Sinai and the African continent, connecting the Mediterranean and the Red Sea, was of strategic concern not only to Egypt, but also to European imperial powers. The Canal provided European powers with a direct maritime connection to their colonies and dramatically shortened the time needed to move goods and natural resources from the colonies to Europe. Despite the fact that it was built by the forced labor of thousands of Egyptian peasants,[32] the Canal was heralded by some as a symbol of progress that would "open up the East to the commerce and civilization of the West";[33] indeed, its construction changed the face of global trade and of global politics. But the day the Suez Canal opened would forever change Egypt's relationship with the Sinai and with the rest of the world. For whoever held the helm of power in Cairo, the Sinai remained a crucial and strategic piece of land. Egypt's leaders hoped that the construction of the Canal on Egyptian territory would propel them into the exclusive club of "modern nations."[34] Just as Mehmet Ali had looked to global powers during his reign as models of what it meant to be an independent and modern state, his son Said Basha hoped to follow the lead of European imperial powers and gain prominence by making full use of Egypt's valuable natural resources and playing an active part in the global economy. In this way, Said Basha hoped and expected that the Suez Canal would lead Europeans to finally recognize his country as a genuinely modern state.[35]

This hope was not realized; through his attempts to "purchase a better future for Egypt using European loans"[36] Said Basha drove Egypt into significant debt to fund the project at Suez. This debt would ultimately justify decades of British imperial rule in the

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[32] ZACHARY KARABELL, PARTING THE DESERT: THE CREATION OF THE SUEZ CANAL, 168 (Random House 2004).

[33] *Id.* at 4, quoting Ferdinand de Lesseps in an account taken from L'ISTHME DE SUEZ, (May 15 1859) *in* Suez Canal Company Archives, *Archives d'Entreprise, la Compagnie Universelle du Canal Maritime de Suez*, 1995060-1522, CENTRE DES ARCHIVES DU MONDE DE TRAVAIL, Roubaix, France.

[34] Mehmet Ali had initially resisted the idea of a canal at Suez over fears that control over such a waterway would prove irresistible to European powers and threaten the gains Egypt had made to wrest itself free from foreign rule. But where Mehmet Ali was an obstacle to the realization of the canal, his son and second successor Mohamed Said Pasha proved an eager collaborator. He dreamed of restoring Egypt's prominence in the region and looked to France and England as models of what Egypt could be but had never become. See *Id.* at 5, ARTHUR GOLDSCHMIDT JR., A BRIEF HISTORY OF EGYPT, 71-72 (Pennsylvania State University 2008).

[35] Emily A. Haddad, *Digging to India: Modernity, Imperialism, and the Suez Canal*, 47 VICTORIAN STUDIES 363, 387 (2005).

[36] Karabell *supra* note 32 at 5.

country and facilitate the movement of canal profits out of Egypt to European shareholders.[37] It was not until 1952 when Gamal 'Abd el Nasser nationalized the Suez Canal Company that the Canal and its profits fully belonged to Egypt.[38] This placed the Canal at the center of the national consciousness making it a symbol of political and economic independence. While the Suez Canal is comparatively less crucial to today's world economy it remains an important source of income for Egypt.[39] The Canal continues to bring in billions of dollars of much needed annual revenue and, in light of the Egypt's faltering economy and the sharp decrease in revenues from tourism since 2011, the uninterrupted operation of the Canal remains a top priority for the Egyptian government.[40]

As discussed above, since the inception of the modern Egyptian nation-state, the Sinai has represented a strategic stake in light of the important trade routes that cross the Peninsula and connect the economies of Africa with those of Asia. While the sort of caravan trade-by-land of previous eras is no longer a part of regional trade, the Sinai retains its economic value as a corridor through which Egypt transports natural gas to its neighbors. The Egypt Gas Pipeline and its extension, the Arab Gas Pipeline, were constructed under the Mubarak regime and allow Egypt to export natural gas to Jordan, Lebanon, Syria and, formerly, Israel.[41] Natural gas has been a major earner of foreign

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[37] Said's debts were passed on to his successor. Khedive Ismail was unable to make payments on the loans and sold his shares—now making up 44% of the Suez Canal Company— to the British government.[37] This was only a temporary solution as Ismail's debt obligations far exceeded the profits of the sale. The Khedive was forced to accept an agreement that placed the canal under the French-British 'Dual Control' and put Egypt's treasury in the hands of international bankers.[37] Soon after, the Khedive's right to 15% of canal profits was sold to a French bank and the Egyptian government ceased to have any financial stake in the Suez Canal. A nationalist armed rebellion followed and in 1882, the British seized the canal and established a protectorate over Egypt.[37] Karabell *supra* note 32 at 262, 265-266; Haddad *supra* note 35 at 387-388, JOHN MARLOWE, WORLD DITCH: THE MAKING OF THE SUEZ CANAL 271 (Macmillan 1974).

[38] Karabell *supra* note 32 at 269.

[39] Waleed Abu al-Khair, *Suez Canal Remains Steady Source of Revenue for Shaky Egyptian Economy*, AL-SHORFA NEWS, (11 May 2012), *available at*
http://al shorfa.com/en_GB/articles/meii/features/main/2012/05/11/feature-02, Karabell *supra* note 32 at 6.

[40] Marwa Hussein, *Suez Canal Revenues at $5.05 Billion Record High Despite Egypt Turmoil*, AL-AHRAM, (August 2, 2011), *available at* http://english.ahram.org.eg/NewsContent/3/12/17938/Business/Economy/Suez-Canal-revenues-at--billion-record-high-despit.aspx.

[41] In April 2012, Egypt cancelled its natural gas exports to Israel, who had previously imported 40% of its gas from Egypt. The gas deal, signed by President Mubarak in 2005, has been controversial since its inception. During his 2012 trial, President Mubarak faced corruption charges related to the deal but was acquitted in a June 2012 decision. Mubarak was accused of improperly authorizing the East Mediterranean Gas Company to export natural gas from Egypt to Israel at prices lower than those on the international

exchange for Egypt in recent decades, an income that depends on the uninterrupted flow of gas out of the country. Like the trade routes of earlier times, the pipeline has proven vulnerable to attack as it passes through the Sinai, increasing the importance of government control of the region to secure its operation.[42]

In addition to its economic value as a buffer and as a corridor, the Sinai Peninsula itself has become an important site of oil, natural gas and mineral extraction and, as I will discuss in the following section, coastal tourism. As of 2012, Egypt was the fifth largest oil producer on the African continent and a significant portion of the country's oil reserves are located in the Gulf of Suez and in the Sinai itself.[43] The majority of Egypt's coal reserves are found in North Sinai and mined by both Egyptian and foreign corporations. The Sinai has become a region that the Egyptian state relies upon in order to provide natural resources for domestic consumption by its booming population and for lucrative export. The significant reserves of oil, natural gas and minerals in the Sinai, along with its coastal tourist destinations, have rendered it one of the most economically important regions of Egypt, territory that must be strategically domesticated and controlled, and whose instability could mean significant economic damage to the country.

C. A Problematic Integration: The Sinai after the 1979 Egypt-Israel Peace Treaty

With the creation of Israel in 1948, Egypt's eastern border in the Sinai became a site of increased tension and would come to be a theater of the Arab-Israeli wars in the decades that followed. Egypt's defeat in the 1967 War with Israel and the fifteen-year Israeli

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market. Yolande Knell, *Egypt Scraps Israel Gas Supply Deal,* BBC NEWS, (April 23, 2012), *available at* http://www.bbc.co.uk/news/world-middle-east-17808954; HUMAN RIGHTS WATCH, *Egypt: Q&A on the Trial of Hosni Mubarak*, (28 May 2012), *available at* http://www.hrw.org/news/2012/05/28/egypt-qa-trial-hosni-mubarak; Hamza Hendawi, *Life Sentence for Egypt's Mubarak; Sons Acquitted*, THE GUARDIAN, (June 3, 2012), *available at* http://www.guardian.co.uk/world/feedarticle/10270577.

[42] Between January 2011 and July 2012, the natural gas pipeline crossing the Sinai was attacked fifteen times, often using improvised explosive devices. See EGYPT INDEPENDENT, *Gas Pipeline in Sinai Bombarded for the 15th Time Since Revolution Started,* (July 22, 2012), *available at* http://www.egyptindependent.com/news/gas-pipeline-sinai-bombed-15th-time-revolution-started.

[43] Tom Jackson, *The Top 5 Oil Producing Economies in Africa,* Ventures Africa, *available at* http://www.ventures-africa.com/2012/08/the-top-5-oil-producing-economies-in-africa/.
According to The Egyptian Ministry of Petroleum, 37% of Egypt's oil production in 2008/2009 came from the Suez Gulf and the Sinai. See *The Annual Production of Crude Oil and Condensates Distributed Over the Production Regions in the Republic 2008/2009 (246.1 Million Barrels)*, the Arab Republic of Egypt Ministry of Petroleum, *available at* http://www.petroleum.gov.eg/en/AboutMinistry/KeyIndicators/OilKeyindicators/Pages/TheAnnualProductionofcrudeoilandCondensatesdistributedamongtheRegionsoftheRepublic20082009(2461MillionBarrel).aspx

occupation of the Sinai that followed confirmed the strategic stake the Peninsula represented, not just to Egypt, but to the region and world.[44] Egypt attempted to force Israel to withdraw from the Sinai in the 1969 War of Attrition but failed in what proved to be an enormous embarrassment for President Nasser and for Egypt. Egypt made another attempt at reclaiming the Peninsula in 1973 during the October War,[45] which ended with a mutually agreed-upon cease-fire in 1975. The Sinai was at the center of negotiations that followed, culminating in the US brokered 1979 Egypt-Israel Peace Treaty. Israel agreed to withdraw its armed forces and civilians from the Sinai, returning the Sinai to Egyptian control[46] in what was celebrated as a victory for both Egypt and for other Arab countries in the region.

After regaining the Peninsula, Egypt once again sought to determine its national boundaries and to re-assert its place as a modern nation-state.[47] Officially back in Egyptian hands, the Sinai became "an issue of reconquest and national affirmation."[48] The development plans for the Peninsula that followed were a means by which the Egyptian government could emphasize the value of the Sinai to the Egyptian public and, in doing so, justify the costs of the military effort to retake it.[49] The Sinai was still of great geostrategic concern to President Hosni Mubarak, who came to power in 1981, but his government was unable to freely exercise its military control over the Sinai due to restrictions contained in the 1979 Peace Treaty with Israel signed by his predecessor President Anwar Sadat.[50] Nonetheless, the Mubarak regime sought to reaffirm its political and economic control over the Peninsula by establishing connections with businesspeople and tribal sheikhs and by expanding the presence of the ruling National Democratic Party in the Sinai.

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[44] INTERNATIONAL CRISIS GROUP, EGYPT'S SINAI QUESTION, 5-6 (January 2007) www.crisisgroup.org/~/media/.../Egypt/61_egypts_sinai_question.pdf.
[45] Also known as the Yom Kippur War and Operation Badr.
[46] Article I(2) 1979 Egypt-Israel Peace Treaty *available at* http://mfo.org.
[47] The Taba enclave was returned to Egypt on 18 June 1989 after long and difficult diplomacy that "revealed Egypt's tenacity as it sought to determine national boundaries." Egypt's Sinai Question *supra* note 44 at 6.
[48] *Id.*
[49] SMADAR LAVIE, THE POETICS OF MILITARY OCCUPATION: MZEINA ALLEGORIES OF BEDOUIN IDENTITY UNDER ISRAELI AND EGYPTIAN RULE 58 (University of California Press 1990).
[50] As I will discuss further in Chapter III.

In the period that followed the return of the Sinai to Egypt, the Egyptian government was tasked with re-sorting, re-ordering and re-affirming the loyalties of the population of the Sinai, a population that had been under enemy occupation for fifteen years and who were seen with even more suspicion and mistrust than before. The loyalties of the population of the Sinai would continue to be brought into question in the decades that followed. A 2010 court case, for example, urged the Egyptian government to strip the citizenship of Egyptian men married to Israeli women.[51] Given the legacy of Israeli occupation in the Sinai and the cross-border relationships between Bedouins and Egyptians of Palestinian descent, a large number of the estimated 30,000 Egyptian men wed to Israeli women at the time were likely to be Sinai residents.

Today, the exoticized Bedouin nomad of the colonial imagination has little resemblance to the population currently living in the Sinai. "Bedouin," as Donald Cole has pointed out, "has changed from denoting a way of life in the past to marking an identity today."[52] That identity remains important for Sinai Bedouins who belong to fifteen major tribes that are further divided by family.[53] Bedouins tend to see their origins as separate and distinct from Egyptians west of the Peninsula and refer to non-Bedouins as "Egyptians." The Egyptian national census contains no specific "Bedouin" category[54] —and therefore there is no "official" population to be counted—but many of the policies and politics of the Egyptian government in the Peninsula have been shaped and influenced by the Bedouin category.

It should be noted that the Sinai Bedouin are not the only inhabitants of the Peninsula. Many Palestinians live in the northern border towns and it is estimated that one third of the population of the northern city of el Arish is of Palestinian descent.[55] Additionally, a large number of Egyptians from the Nile Valley now live in the Sinai, as a result of ambitious population settlement initiatives following the return of the Peninsula from Israeli occupation. The National Project for the Development of Sinai, initiated in

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[51] *Cairo Court Rules on Egyptians Married to Israeli Women,* BBC NEWS, (June 5, 2010), *available at* http://www.bbc.co.uk/news/10247437.

[52] Donald P. Cole, *Where Have the Bedouin Gone?*, 76 ANTHROP Q 235, 235-267 (2003).

[53] Egypt's Sinai Question *supra* note 44 at 9.

[54] Cole *supra* note 52 at 236. Cole notes that "nomads" or "Bedouins" were clearly distinguished in Egypt's censuses in 1907 and 1917 but do not appear as separate categories in later censuses.

[55] Oroub El Abed, *The Palestinians in Egypt: An Investigation of Livelihoods and Coping Strategies,* 2003 (American University in Cairo FMRS working paper series, no. 3, 2003).

1994, sought to settle 3.2 million Nile Valley Egyptians in the Sinai and to create 800,000 jobs to employ them by 2017.[56] These settlement projects, which coincided with massive investment in the tourism industry in the Sinai, focused on the resort city of Sharm el-Sheikh and other sites along the Red Sea Coast. The jobs created from the development project were primarily given to Nile Valley migrants to the exclusion of Sinai Bedouins, many of whom lost their land and livelihoods as a result of these development initiatives.[57]

As the Mubarak regime turned its attention to the Peninsula's potential as a profitable tourist destination in the 1990s, the Red Sea Coastal areas of South Sinai saw a massive increase in domestic and international investments in the tourism industry and the Sinai experienced a 16-fold jump in the percentage of Egypt's total tourist accommodations.[58] The boom in the tourism industry, however, largely benefitted Egyptian and foreign companies. It provided employment opportunities for workers brought in from the Nile Valley while pushing Sinai locals to the economic margins of employment and land ownership.[59] In North Sinai, where the majority of the Sinai's population resides, "national development plans for the region have remained wishful thinking"[60] and those development plans that have been implemented have been in private hands and shown little benefit to the local population. This has resulted in the overall economic marginalization of the Sinai along with uneven development between

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[56] National Project for the Development of the Sinai 1994-2017, cited in ANDREA VON SARNOWSKI, THE ROLE OF INDIGENOUS PEOPLE IN NATIONAL DEVELOPMENT: PARTICIPATION AND MARGINALIZATION OF INDIGENOUS BEDOUIN IN SOUTH SINAI DEVELOPMENT 84 (2011), http://ubm.opus.hbz-nrw.de/volltexte/2011/2733/pdf/doc.pdf.

[57] Many of Sinai's tourism centers were originally fishing villages but were either destroyed or relocated to pave the way for tourist resorts. In Nuweiba, fishermen organized to request compensation when a ferry terminal built to encourage Egypt-Jordan tourism eliminated their beachfront fishing territory. Agents of the Egyptian *mukhabarat* (Egyptian secret police) threatened them with jail if they pursued their claim. See Lavie *supra* note 49 at 76. Those who continue to fish have often found themselves in a battle with the tourism industry that has sought bans against fishing in popular snorkeling and scuba diving areas. See Dalia Farouk, *South Sinai governor bans fishing in Ras Mohamed protected area,* al Ahram Online (May 20, 2011) *available at* http://english.ahram.org.eg/NewsContent/1/64/12553/Egypt/Politics-/South-Sinai-governor-bans-fishing-in-Ras-Mohamed-p.aspx. Egyptian Tourist Police keep constant tabs on Bedouin who interact with tourists and, according to the International Crisis Group's report in 2005, "the [South Sinai] governor banned the only activities open to Bedouin –offering camel rides to tourists, acting as unofficial guides on trips into the mountains and, especially, holding *soirées* under a tent at night. Now only official tour operators are authorized to organize events in the desert –'Bedouin parties' without Bedouin." Egypt's Sinai Question *supra* note 44 at 13.

[58] Egypt's Sinai Question *supra* note 44 at 9, 13.

[59] *Id.* at 13-15.

[60] *Id.* at 17.

the South, which has approximately 20% of the population but has received the majority of development projects, and the North whose 80% of the population of the Peninsula has been largely forgotten in terms of development. This has led to even higher levels of resentment towards the central government and political and economic elites in Cairo.[61]

These developments have left many Sinai Bedouin with the impression that far from being a part of the Egyptian nation after Israeli withdrawal, the Sinai is closer to being the subject of an Egyptian colonialism that implements discriminatory policies that firstly privilege outsiders from the Nile Valley and secondly use divide-and-rule tactics by favoring the South in development projects.[62] Many assert that no meaningful effort has been made to integrate the Sinai's population into greater Egypt. It seems more accurate to say that the re-domestication of the Sinai following Israeli occupation, as has been the case in earlier periods in its history, has been carried out along strategic trajectories with concern for economic, political and security interests.

The tensions surrounding the Sinai's place within the Egyptian nation-state surfaced dramatically on a day in October 2004 when three bombs exploded in the South Sinai coastal resorts of Taba, Ras Al-Shaytan and Nuweiba, killing thirty-four people.[63] In the summer of 2005, an attack in Sharm el Sheikh killed seventy people, mostly Egyptians.[64] In 2006, the resort town of Dahab was hit by three more bombs, killing nineteen.[65] The government initially attributed the attacks to Al-Qaeda, but the alleged connection to international terrorism was complicated by the timing of the three major attacks on symbolic dates in Egyptian history[66] and the high number of Egyptians in comparison with Western tourists who were targeted.[67] Thousands of "suspects" were arrested in the aftermath of the attacks, most of them young men from North Sinai[68] and

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[61] *Id.* at 12, 22.
[62] *Id.* at 22-23.
[63] *Id.* at 1.
[64] *Id.*
[65] *Id.*
[66] 6 October, the date of the 2004 bombing in Taba, Ras Sheitan and Nuweiba, is the anniversary of the army's crossing of the Suez Canal in the 1973 war; 23 July, the date of the 2005 bombing in Sharm el Sheikh commemorates the 1952 revolution; 24 April, the date of the 2006 bombing in Dahab, is the eve of the anniversary of Israel's 1982 withdrawal from Sinai and coincides with the *Sham en-Nessim* holiday. *Id.*
[67] *Id.*
[68] Sadiq Reza, *Endless Emergency: The Case of Egypt,* 73 NEW CRIM. L. REV 532, 551 (2007), Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai* 12 (February 2005) *available at* www.hrw.org/sites/default/files/reports/egypt0205.pdf.

responsibility was eventually attributed to a previously little-known Egyptian group called *Tawhid wa Jihad*.[69]

In the period that followed the bombings, "[b]oth the state's response and wider public discussion [were] confined to the surface of events and … ignored the socio-economic, cultural and political problems which are at the heart of Sinai's disquiet."[70] In light of decades of marginalization and underdevelopment of the Sinai, in addition to the preferential treatment given to the South in development initiatives, there is "reason to consider how the attacks may be linked to the question of Sinai and its population in relation to the nation as a whole."[71]

D. Sinai after Mubarak

On January 30th 2011, twelve days before President Mubarak's resignation, residents of the North Sinai town of Rafah called their relatives in Cairo to tell them that they had "already finished the revolution" in the Sinai. This was in reference to the abrupt withdrawal of security forces from the Peninsula the day before. Unlike most of the Egyptians in Cairo who protested peacefully during the January 25th 2011 uprisings, Bedouin protestors in the Sinai were armed from the outset. Attacks on police stations and prisons in late January and early February 2011 led to the withdrawal of police and state security forces and the release of prisoners, many of whom had been held since the mass arrests of North Sinai men following terrorist attacks from 2004 to 2006.[72] Many Sinai Bedouin who felt they had lived as second-class citizens under the Mubarak regime celebrated the withdrawal of the state and enjoyed freedom of movement for the first time in decades.[73]

In the months that followed, the Peninsula saw continued violence with the destruction of symbols and institutions of government, as well as increases in tribal vendettas, hostage-taking and car-jacking.[74] Arms trafficking through the Peninsula has

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[69] Translated into English, the group's name means "Oneness [of God] and Holy Struggle." According to International Crisis Group's report, the group was unknown in Egypt prior to the attacks. Egypt's Sinai Question *supra* note 44 at 1.
[70] *Id.* at i.
[71] *Id.* at 1.
[72] Pelham *supra* note 16 at 5.
[73] *Id.*
[74] *Id.* at 7.

come to incorporate a flow of weapons from Libya after the collapse of that country's government in August 2011.[75] In August 2012, masked gunmen opened fire on an Egyptian Army checkpoint near the Israeli border, killing fifteen soldiers.[76] The Egyptian government responded with Operation Eagle, which it said would be the largest military mission since 1973, would find those responsible and would rid the Peninsula of Islamist militants.[77] In the weeks that followed, however, many said that while there was an increase in military and police presence in the Sinai for the operation, military statements were exaggerated and that little was actually being done.[78]

While anxieties surrounding the space of the Sinai seem to have intensified in recent decades and particularly following the resignation of President Mubarak in 2011, the Peninsula's relationship to the Egyptian state has always been questioned and challenged. While the new questions have arisen about the absence of the state, the emergence of parallel systems of justice and even the potential emergence of a sub-state entity, Sinai has always, to some degree, been self-governing. What is new is that the narrative surrounding the Sinai has shifted from one that understands the space as problematic, troublesome and challenging to one that sees it as lawless, chaotic and ungovernable.

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[75] Soraya Sarhaddi Nelson, *Libyan Arms Flow Into Egypt Across Northern Sinai,* NPR News, (October 13, 2011), *available at* http://www.npr.org/2011/10/13/141303842/libyan-guns-pour-into-egypt-sinai-residents-arm-themselves.
[76] Kareem Fahim, *Gunmen Kill 15 and Steal Vehicle in Attack*, NY Times, (August 5, 2012), *available at* http://www.nytimes.com/2012/08/06/world/middleeast/gunmen-storm-egyptian-base-killing-15-soldiers.html?_r=0.
[77] Ahmed Aboul Enein, *Army Operation Provokes Barrage of Questions,* Daily News Egypt, (August 12, 2012), *available at* http://www.dailynewsegypt.com/2012/08/12/army-operation-provokes-barrage-of-questions/.
[78] *Id.*

III. Legal Geographies: Law and Other-Spaces

As the previous Chapter has demonstrated, the Sinai has played an important role in the construction of the modern Egyptian nation-state. This relationship, however, has also resulted in the construction of the Sinai as a semi-detached frontier zone that is outside, separate and different from the rest of Egypt. This idea that the Sinai is an Other-space to Egypt's center has historically rendered it subject to processes of domestication through law that often echoes and resembles the civilizing mission. This chapter explores the relationship between law and Other-spaces using Antony Anghie's concept, which he calls "the dynamic of difference."[79] I then detail three techniques employed by the Egyptian government, and to a lesser extent the Israeli government, through which the space of the Sinai has been legally constructed as Other-space, paving the way for exceptional regulation by law.

A. International Law and its Others

By entering into a discussion of the relationship between law and Other-spaces, I am engaging with an ongoing critical project related to international law and its Others.[80] Throughout history, international law has had many Others: women, culture, nature, savages, barbarians, the colonial world and peripheral nations and peoples have all in some way been the Other to of the Self of international law.[81] These Others, as several critical legal scholars have suggested, have played a crucial role in establishing the identity of international law and in justifying its use. Critical legal scholars who have engaged the question of international law and its Others have often identified the continuities between colonialism and newer forms of imperialism in the twenty-first century. They argue that international law was founded upon European imperialism and

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[79] ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 4 (Cambridge University Press, 2005).

[80] INTERNATIONAL LAW AND ITS OTHERS (Anne Orford ed., Cambridge University Press 2006). This thesis was particularly influenced by the contributions to that book by Anne Orford, Frédéric Mégret, Antony Anghie, Hilary Charlesworth and David Kennedy.

[81] Anne Orford, *A Jurisprudence of the Limit,* in INTERNATIONAL LAW AND ITS OTHERS (Anne Orford ed., Cambridge University Press 2006), Hilary Charlesworth and David Kennedy, *Afterward: and Foreward – There Remains So Much We Do Not Know,* in INTERNATIONAL LAW AND ITS OTHERS (Anne Orford ed., Cambridge University Press 2006).

the exploitation of the non-European world and that international law continues to reproduce these patterns of power, exploitation and exclusion.[82]

While some map these power imbalances squarely between the West and the global South or between former colonial powers and their former colonies, others see the Self and the Other, the inside and the outside of law as much harder to name in definite terms. In this way, the power imbalances inherent in international law are produced and reproduced in different forms through "the complicated and infinite process of constituting the self in relation to the other through the institutions of law and language."[83] Important in this analysis is the idea that the Other is not produced through any specific formula or blueprint, but can be found on different scales and with different actors. The patterns of domination and exclusion established by the colonial encounter are reproduced, albeit in different forms, in other relationships such as the relationship between a post-colonial state and its minorities,[84] or between what some have called the Transnational Capitalist Class and the Transnational Oppressed Classes.[85]

Antony Anghie argues that the relationship between international law and the Other emerges in the perpetual efforts to create and bridge differences between that which is universal or civilized and that which is particular or uncivilized.[86] This driving force of the civilizing mission is what Anghie calls the "dynamic of difference" and is both endless and self-sustaining. It is this compelling invocation of the Other, Anghie argues, that drives the creation of new doctrines of international law. But further difference is also generated through these processes, rendering the task of bridging and incorporating the Other endless because it is forever incomplete.[87] As Anghie aptly asserts, "each act of arrival reveals further horizons, each act of bridging further differences that international law must seek to overcome."[88] In other words, law engages in this continual effort to identify difference in order to sanction and correct it along

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[82] *See* Orford *supra* note 81 at 3.
[83] *Id.* at 4.
[84] Anghie *supra* note 79 at 207.
[85] B.S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century,* (2012) 14 OR. REV. INT'L L. 19 2012 citing William I. Robinson & Jerry Harris, *Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class*, 64 SCI. & SOC'Y 11 (2000).
[86] Anghie *supra* note 79 at 4.
[87] *Id.* at 312.
[88] *Id.* at 4.

juridical terms, resulting in what Foucault calls "the ever-to-be-accomplished unveiling of the Same."[89] These confrontations in turn drive the creation and application of law in a given context, reproducing patterns of domination and subordination.[90]

This dynamic is not a blueprint for the ways in which the civilizing mission approaches difference, rather it is an ever shifting and adapting force that shapes law's interface with the Other. What becomes important to highlight here is that the Other serves a crucial role in giving both purpose and justification to the law as it is animated in the never-ending tasks of bridging and transforming. As Peter Fitzpatrick has argued, the law needs this Other in order to reinforce its own identity and meaning.[91] The narrative of international law as having an inherently progressive value that leads humanity towards a superior state of civilization and social development has held enormous sway within the discipline.[92] Contained in this idea of law as progress is not only a progression of humanity *towards* the universalized and the civilized, but also a move *away* from the particular, the uncivilized, and the Other.[93] In this way, as Peter Fitzpatrick argues, the identity of law is partially developed by the negation of what it is *not*, by the negation of that which is Other.[94] By constructing the identity of the Other as uncivilized, informal and primitive, the identity of the law is mutually constructed as civilized, formal and modern.

Anghie's analysis pays particular attention to the role of the colonial encounter and subsequent efforts at decolonization in the development and application of various legal doctrines, particularly the central international legal doctrine of sovereignty.[95] He stresses, however, that "certain structures of thought regarding the 'foreign' or the 'uncivilized,' which arise from particular and identifiable historical circumstances, have

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[89] MICHEL FOUCAULT, THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES, 370 (Routledge 2005) (1966) *available at* http://books.google.com.eg/books?id=7z0nXi4R8m4C&printsec=frontcover#v=onepage&q&f=false.
[90] James Crawford, *Foreward,* in Anghie *supra* note 79 at xi.
[91] PETER FITZPATRICK, THE MYTHOLOGY OF MODERN LAW (Routledge 1992).
[92] *See* THOMAS SKOUTERIS, NOTION OF PROGRESS IN INTERNATIONAL LAW DISCOURSE (Asser Press, 2010).
[93] Fitzpatrick *supra* note 91 at *ix, xiii.*
[94] PETER FITZPATRICK, THE MYTHOLOGY OF MODERN LAW (Routledge 1992).
[95] But also the 'just war' doctrine and the doctrines of discovery, occupation and conquest, among others associated with the acquisition of territory by European powers, and the doctrines of assimilation of colonized populations during the era of colonial expansion. In the era of decolonization, the recognition doctrine, the statehood doctrine, the doctrine of state succession, the acquired rights and sources doctrine and the doctrine of self-determination show an important animation of the dynamic of difference.

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an enduring presence"[96] and that the dynamic of difference continues to operate in new forms in the post-colonial state. Consequently, patterns of domination and subordination "are often reproduced, albeit in somewhat modified form, in later encounters with people deemed to be uncivilized and violent."[97]

Following decolonization, "the achievement of development became the central and defining preoccupation of the new states"[98] and the post-colonial state was the agent of that development. Wherever cultural divisions existed within a state, development was seen as a means of transcending these divisions by representing the "universal interests" of the national population and incorporating difference through the assimilation of minorities into the "universal state."[99] The civilizing mission within the post-colonial state justified "the intervention of the development state into the many social, economic and cultural spheres that had been previously governed by the traditions of the particular community involved."[100]

The dynamic of difference becomes useful in understanding the historical context of the Sinai and its relationship to the Egyptian state, and can be seen at many stages of that history. Mehmet Ali's Egypt provides a fitting example of the dynamic at work. In the Pasha's efforts to demonstrate control over his territory and borders through the settling of tribes in Egypt, he encountered unique difficulties in the Sinai where nomadism and the cross-border realities of the lives of Sinai tribes were seen as primitive and ran contrary to the principles of the modern nation-state he was trying to establish. In order to expand and solidify his rule in the Sinai, the Pasha attempted to bridge these differences by developing elaborate bureaucracies to reach the tribes, to sanction unruly behavior and to transform them into citizens accessible to the centralized state through law.

The characteristics of the development state described by Anghie emerged most forcefully in the Sinai under President Hosni Mubarak in the decades that followed the return of the Peninsula from Israeli occupation. The National Project for the Development of Sinai 1994-2017 sought to re-assert Egyptian control of the Peninsula's

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[96] *Id.* at 288.
[97] *Id.*
[98] *Id.* at 203.
[99] *Id.* at 206.
[100] *Id.* at 205.

resources and population through ambitious initiatives such as the settlement of Nile Valley Egyptians in the Sinai, the creation of jobs for these settlers in tourism and industries based on raw materials, and the full exploitation of the Peninsula's natural resources.[101] The overall objective of the project, as stated by the Egyptian government, was "the complete overhauling of the social, economic, political and culture [sic] structure of Sinai,"[102] a transformative effort that would be initiated and facilitated by law.

B. Law and Other-Spaces

There is an inherent spatiality to Anghie's theory as he describes the bridging of gaps that exist between law and the Other in the crossing of what could be imagined as a physical void between us and them. Anghie describes the "acts of arrival" and the revealing of yet "further horizons" through the dynamic of difference creating an image of an endless physical expansion and extension of the law as it reaches across space and territory to bridge and overcome difference. Anghie contends that "it is primarily in the peripheries, the non-sovereign, non-European world that sovereignty is completely unfettered, directed and controlled only by its ingenuity in constructing the uncivilized in ever more innovative ways which then call for new elaborations, applications and refinements in sovereignty."[103]

Throughout history, it is not just the populations and governments of the peripheries that are the object of Anghie's dynamic of difference; these relationships are also spatialized and contained within Other-spaces such as the colonial territories, the League of Nations mandate territories, so-called developing countries and, more recently Rogue States and the Axis of Evil. While the population of the Sinai has often been the object of efforts at domestication, integration and transformation through law, the *space* of the Sinai has also been subject to exceptional legal regulation, creating particular legal geographies within the Peninsula.

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[101] GOVERNMENT OF EGYPT, 1994: THE NATIONAL PROJECT FOR THE DEVELOPMENT OF SINAI. 1994 - 2017. Cited in Sarnowski *supra* note 56 at 83-84.
[102] *Id.* at 84.
[103] Anghie *supra* note 79 at 311.

C. Legal Geographies of the Sinai Peninsula

The Sinai, while of enormous economic and political importance, has also represented a space of vulnerability in the modern Egyptian nation-state. Egypt's eastern border anxieties with Israel and Gaza have only intensified in light of regional security tensions in recent decades and the Egyptian government has responded through the selective domestication of the population, territory and resources. These efforts often come in the name of security and in the form of law. In other words, the Sinai is not only imagined as an Other, outside or vulnerable frontier space, it is also aggressively regulated as such through law. In contrast to descriptions of the Sinai as a law-*less* region there is, in fact, an abundance of law in the Peninsula. In considering the Sinai as a hyper-regulated space, however, it must be noted that laws are not applied in a blanket but along specific trajectories resulting in heavy regulation in some areas and none in others,[104] according to the strategic interests of the state.

The Sinai is regulated by several distinct but overlapping legal geographies. Like other regions of the country, it is subject to general Egyptian law, to international laws contained in international treaties signed by Egypt, and to customary international law. Furthermore, the Sinai is exceptionally regulated by international and domestic laws that apply exclusively to the Peninsula. At the international level the 1979 Peace Treaty applies strictly to territory lying east of the isthmus of Suez and west of the border with Gaza and Israel. The 1981 protocol to the treaty relating to the presence of Multinational and Force Observer international peacekeepers, too, finds its application only on the Peninsula. At the domestic level, the Sinai is regulated by a large body of additional regulations related to security, land ownership, private property, development, resource exploration and extraction, tourism, migration and border management.[105] Egypt's decades-long emergency law has resulted in exceptional legislation and security measures

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[104] For example, despite the intense presence of legal regulation along some trajectories, some estimates say that as many as one quarter of Sinai's population do not have a national ID card. *See* Sarah El-Rashidi, *Egypt's Sinai Bedouin Cry Out,* AHRAM ONLINE, (September 29, 2012), *available at* http://english.ahram.org.eg/NewsContentP/1/54170/Egypt/Egypts-Sinai-Bedouins-cry-out.aspx.

[105] Some of which will be discussed further in this chapter. While a comprehensive list or analysis of these laws is beyond the scope of this thesis, they can accessed through a search of the American University in Cairo's legal database, which enables the user to search Egyptian laws by governorate (i.e. North Sinai and South Sinai) and by year.

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in the country, many of which have been directed at the Sinai and its population.[106] Additionally, Israel's application of its anti-infiltration law has at times found its application on the Peninsula as Israeli soldiers cross into Egyptian territory in order to pre-emptively arrest those they believe intend to enter Israel illegally.[107] Through these overlapping legal geographies, the political, cultural, historical and legal relationships between Egypt and its colonizers, between Egypt and Israel, between the Egyptian government and its subjects, and between Nile Valley Egyptians and Sinai Bedouin are mapped and layered onto the territory of the Sinai through law.[108]

This exceptional legal mapping is important because it demonstrates the ways in which law's efforts at sanctioning or transforming the Other through law apply not only to people and populations, but also to space. To demonstrate this, I have chosen three examples of the ways in which these legal geographies have operated in the Sinai as an Other-space within the Egyptian state. First, the Sinai has been constructed as a contested battleground in contrast with other regions of the country that sit securely within Egyptian sovereignty. Second, the Sinai has been constructed as an empty space in contrast to the densely populated and resource-scarce Nile Valley. Finally, the Sinai has been constructed as a porous and dangerous frontier zone, a precarious periphery to Egypt's center.

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[106] As I discussed in Chapter II, emergency measures following the bombings at tourist resorts in the Sinai in 2004, 2005 and 2006 resulted in mass arrests of thousands of young men from North Sinai. Hostages were taken by security forces in order to secure the arrest of family members and those who were arrested reported torture and ill treatment during interrogations. See Sadiq Reza, *Endless Emergency: The Case of Egypt,* 73 NEW CRIM. L. REV 532, 551 (2007), Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai* 12 (February 2005) *available at* www.hrw.org/sites/default/files/reports/egypt0205.pdf.

[107] Lina Attallah, *Israeli Soldiers Preemptively Arrest African Migrants in Egyptian Territory,* EGYPT INDEPENDENT, (August 10, 2012), *available at* http://www.egyptindependent.com/news/israeli-soldiers-preemptively-arrest-african-migrants-egyptian-territory.

[108] See Vasuki Nesiah's discussion of the *Western Sahara* opinion of the ICJ through which, she argues, "[s]cale emerges as an analytical frame through which legal, political, and cultural relationships, modern and historical relationships, are read, and layered laterally across territory." In the case of the Western Sahara, protagonists in the ICJ case (Spain, Mauritania and Morocco) map varying accounts of legal, political and cultural ties onto the territory of Western Sahara in order to make specific arguments related to the question of Western Saharan sovereignty at the moment of Spanish decolonization. Vasuki Nesiah, *Placing International Law: White Spaces on a Map,* 16 Leiden J Int Law 5-6 (2003).

1. *Sinai as a Battleground*

The Sinai's role in the region's military history has led it to be called Egypt's "eternal battleground"[109] and the Peninsula has absorbed and embodied many national and regional tensions. On the one hand, the Peninsula represents a source of Egyptian national pride resulting from the military victory that resulted in the return of the Peninsula to Egypt following fifteen years of Israeli occupation. Regionally, many see the re-taking of the Sinai as the last major Arab victory against Israel. Behind that victory, however, lies the national embarrassment of having lost the Peninsula to Israel in the 1967 War in the first place. The memory of the Israeli occupation serves as a reminder that the Sinai is a space of vulnerability for Egypt and that its status as Egyptian territory is not fully assured. Nearly forty years after the end of hostilities between Egypt and Israel, the image of the Sinai as a tenuous warzone remains.

While the Sinai has been an actual battlefield at many points in history, its legal construction as such was intensified with the creation of Israel in 1948 and the Arab-Israeli Wars that followed. At the beginning of the 1948 War, Egyptian forces entered the former British Mandate of Palestine through the Sinai and several battles took place on the Peninsula when Israel entered its northeastern corner. Following the Arab defeat, the 1949 Armistice Agreement situated the new state of Israel at the Sinai's eastern edge, with the exception of the Gaza Strip, over which the Egyptian government was made temporary custodian and which it administered until 1967.[110] The Sinai was seized by Israel during the 1967 Six Day War, and remained under Israeli occupation until the last settlements were withdrawn in 1982. During this fifteen-year period, the Peninsula was subject to several overlapping regimes: some Egyptian laws still applied in the space, some laws were implemented by Israeli occupying forces, and the Peninsula was further regulated by the international laws of occupation contained in the 1907 Hague Convention and the 1949 Fourth Geneva Convention.[111]

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[109] GREGORY BLAXLAND, EGYPT AND SINAI: ETERNAL BATTLEGROUND (Funk & Wagnalls 1966).

[110] For more on the Egyptian Administration of the Gaza Strip *see* ILANA FELDMAN, GOVERNING GAZA: BUREAUCRACY, AUTHORITY AND THE WORK OF RULE (Duke University Press 2008).

[111] Convention Respecting the Laws and Customs of War on Land (Hague IV) (18 October, 1907), *entered into force* January 26, 1910; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GCIV) (12 August 1949), *entered into force* October 21, 1950.

The 1979 Egypt-Israel Peace Treaty, which officially returned the Peninsula to Egypt and initiated Israeli withdrawal from the space, continues to intensively regulate the Sinai. The Peace Treaty established "limited force zones," that span the entire Peninsula, from the Suez Canal to the Egypt-Israeli border, including a narrow strip of Israeli territory. The four zones, labeled A through D, are distinguished by the varying levels of Egyptian military, Egyptian police, Multinational Force Observers and Israeli military presence permissible under the treaty.[112] Zone A begins as soon as one crosses the Suez Canal and enters the Sinai and each consecutive zone is characterized by increasing regulation as one moves closer to the Egypt-Israel and Egypt-Gaza borders. While very limited numbers of Egyptian troops are allowed in western and central portions of the Peninsula, Zone C in far eastern Sinai is entirely demilitarized. The zone continues to be patrolled by roughly 1,600 Multinational Force Observers (MFO) who were given a role in the supervision and implementation of the security provisions of the treaty in the treaty's Annex I and in an additional protocol negotiated in 1981.[113]

The legacy of the Sinai as a battlefield and a military buffer continues to shape Egypt's politico-legal and military approaches to the Peninsula and to its population. As I discussed in Chapter II, despite the fact that the Sinai was returned to Egyptian control more than thirty years ago, suspicions remain as to the loyalties of its inhabitants, a population that was occupied by the enemy for fifteen years.[114] Many laws and policies that have been applied to the Sinai in recent decades evidence these questioned loyalties in nuanced ways and have blatantly marginalizing effects.

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[112] Zone A (strip of territory to the east of the Suez Canal): Egypt is authorized to station one mechanized infantry division and its military installations with a maximum of 22,000 military personnel. Only unarmed, non-combat aircraft may be stationed in the zone; Zone B (Central Sinai): Four military battalions may reinforce Egyptian civil police with a maximum of 4,000 personnel. A maximum of eight unarmed transport aircraft may be maintained in the zone; Zone C (to the west of the border with Gaza and Israel, along the coast of the Gulf of Aqaba as far as Sharm Al-Sheikh): Only MFO and Egyptian police are permitted in the zone with the exception of an area in the north along the border at Rafah where a designated force of Egyptian Border Guards have been stationed since a 2005 agreement between Egypt and Israel. No other Egyptian military forces are permitted in this zone. The MFO has a base in the north at Al-Ghoura and a second in the south near Sharm Al-Sheikh. Zone D (a narrow strip on the east side of the Egyptian border with Gaza and Israel): Israel may station four infantry battalions in this zone along its border with Egypt. *See Multinational Force and Observers: Sinai Map, available at* www.mfo.org/sinai.
[113] *Multinational Force and Observers: Contingents available at* http://mfo.org/contingents, Annex I, Article VI, 1979 Egypt-Israel Peace Treaty, 1981 Protocol to the 1979 Egypt-Israel Peace Treaty *available at* http://mfo.org.
[114] Lavie *supra* note 49 at 58.

A striking example of this marginalization can be found in the legacy of restrictive land ownership laws in the Peninsula. Law 143 of 1981, known as the Desert Lands Law,[115] which applies to all Egyptian land two kilometers outside of city limits, holds enormous implications for land ownership in the Sinai. The law considers *wad al-yad,* which literally means "to put hands on" and refers to *de facto* ownership of land without official documents, to be in violation of state property.[116] This means that the state does not recognize land ownership in many places the Sinai, where property may be passed down for generations according to customary law but in the absence of official documents. Anyone found to be illegally occupying state lands may face imprisonment, fines and land seizure.[117] Particularly relevant to the Sinai is the fact that the law prohibits all land ownership in strategic military areas, which are defined by the Minister of Defense.[118] Law 632 of 1982 expands upon the 1981 law with stipulations specific to four areas of the country, including the Sinai.[119] This law allows for private ownership of desert lands in some cases where the land has been farmed for more than three years, but requires the person hoping to claim the rights to their property to go through a lengthy and complicated process that involves submitting proof of ownership, maps and blueprints to a government committee.[120] Even if the application is approved, the Minister of Defense may override the decision should he decide to designate the land in question as part of a strategic military area.[121]

In the absence of official ownership in the eyes of the state, local populations have continued to follow customary procedures for property ownership contained in Bedouin law. In sharp contrast to the restrictions placed on Sinai inhabitants with regards to land ownership, however, the Tourism and Development Authority encouraged private sector investment in tourism in the 1990s by offering reclaimed land in South Sinai for

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[115] Egyptian Parliament Law no. 143 of 1981 (On Desert Land) *Official Gazette,* 30 Aug. 1981 (Egypt).
[116] *Id.* at art. 10.
[117] *Id.* at art. 23.
[118] *Id.* at art. 2(a).
[119] President of the Arab Republic of Egypt Decree no. 632 of 1982, *Al Ahram,* 30 Dec. 1982 (Egypt). The law also applies to Wadi Gedid, the Red Sea areas and Marsa Matrouh.
[120] *Id.* at arts. 2,3,4,6.
[121] *Id.* at art. 6.

purchase at $1.00 USD per square meter.[122] The market was transformed and many locals were stripped of ownership rights in the name of development.[123]

The 2012 Law for the Comprehensive Development of the Sinai Peninsula contains an article that opens up government-sanctioned land ownership to Sinai inhabitants, but requires proof of the sole Egyptian nationality of the buyer and of his or her parents.[124] The wording of the law is unclear with regards to implications for inheritance, but has left many dual nationals, foreign nationals married to Egyptians and individuals whose parents hold another nationality anxious about the future consequences of the law.[125] Later in 2012, the Minister of Defense invoked his power under Law 143 of 1981 and prohibited all land ownership within five kilometers of the North Sinai border with Gaza and Israel, an area inhabited by approximately 10,000 families.[126]

In another example of marginalizing policies in the name of military concerns in the Peninsula, young men native to the Sinai, particularly Bedouins and those whose families are from the city of el Arish, are drafted into the military at much lower rates than the rest of the population. Those who are drafted are typically put into low-stakes positions, outside of the Sinai and far from strategic and security concerns. While it is not an official rule, it is generally known that Bedouins are not accepted into Egyptian Police and Military Academies and are excluded from high-ranking police and military positions. Considering that these are some of the most secure and respected jobs

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[122] Egypt's Sinai Question *supra* note 44 at 14.

[123] *Id.*

[124] Executive Law no. 14 of 2012, Art 8 (Executive Regulations for Law 14 for the Comprehensive Development of the Sinai Peninsula) *Official Gazette*, Issue 210, 13 Sept. 2012.
President of the Arab Republic of Egypt Decree no. 298 of 1995 (Security of the Eastern Border of the Arab Republic of Egypt) *Official Gazette*, Issue 39, 28 Sept. 1995 (Egypt).

[125] Sarah Carr, *New Ownership Regulations in Sinai are Worrying for Many,* AL-MASRY AL-YOUM (January 14, 2012) *available at* http://www.egyptindependent.com/news/new-ownership-regulations-sinai-are-worrying-many.

[126] Armed Forces Decree no. 203 of 2012, *Official Gazette,* Dec. 2012 (Egypt). *See also, Defense Minister Bans Private Land Ownership on Eastern Border,* AL-MASRY AL-YOUM, (December 23, 2012), *available at* http://www.egyptindependent.com/news/defense-minister-bans-private-land-ownership-eastern-border*; Sinai Bedouins Balk at Uprooting Families Near Border,* WORLD TRIBUNE, (February 8, 2013), *available* at http://www.worldtribune.com/2013/02/08/sinai-bedouins-balk-at-uprooting-families-near-border/.
The military recently announced that this decision would be reversed following meetings with tribal leaders who had previously threatened to block the international road to Rafah and roads to industrial areas in central Sinai if their demands were not met. *See Second Field Army Chief Says Sinai Residents Allowed to Own Lands,* AL-MASRY AL-YOUM, (April 1, 2013), *available at* http://www.egyptindependent.com/news/second-field-army-chief-says-sinai-residents-allowed-own-lands, *Sinai Tribes Give Ultimatum on Land Ownership Ban,* AL-MASRY AL-YOUM, (January 22, 2013), *available at* http://www.egyptindependent.com/news/sinai-tribes-give-ultimatum-land-ownership-ban.

available and in light of the high rates of unemployment—particularly youth unemployment— in the country,[127] these exclusions come at a great cost.

2. *Sinai as Empty Space*

"We have known four periods of occupation [ihtilal]: British, Egyptian, Israeli and, for the last 30 years, Egyptian again. Look, there they are, the colonialists of today."[128]

The notion of empty territory, or *terra nullius*, has played an important role in the processes of legal legitimation of conquest and the movement of colonial settler populations into colonized spaces. In order to justify the claiming of space already inhabited by indigenous societies, land is often rendered as vacant, uninhabited, or empty. The legal category of *terra nullius* has lost its relevance as the imagined "white spaces on the map"[129] have been divided up and claimed by colonial powers. There remains at the level of the imagination, however, "a persistent longing for a yet unknown and unclaimed frontier, a *terra nullius*… a nostalgic longing for a virgin territory … as yet unmapped, still awaiting the cartographer's pen and the explorer's gaze."[130]

Since the return of the Sinai to Egyptian control following the end of Israeli occupation, the Peninsula has not only been seen as empty space to be claimed, it has also been legally constructed as such. This was particularly evident in Egyptian laws and government policies in the early 1980s promoting the settlement of Nile Valley migrants in the Sinai. From 1982 onwards, following the dismantling of the last remaining Israeli settlements from the Peninsula, the Mubarak regime sought to integrate and control the Sinai through encouraging large numbers of migrants from the Nile Valley to settle in the Sinai. As I discussed in Chapter II, the National Project for the Development of Sinai 1994-2017 aimed to provide for the settlement of millions of Egyptians from the Nile

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[127] Unemployment rates for young people (from 15-29 years old) reached 77.5% in 2012. Half of Egypt's population is under 25 years old and 90% of Egypt's unemployed are young adults. See *Egypt's unemployment rate hits record high in second quarter,* AHRAM ONLINE, (August 14, 2012), *available at* http://english.ahram.org.eg/NewsContent/3/0/50405/Business/0/Egypts-unemployment-rate-hits-record-high-in-secon.aspx, Population Reference Bureau, *Youth Revolt in Egypt, a Country at the Turning Point* (February 2011) *available at*: http://www.prb.org/Articles/2011/youth-egypt-revolt.aspx.

[128] Egypt's Sinai Question *supra* note 44 at 22, citing an interview with a young university graduate from Sheikh Zweid, June 2006.

[129] Nesiah *supra* note 108.

[130] *Id.* at 10.

Valley in the Sinai, and to create hundreds of thousands of jobs for these migrants. In contrast to the Nile Valley, an overpopulated space of increasing scarcity, the Sinai was seen as an empty space of opportunity into which these migrants could be settled, and be absorbed by the tourism industry in the Peninsula as laborers. Notably, the government plan does not mention the Bedouin population in its section on "objectives, mainstays and potentials."[131] The report states instead that "[the] Sinai is a model of national pioneer development in which new and unconventional policies of *building new societies* are implemented,"[132] implying a lack of existing "societies" within the space.

Large swaths of the Sinai are composed of sparsely inhabited desert and harsh mountain terrain, but portions of the northern industrial areas are relatively heavily populated and the rest of the Peninsula is far from empty or uninhabited.[133] Nonetheless, Egyptian laws and policies have often treated the space of the Sinai as vacant and uninhabited, ignoring the well-established structure of property rights contained in Bedouin customary law and paving the way for colonial policies of land, resource and contract allocation. As I discussed in Chapter II, Nile Valley migrants brought to work in Sinai industries are given preferential treatment in employment and housing upon arrival, resulting in systematic discrimination against local populations. In the resort town of Sharm el Sheikh, for example, all building plots were allocated to Egyptian and foreign companies investing in tourism and the vast majority of the tens of thousands of jobs created in the city went to non-locals.[134] In North Sinai, too, Cairo businesspeople control much of the industrial sector, employing primarily Nile Valley workers and providing little benefit to local populations.[135]

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[131] GOVERNMENT OF EGYPT, NATIONAL PROJECT FOR THE DEVELOPMENT OF SINAI 1994-2017, Chapter 2, cited by David Homa, *Touristic Development in Sinai, Egypt: Bedouin, Visitors, and Government Interaction,* 241 *in* TOURISM IN THE MIDDLE EAST: CONTINUITY, CHANGE AND TRANSFORMATION (Ramy Farouk Daher ed., Channel View Publications 2007).

[132] *Id. (italics added by Homa).*

[133] Nearly 400,000 people in the coastal plain of North Sinai province and a further 160,000 live in South Sinai. While these numbers are small in comparison to the total population of roughly 83.5 million, the Peninsula's population is growing at some of the fastest rates in the country. Central Agency for Public Mobilization and Statistics, *Statistical Yearbook,* (2012) http://www.capmas.gov.eg/book.aspx.

[134] Egypt's Sinai Question *supra* note 44 at 13.

[135] *Id.* at 17; *Faultlines: The Battle for Sinai* (Al Jazeera December 19, 2012) *available at* http://www.aljazeera.com/programmes/faultlines/2012/12/2012121874352233407.html.

3. *Sinai as a Border*

Egypt's eastern border in the Sinai has long been a source of anxiety and vulnerability for the state and has been regulated and securitized in ways that distinguish it from Egypt's southern and western borders.[136] The reach of the state in the Sinai is limited by the transnational nature of the lives of many of the Peninsula's inhabitants, characterized as they are by economic and familial ties across Egypt's the eastern border. These relationships, as I discussed in Chapter II, have contributed to questions about the national loyalties of Sinai residents. In addition to national concerns, Egypt receives pressure from the Israeli government to control the movement of arms, militants and migrants across the Gaza and Israel borders. Furthermore, Egyptian border guards have been known to enact shoot-to-kill policies at the Israeli border, using lethal force against individuals –particularly African migrants— leaving Egypt to cross into Israel.[137]

These concerns, however, are not limited to the actual border. While Egypt's border with Israel and Gaza appears as a line on the map, the Sinai itself has been legally constructed as an extended border that spans the entire Peninsula, extending the application of the types of laws and policies typically seen at national borders. It is not unusual for a border, particularly a militarized border, to have a zone on either side in which individual access and economic activity are restricted or forbidden altogether. These zones, however, are rarely more than a few kilometers wide, are generally uninhabited and are deemed to be outside the normal operations of the state.[138] The Sinai, on the other hand, a Peninsula of more than 61,000 square kilometers, is nearly twice the size of Egypt's Nile Valley, three times the size of Israel, 200 times the size of Gaza and contains two of Egypt's governorates.[139] Nonetheless, through the exceptional security measures related to land ownership and the movement of goods and individuals, the entire Peninsula has been constructed and treated as an extended zonal border.

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[136] A 1995 Presidential decree applicable only on Egypt's eastern border from Rafah to Taba, prohibits the presence of individuals within 150 meters from the border without permission from the military and makes specific reference to the tunnels passing under Egypt's eastern border. Passing illegally into this border zone renders an individual subject to penalties such as prison terms, fees and hard labor. President of the Arab Republic of Egypt Decree no. 298 of 1995 (Security of the Eastern Border of the Arab Republic of Egypt) *Official Gazette*, Issue 39, 28 Sept. 1995 (Egypt).

[137] *See e.g.,* Sinai Perils *supra* note 8.

[138] The Korean Demilitarized Zone, for example, the most heavily militarized zone in the world, is four kilometers wide and, with few exceptions, access is prohibited.

[139] Pelham, *supra* note 16 at 1.

The movement of goods and individuals through the Sinai is heavily regulated through the presence of both military and police checkpoints. While it is not unusual to find an occasional security checkpoint on roads in other parts of Egypt, the number of checkpoints on roads through the Sinai far exceeds those found in other governorates. When entering the Sinai at the Suez or Port Said crossings, individuals and vehicles are stopped at military checkpoints and must pass through procedures similar to an international border crossing. All individuals are required to present their identification and foreign nationals must show visas or proof of residency. Individuals are questioned as to their reasons for travel to or through the Peninsula and drivers of commercial vehicles are required to provide documentation for their cargo and to allow military officials to search their vehicles for prohibited goods. These border-like procedures are often repeated at additional military and police checkpoints across the Peninsula.

Each of the above examples—the Sinai as a battleground, as empty space and as an extended border—constructs the Peninsula as an Other-space that is distinct and different from the rest of Egypt. Just as law seeks to bridge the differences between us and them through efforts at sanctioning and transforming individuals and populations, a similar approach is taken to Other-spaces. Through the identification of the various types of Otherness embodied by the Sinai, law becomes both animated and justified: as a tenuous battleground, the Sinai must be protected from the enemy and from those disloyal to the nation-state; as an empty space it must be filled and settled, its resources plundered; as an extended border, it must be exceptionally regulated and securitized.

IV. Imaginative Geographies: Mapping the Outlaw

"This mattered, I realized then, because representations are never merely mirrors held up to the world; they enter fully into its formation."[140]

On a street in downtown Cairo in late 2011, a wall covered in freshly painted graffiti addressed the Supreme Council of the Armed Forced (SCAF), the military body ruling Egypt at the time: "You act like lions in the Square but you act like women in the Sinai!" In nearby Tahrir Square, a group of protesters called on Egypt's military rulers to transfer power to a civilian body, echoing the message painted on the wall, "If you are strong, go back to the border and show us your strength there!" and "Why are you here in the Square? In the Sinai, the enemy will have free reign."

Through these chants the Egyptian protesters called on the military to stay out of politics and to restrict their role to that of national security, while simultaneously criticizing them for failing to exercise effective control over the Sinai during their rule. But there is also a spatial narrative –not to mention a gendered narrative— in these statements and demands; Tahrir Square is rendered as a space of politics whereas the Sinai is constructed as the space of "real" danger where military force is both necessary and legitimate. Tahrir Square is imagined as the space where the Egyptian people engage in protests and political negotiation with the Egyptian government, whereas the Sinai is the place where the unnamed enemy[141] lurks and must be confronted. Cairo is imagined as the center, the heart of the country where internal issues are named and negotiated whereas the Sinai is conversely imagined as an exterior space which, if not effectively policed, will render the entire country vulnerable to the enemy.

As I have argued in the previous chapters and as reflected in the spatial narrative above, the Sinai has been constructed as an Other-space that is somehow outside and separate from the Egyptian state, while still inside its borders and a part of its national territory. This characterization has come about from a number of converging points related to the geostrategic location of the Peninsula, its role in regional military history, its economic value, and tensions associated with its population, whose "Egyptian-ness"

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[140] DEREK GREGORY, THE COLONIAL PRESENT IN AFGHANISTAN, *xiii* (Blackwell 2004).
[141] While the 'enemy' is unnamed in some chants, it is named as Israel or the Zionists in other chants, such as "Military, military, the way you beat us, who do you think we are, Zionists?"

and loyalties to the state have often been questioned. As such, the Egyptian government has at times approached the Sinai and its population through strategic efforts at domestication and national integration through law. In this way, the dynamic of difference described by Anghie is an appropriate mode of analysis for much of Egypt's approach to the Sinai, which has been constructed as an Other-space to be bridged, transformed and brought inside the Egyptian nation-state through law.

There is a different tone, however, to the understanding of the space of the Sinai contained in the chants coming from Tahrir. The national narrative surrounding the Sinai no longer includes discussions of reclaiming, of national affirmation, of settlement or of integration—and not because the Egyptian state has achieved assimilation and unification of the Sinai with the rest of Egypt more than thirty years after its return from Israeli control. To the contrary, the integrity and identity of Egypt's eastern border zone is perhaps less assured than it has been in decades. As the chants and graffiti indicate, the Sinai is seen as a space in which the actions of the state are shaped by geostrategic and security concerns and in which efforts are thus focused on containing and controlling the Peninsula, rather than transforming it.

A. Imaginative Geographies

The narrative of the Sinai that emerged from Tahrir Square during anti-SCAF protests in 2011 imagines a particular geography of the Egyptian nation-state and the ways in which that space may be divided, labeled and understood. The term "imaginative geography" was first used by Edward Said in his critical discussions of Orientalism to describe the universal though often arbitrary "practice of designating in one's mind a familiar space which is 'ours' and an unfamiliar space beyond 'ours' which is 'theirs.'"[142] Said argues that while these geographic divisions between our space and their space may not be entirely fictional, they are less a fact of nature than of human production.[143] As Derek Gregory further elaborates, "[w]e might think of imaginative geographies as fabrications, a word that usefully combines 'something fictionalized' and 'something made real,'

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[142] EDWARD SAID, ORIENTALISM 54 (Penguin 2003) (1978).
[143] Edward Said, *Orientalism Reconsidered*, CULTURAL CRITIQUE 89, 90 (1985).

because they are imaginations given substance."[144] But imaginative geographies not only demonstrate the space that is ours and the space that is theirs, they also describe them as having particular characteristics. Additional meanings are invested at many other levels, designating spaces of safety and spaces of danger, spaces of wealth and spaces of poverty, spaces of weakness and spaces of power.

Increasingly, these spatial imaginations are converted into indexes, maps and online info-graphics. The Democracy Index,[145] the Poverty Index,[146] and even the Happiness Index[147] are accompanied by colorful maps that divide, categorize and display various spaces in order to tell us where and to what extent these defining characteristics can be found. The Failed State Index[148] provides a telling example of the ways in which spaces that are imagined as chaotic and lawless mapped. The Index lists 177 states and ranks them from most failed to least failed, from Somalia to Finland.[149]
The Failed State Index's interactive website does not provide a definition of a failed state,[150] but rather gives each state a score of failed state-ness, calculated according to various political, social, economic and security criteria.[151]

In order to give the reader a visual understanding of state failure around the globe, the Failed State Index displays a map of the world, colored by country in "critical" red,

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[144] Gregory *supra* note 140 at 17.

[145]   Economist   Intelligence   Unit,   *Democracy   Index   Map   (2012)*, http://www.eiu.com/index.asp?layout=info&info_name=infographic_democracy (last accessed April 15, 2013).

[146]   Oxford   Poverty   &   Human   Development   Initiative,   *Mapping   the   MPI,* http://www.ophi.org.uk/multidimensional-poverty-index/mpi-data-bank/mapping-the-mpi/.

[147]   The   New   Economics   Foundation,   *Happy   Planet   Index: The   Data,*   (2013) http://www.happyplanetindex.org/data/ (last accessed April 15, 2013).

[148] Foreign Policy co-published with the Fund for Peace, *The 2012 Failed States Index: Interactive Map and Rankings*, (2012), http://www.foreignpolicy.com/failed_states_index_2012_interactive (last accessed April 15, 2013).

[149] *Id.*

[150] The term 'failed state' first came into use the early 1990s when an article in Foreign Policy Magazine warned that "a disturbing new phenomenon is emerging: the failed nation-state, utterly incapable of sustaining itself as a member of the international community." In reference to such states, the authors described a descent into violence and anarchy that threatens not only the life and liberty of the citizens of those states, but of their neighboring and, indeed, the whole world. Gerald B. Helman & Steven R. Ratner, *Saving Failed States,* Foreign Policy 3 (1993). In the decades that followed, Foreign Policy Magazine turned what they had once described as a novel situation into one that was updated on an annual basis through the interactive Failed State Index website *Id.*

[151] The criteria that collectively determine a state's score on the Index are: demographic pressures, refugees/IDPs, group grievance, human flight, uneven development, economic decline, de-legitimization of the state, public services, human rights, security apparatus, factionalized elites and external intervention. Failed State Index *supra* note 148.

"in danger" orange, "borderline" yellow, "stable" chartreuse, and "most stable," a coveted green. At the center of the map, Africa has been largely red-washed, the crimson seeping into most of the Middle East and Central Asia, while the bulk of the Asian land mass is colored "in danger" orange. The Americas are a mixed batch spanning the spectrum from "critical" Bolivia, Colombia and Haiti to "most stable" Canada slumbering in the north. By clicking on a country on the Failed State map the viewer can see its score and rank alongside arrows indicating whether the state has moved up or down on the list in the past year.[152] A Watch List is also provided to warn the viewer of those states whose stability is deteriorating as they are imagined to be slipping towards the edge of failure.[153]

While no new official borders are drawn on the map, the color-coding of countries according to their failed state-ness employs Said's imaginative geographies creating meaningful new boundaries and new divides, and reconfiguring the way we imagine space on the global scale. In this case it is not just our space and their space, but also normalcy and emergency that are separated along geographic lines.[154] The map confidently displays where in the world there is safety and where there is danger, where we will find stability and where we should expect to encounter violence and disorder. The map tells us which states are failed and which states may be sliding towards an imaginary cliff of chaos and collapse. It also tells us, crucially, which states are *not*-failed, sitting securely in dark green stability. It tells us which places are not dangerous and not a risk for us, whether for adventure or investment.

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[152] Fund for Peace's sister website awards "Most Improved" in 2012 to Kyrgyzstan and "Most Worsened" to Libya. Fund for Peace, *The Failed States Index 2012,* available at http://ffp.statesindex.org/rankings-2012-sortable (last accessed April 15, 2013).

[153] A link on Foreign Policy's Failed State 2012 home page directs the viewer to a site called "Postcards from Hell." Here one can embark on a visual tour through "The World's 60 Most Fragile Countries." An Afghani girl stands screaming in the center of a pile of bloody bodies in the wake of a suicide attack. AK-47 wielding Yemeni soldiers ride on top of a camouflage pickup truck barreling through jihadist territory. A Syrian flag flies in the forefront of a landscape of bombed out buildings. Protestors in several places are beaten by police. A malnourished Ethiopian child swats a fly. Maoist supporters wield flaming sticks in Nepal. A one-legged doll lies in the dusty street of a Congolese city. The viewer can also visit "Was the Arab Spring Worth It?" (Libya, Egypt and Syria made huge leaps up the ladder of failure), "10 Reasons States Fall Apart" (so that perhaps it can be avoided) "How to Help Somalia" and, for those who were wondering, "What's Wrong with Pakistan?" Foreign Policy, *Failed States 2012,* http://www.foreignpolicy.com/failedstates2012 (last accessed April 15, 2013).

[154] Gross, 'Chaos and Rules: Should Responses to Violent Crises Always be Constitutional?', 112 YALE LJ (2003) 1011, at 1076.

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While the particular spatial reading of the Failed State Index has chosen the state as its site of analysis the same processes and methods of mapping could be applied to a region within a given state, an entire city, a neighborhood within a city or any number of other spaces as sites of failure. In the case of Egypt and the Sinai, we can see this sort of mapping operating on several scales. If the protesters in Tahrir Square map the Sinai bright red as the "real" space of danger, this would be contrasted with the friendlier chartreuse that might color the Egyptian territory west of Suez. In times of violent unrest, on the other hand, Tahrir Square, the Presidential Palace, Port Said and a number of other spaces within mainland Egypt may turn orange or red. In military terms, the Sinai would be internally color-mapped according to the zones set out by the 1979 Peace Treaty, resulting in a rainbow-like spectrum beginning with a "borderline" yellow at the Suez Canal and becoming more and more red as one moves east across the Peninsula, approaching Egypt's border with Gaza and Israel.

For holidaymakers and for Egypt's Tourism Authority, the Sinai would be mapped in yet another manner, one that distinguishes the Red Sea coastal resort areas of South Sinai from the center and northern regions of the Peninsula. The Red Sea coastal resort area might be mapped as a "fairly stable" green, a space of pleasure and leisure for wealthy Egyptians and foreigners visiting from abroad.   This swath of safety would be centered at Sharm el Sheikh, moving along the coast in both directions, enveloping several smaller resort towns such as Dahab, Nuweiba, Taba and Ras Sidr and the string of gated beach condo communities in between. Those wishing to visit Egypt's Red Sea in the Sinai are advised to arrive to their coastal paradise by plane, flying over and thus avoiding the risky and shadowy portions of the Peninsula that are mapped in an orange-red hue of unpredictability. This coastal green-zone is disrupted, of course, by the occasional kidnapping of a foreign tourist or by a bomb set off in a seaside restaurant, but these are seen as mere aberrations demonstrating the need for better policing of the boundaries between zones of safety and zones of danger. Following the 2005 bombing at the tourist market in Sharm el Sheikh, government officials initiated the construction of a

1.5-meter high fence around the resort city[155] which, had it been built,[156] would have been a physical manifestation of already imagined boundaries between the two spaces.

While this sort of mapping can be used to display the presence or absence of any number of elusive characteristics of a place – such as democracy, poverty or happiness- there is an added level of significance when it is applied to the Sinai and other spaces that are zoned as lawless, dangerous or chaotic. Zoning, according to Guillermina Seri, is "the distinction between spaces of safety and spaces of lawlessness and exception."[157] "Normal" spaces under this model are characterized by the preeminence of the rule of law, as contrasted with zones of exception in which the juridical order has been suspended.[158] Within Seri's zones of exception, "different sorts of signs, languages, lives, identities and forms of production coexist without any recognizable pattern other than crisis and corruption. Anything may take place in these zones, and does take place in them."[159]

Seri argues that zoning has been the primary activity of sovereign power since its origin.[160] By zoning and dividing up space, the sovereign exercises its power to determine which zones will be designated as normal spaces and which will be labeled as zones of exception. In this sense, the act of defining and contrasting normal and exceptional spaces represents the decision through which the sovereign can both frame and stabilize its power. Applying Giorgio Agamben to the processes of dividing, carving up and labeling space, we see that the identification of places that are deemed to be lacking rule of law serve the purpose of making more visible and emphasizing the importance and stability of those spaces where the rule of law *is* present.[161] These spaces are not merely Other-spaces that present a challenge or a task for law, but often appear to

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[155] The fence was to be 20km long, surrounding the entire city and forcing vehicles to pass through checkpoints in order to enter. It would also wall out a nearby Bedouin settlement where many workers lived. *See, Fence to Protect Red Sea Resort*, BBC, (October 18, 2005), *available at* http://news.bbc.co.uk/2/hi/middle_east/4354666.stm; Egypt's Sinai Question *supra* note 44 at 13.

[156] The project was abandoned after a fierce press campaign against it, in which some used the term *jidar*, an implicit reference to the Israeli separation wall under construction at the time in the Palestinian Territories. Egypt's Sinai Question *supra* note 44 at 13.

[157] *Id.* at 79.

[158] *Id.*

[159] *Id.*

[160] Guillermina Seri, *On the "Triple Frontier" and the "Borderization" of Argentina: A Tale of Zones, in* SOVEREIGN LIVES: POWER IN GLOBAL POLITICS 79-97 (Jenny Edkins et al. eds., 2004).

[161] GIORGIO AGAMBEN, STATE OF EXCEPTION (Kevin Attell trans., The University of Chicago Press, 2005) and HOMO SACER: SOVEREIGN POWER AND BARE LIFE (Daniel Heller-Roazen trans., 1998).

elude or resist such transformative processes altogether, requiring and justifying other approaches that may instead aim to contain, control or simply ignore them. These spaces are seen as threatening and dangerous and are mapped not only as Other, but also as outside and as Outlaw.

B. Mapping Outlaw Space

The notion of Outlaw space proposed here is not intended as a blueprint or formula, though it may be a useful as a way to connect the Sinai with the other spaces I mentioned in the introduction of this thesis, the no man's lands, the black holes, the security vacuums and the breeding grounds that seem to have proliferated in the post-9/11 era. My goal is to bring to light certain patterns in the relationships of power in these spaces that are often characterized as chaotic, ungovernable or lawless when the realities of what is happening within those spaces and how they came to be that way is much more complex.

The choice of the term Outlaw space is not an attempt to engage the imagery of the romanticized cowboy wanderer or the fugitive bank-robber and gunfighter of the American West, though this fantasy figure has been invoked more than once in the case of the Sinai.[162] The Outlaw in its human form, it is worth noting, is understood as having crossed a line and entered into the space outside the law, at which point the prosecutor is released from his duties. Efforts at transformation through law that would be applied to the criminal or to the uncivilized subject are then abandoned. This is not to say that he is forgotten about. When an individual exists on the "wrong" side of this line, he is also outside of the sphere of legal protection and subject to whatever fate or punishment should befall him.[163] Additional measures may be taken against the Outlaw in order to control his actions or to contain the damage the he may cause. In yet other cases, just so long as he does not cause too many problems, the Outlaw may also be ignored. Outlaw space, too, is seen as existing outside the law. Contrary to the imagination of these spaces as lawless, however, law is still present but works in strategic ways and along

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[162] In the case of the Sinai, this imagery has been both directly and indirectly invoked through descriptions of the space as "Egypt's Wild West." *See* Lewis *supra* note 3; Fahmy *supra* note 15.

[163] *See* Frédéric Mégret, *From 'Savages' to 'Unlawful Combatants': A Postcolonial Look at International Humanitarian Law's 'Other', in* International Law and its Others 265-266 (Anne Orford ed., 2006).

specific trajectories that aim not necessarily to sanction and transform, but sometimes to simply contain, control, exploit or ignore.

I have also chosen the term Outlaw space for its application in the more literal sense: that which is outside of the law, as opposed to that which is in-law, or inside the realm of the law. This basic juxtaposition, as I will elaborate further in this section, is complicated by the presence—even the superabundance— of law in Outlaw spaces but it remains essential to the value of these spaces in processes of mutual construction and the exercise of power through the zoning, dividing and labeling of space. In distinguishing between the *out* and the *in* of law in spatial terms, lines and boundaries are drawn around spaces in an attempt to define and give a certain territoriality to that which is Outlaw. The Sinai as an Outlaw space is easily imagined and labeled according to its relatively self-contained geographic nature as a Peninsula but in reality, there is nothing natural about these spaces and it is not always clear where they begin and where they end.

Outlaw space has much to do with a particular imagination of space as dangerous and threatening but that space is not Outlaw according to any inherent or pre-defined characteristics. In fact, the characteristics of Outlaw space itself are often secondary to the ways in which it is imagined and constructed through law. Referring back to the quote with which I began this Chapter, representations of a space are never merely mirrors or descriptions of existing realities but may enter into the fabrication of those spaces. In this way, Outlaw space is performative in that "it produces the effects that it names."[164] This is not to say that Outlaw spaces are mere fantasies. These spaces may very well be dangerous and difficult to control but by imagining them as lawless, we are precluded from seeing the ways in which law is present, and may indeed contribute to the precariousness of the space. By understanding these spaces as ungovernable, we cannot see that they are often governed in very specific and strategic ways. By imagining them as black holes or vacuums we are unable to see the presence of normalcy and order that exist within these spaces and the ways in which people continue to live their lives facing challenges that, on many levels, resemble those faced by people in "normal" spaces. John Marx notes this normality in his comments on Chimamanda Ngozi Adichie's novel

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[164] Gregory *supra* note 140 at 18.

Half of a Yellow Sun,[165] in which the author gives an account of the Nigerian crisis that culminated in the Biafrian War. Marx observes that,

> couples fall in and out of love, families mourn, and children grow up in communities displaced and devastated by conflict. People starve and die in the refugee camp where the novel's final chapters are set, but they also write poetry, have sex, and engage in intellectual debate…[166]

This portrayal of life in what was seen by the world as an Outlaw space "suggests that what goes on in the most unstable of states is never so extreme that it cannot be normed."[167]

Outlaw spaces are important because they serve particular purposes. First of all, the processes that produce Outlaw spaces simultaneously co-produce spaces that are *in-law*. This reinforces characteristics of in-law spaces that are imagined to be linked to the the presence of law, safety and order. If we return to Fitzpatrick's argument that the identity of law itself is constructed through the negation of that which is not-law, the identity of in-law *spaces*, too, are constructed in opposition to spaces that are Outlaw. In creating boundaries that illustrate the presence of Outlaw spaces, "law itself becomes formed in ways that secure its integrity."[168] These divisions between in-law and Outlaw are produced not only through the drawing of new lines, but also by re-imagining, moving, removing, fragmenting or differentiating existing boundaries.[169] Law is thus imagined to have collapsed or deteriorated in Outlaw spaces while maintaining its integrity in places that are in-law. In this way, drawing attention to the failure and collapse in the Sinai may serve to distract or draw attention away from, for example, Egypt's failing economy and deep unrest in Cairo and elsewhere in Egypt's center. Outlaw spaces, then, serve the purpose of assigning a territoriality to our anxieties in order to locate it in spaces that are *elsewhere*.

Secondly, Outlaw spaces serve the purpose of justifying the exceptional behavior of the state, behavior that would otherwise be seen as unacceptable in in-law spaces. In the Sinai, rounding up and jailing hundreds of men from cities in the north following the

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[165] John Marx, *Failed-State Fiction,* 49 CONTEMPORARY LITERATURE 597, 597-598 (2008).
[166] *Id.* at 597.
[167] *Id.*
[168] Fitzpatrick *supra* note 91 at 181.
[169] J.-A. Mbembe, *At the Edge of the World: Boundaries, Territoriality, and Sovereignty in Africa,* 12 PUBLIC CULTURE 259, 261 (2000).

explosion of a bomb across the border in Israel is more easily justified if the space is zoned as a breeding ground for terrorism. In Rio, a pre-dawn operation in which a fleet of 1,500 police and navy commandos backed by armored vehicles occupy a neighborhood in Rio is more easily justified if that neighborhood is a zoned as a lawless slum run by drug lords.[170] It becomes yet more acceptable in light of the upcoming Olympic Games in the Rio, around which walls –real or imagined—of law, order and security are built. Once Rogue States are zoned as such, those who are suspected to of possessing or to intending to develop weapons of mass destruction become the subject of a "legitimate" attack.[171]

Thirdly, zoning a space as Outlaw allows for certain strategic and selective uses of law in the space to the exclusion of others. In spaces like the Sinai, this means that the state can still access the oil, gas and other natural resources of the Peninsula remaining indifferent to the torture, rape and extortion faced by kidnapped migrants on the Peninsula.[172] Furthermore, this zoning facilitates the state in its active economic underdevelopment of the Sinai as it funnels natural resources and their profits out of the Peninsula. By constructing the Sinai as an Outlaw space, the state can then explain the poverty that results from this underdevelopment as *resulting from* the so-called deviant, lawless or chaotic behavior of the population of the Sinai as opposed to acknowledging the ways in which this behavior may be partially *caused* by poverty and marginalization. For example, in early 2012 a group of Bedouin activists held a sit-in in the south Sinai town of Wadi Feiran to ask the government for running water in their homes and development projects to ease unemployment in the town.[173] When they received no

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[170] *Brazilian Special Forces Take Control of Rio 'Favelas' Close to the Airport and Seaport,* MercoPress, (March 4, 2013), *available at* http://en.mercopress.com/2013/03/04/brazilian-special-forces-take-control-of-rio-favelas-close-to-the-airport-and-seaport.

[171] Anghie *supra* note 79 at 277. As Anghie points out, this "leaves open the question of how such 'rogue nations' are to be defined." *Id.* It would be inconceivable that the United States, for example, would be defined as Rogue, regardless of the weapons it has and builds, its compliance (or non-compliance) with international law or actions towards other states. In this way, we see that the line between in-law and Outlaw can only be drawn in certain directions.

[172] The sheikh I mentioned in the anecdote with which I began the introduction maintains that the traffickers learned the torture methods they use on migrants through their own experiences of torture at the hand of the Egyptian security apparatus during the mass arrests of North Sinai men following the terrorist attacks in 2004-2006.

[173] Soraya Sarhaddi Nelson, *To be Heard, Egypt's Bedouin Take Tourists Hostage,* NPR NEWS, (March 28, 2012) *available at* http://www.npr.org/2012/03/28/149145272/to-be-heard-egypts-bedouin-take-tourists-hostage.

acknowledgement from the government, the group decided to detain two busloads of European tourists visiting a nearby monastery.[174] The tourists were released unharmed after five hours but not before the governor's security chief, panicked over potential effects on already low levels of international tourism, agreed to meet with the group.[175] A few days later, members of the same tribe kidnapped two Americans and their Egyptian guide in the same area, this time in an effort to win the release of relatives they felt had been jailed unfairly.[176] In both situations, the kidnappings came in an effort to be heard by the government in a region where the population has often been ignored.

C. Beyond Defensive Imperialism: Containing and Controlling Outlaw Space

The Sinai has been constructed as Other-space– namely a battleground, an empty space and a border zone—but it has also been constructed as Outlaw space. Outlaw space differs from Other-space in that the Otherness in question is deemed to be somehow dangerous or threatening. Anghie's theory portrays a similar confrontation with a dangerous and threatening Other as he discusses the most recent manifestation of the dynamic of difference as seen in the War against Terrorism following the attacks of September 11th, 2001. Anghie argues that contemporary imperialism has shifted its motives and strategies in order to confront this dangerous and threatening Other, namely, the terrorist.[177]

The War against Terrorism, Anghie points out, continues the goals of the civilizing mission but with an important shift: rather than seeking to achieve the salvation of "backward" or "uncivilized" peoples, this newer form of imperialism –which Anghie calls "imperialism as self-defense"- is concerned instead with ensuring the safety of the American people.[178] According to the thinking of the War against Terrorism, this task must be accomplished by using pre-emptive self-defense (PESD) against the Rogue State in order to transform its society through democracy promotion initiatives.[179] Anghie argues that in the post-9/11 era, the task of transforming the Other "has acquired an

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[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] Anghie supra note 79. See Chapter 6: *On Making War on the Terrorist: Imperialism as Self-Defence* at 273-309.
[178] *Id.* at 286.
[179] *Id.* at 278.

unprecedented urgency, an imperative character, precisely because it is now so powerfully linked to the idea of self-defence and survival, not only of the United States but of civilization itself."[180]

Anghie's theory, however, fails to fully capture the Egyptian state's approach to the Sinai because it still implies an ambition or an intention to transform the Other through law. In the Sinai this has not necessarily been the case. Where the Egyptian government once hailed the reclaiming of the Peninsula as an opportunity for re-integration and national affirmation, the space of the Sinai has increasingly been cast outside and excluded. Where the state once sought to transform the Peninsula through ambitious development efforts that would result in "the complete overhauling of the social, economic, political and culture [sic] structure"[181] of the Peninsula, these efforts have been largely abandoned. The question remains, then, as to what happens if the acts of bridging described in the dynamic of difference become impossible or when subjects and spaces slip from the grasp of the law, resisting or eluding the attempts at integration and transformation. What happens if the moment of arrival described by Anghie is interrupted or never transpires? Or, perhaps more importantly, what happens when this process of bridging to Other-space through law is not seen as being in the interest of the state or of the world and previous efforts are abandoned?

Instead of efforts at transformation along juridical lines, the Egyptian state has come to favor an approach that partially or fully abandons the civilizing mission and instead aims to merely contain and control the space of the Sinai. In a performance of space that assigns territoriality to the anxieties of the Egyptian state and other actors in the region, the Sinai is seen as a potential breeding ground for Islamic extremism. But while some voices call for this threat to be addressed or neutralized, others see containment as a higher priority and raise a red flag when this extremist threat spills over, the bounds of the Peninsula, threatening shift or expand to other provinces.[182] The threat associated with the Peninsula, according to the Egyptian government, must be contained within that space.

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[180] *Id.* at 298.
[181] GOVERNMENT OF EGYPT *cited in* Sarnowski *supra* note 56 at 84.
[182] *Security Sources: Jihadis Might Shift Operations from Sinai to Other Provinces,* EGYPT INDEPENDENT, (October 27, 2012), *available at* http://www.egyptindependent.com/news/security-sources-jihadis-might-shift-operations-sinai-other-provinces.

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In the case of the group of Bedouin activists in Wadi Feiran, the state ignored initial demands from the sit-in but was forced to respond when reports of the kidnapping of foreign tourists reached the international media. They diffused the situation by promising a meeting with a government official if the tourists were released. Media reports do not mention whether or not the demands for running water in the homes of the townspeople and projects to ease unemployment were addressed by the state but a meaningful government response is unlikely given the history of marginalization on the Peninsula. Reports do indicate, however, that none of the relatives of the kidnappers who were in prison were released, nor were any of the kidnappers arrested.[183] The concern of the state in this case is neither to resolve the issue by agreeing to the terms of the activists, nor is it to sanction and punish the kidnappers through law. By agreeing to a meeting with the activists, the state was able to contain and control the immediate situation and to re-draw the lines between the safe spaces of tourism and the shadowy spaces of danger within the Peninsula but pursued it no further once the tourists were released. The concern of the state, then, is not to correct or transform the space but rather to contain and control the space to the extent that it can ensure that its inhabitants do not kidnap tourists for *too* long, blow up *too* many pipelines, or let *too* many migrants into Israel, or cause *too* much disruption to access to the Peninsula's natural resources.

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[183] Nelson *supra* note 173.

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V.   Conclusion

This thesis has sought to shed light on the relationship between the Egyptian state and the Sinai Peninsula in a way that draws connections to a broader global narrative of chaotic, lawless and ungovernable spaces that has proliferated in the post 9/11 era, but that also seeks to disrupt and move beyond that narrative. I have argued that by way of imaginative and legal geographies, the Sinai has been constructed as an outside and Other-space long before it entered the international spotlight following the 2011 Egyptian uprisings. Rather than creating a rupture in the relationship between Egypt and the Sinai, the withdrawal of the security apparatus in the early months of 2011 only brought to light and intensified dynamics of inclusion and exclusion that had been at play since the formation of the modern Egyptian nation-state and perhaps before.

At the same, there has been a subtle shift in the relationship between the Sinai and Egypt in recent decades, one that, this thesis proposes, is indicative of a larger shift in the relationship between law and space, between the nation-state and territory. This shift has led to the construction of the Sinai—and places beyond the Sinai—not only as Other-spaces, but also as Outlaw spaces. Mapping and labeling certain zones as outside the law is deceptive. There is nothing natural about Outlaw spaces and it is not always clear where they begin and where they end. While Outlaw spaces are imagined as law-*less*, law may still be present –even abundant—in the space but works in strategic ways and along specific trajectories.

Whether Outlaw spaces are dangerous, lawless, chaotic or not, the drawing of boundaries and labeling of the spaces they demarcate amounts to a forceful exercise of power and has important implications for the ways in which the space will be regulated, not regulated or selectively regulated through law. Zoning a space as Outlaw not only creates truths about that space, it also seeks to provide an explanation for the nature of these spaces and in doing so, asserts the opposite qualities of *in*-law spaces that are constructed at the same time. These processes of mapping, zoning, dividing and labeling of space are not just a tool for the use or non-use of law within a space, they also seek to provide a narrative for why the imperial eye of law has failed in its efforts to infinitely extend its reach to sanction and transform the Other.

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Antony Anghie's theory on the relationship between international law and the Other, as expressed through the dynamic of difference, is useful in understanding some of the ways in which the Egyptian state has attempted to transform the space of the Sinai through law. The theory, however, fails to fully explain the use of power in Outlaw spaces because it assumes that there is always an ambition and an intention to bridge the void between us and them, and to transform the Other through law. As I have demonstrated in the case of the Sinai, this is not always the case. As Outlaw space, the Sinai is not just constructed and located as outside, it is in many ways cast outside into a space that is actively defiled.[184] A space that is defiled will not necessarily be sanctioned, transformed or rebuilt, it may instead be simply contained, controlled, exploited or ignored.

By examining the force of both legal and imaginative geographies in the context of the Sinai, I have attempted to highlight broader dynamics of power that may be useful in understanding spaces beyond the Sinai, such as the "black holes," the "breeding grounds," the "security vacuums" and the "no man's lands" that have proliferated in the post-9/11 era. By going beyond these opportunistic labels, we may be able to better identify patterns in *where* we find the Outlaw, in *how* the lines are drawn between in-law and Outlaw, and in the functions that these spaces serve to those spaces that are constructed in their negation. A spatial analysis of this sort enables us to better see the links between state policies toward a population within a given space as they relate to the presence and desirability of natural resources within that space. Furthermore, it allows us to see the powerful meaning invested in Outlaw spaces, the important consequences for the people who live in or pass through that space and the ways in which, as Anghie would say, the Sinai Bedouin is connected to the Iraqi and the Native American, along with the inhabitants of any number of Outlaw spaces, all of whom have been seen as threats to security and who "challenge [a] system of government that is extended to incorporate them."[185] But beyond this, it enables us to also see the situations in which those subjects slip from the grasp of the law at the same time as efforts at extending, bridging and transforming are partially or fully abandoned in favor of containment and control.

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[184] *See* Derek Gregory, *Defiled Cities*, in The Colonial Present in Afghanistan, *supra* note 140.
[185] Anghie *supra* note 79 at 288.

Finally, to return to my starting point, a theory of Outlaw space may give us a way of understanding the "hundreds of bodies" of Eritrean migrants as resulting from much more than just a vacuum of unfortunate lawlessness, chaos and violence.