Tribal Customary Law in Contemporary Jordan: Conciliation and security through Bedouin justice

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A Thesis Submitted for the Degree of
Doctor of Philosophy in Law

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WESTERN SYDNEY
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School of Law

December 2021

Dedication

Dedicated to my late grandmother

My source of inspiration and resilience

Mariyam Alassar

For being my guide in return for being her walking stick

As a single mother and business woman, my grandmother was a powerful figure within her clan, where she often used her influence by engaging with Bedouin groups and appealing to tribal leaders in resolving conflicts of personal significance.

Declaration

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

Munther (Munzer) Emad

31 December 2021

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Acknowledgements

This PhD journey has taken many twists and turns over the past seven years, during which countless people have made invaluable contributions. My thanks go first to my supervisors, Professors David Tait and Steven Freeland, for their guidance and support through these years. I am indebted to their faith in me and their encouragement to pursue the vision of this PhD. I certainly would not be writing this acknowledgement were it not for their dedication to seeing me complete this journey. My gratitude also to Professor Meredith Rossner for her kindness and feedback in the early stages of this PhD, which were instrumental in setting its foundation. My heartfelt thanks go to the staff at Western Sydney University, both at the School of Law and the librarians, for all their help. And, of course, this thesis would not have been possible without the generous support of all the participants who enriched my field research in Jordan, particularly Sheikhs Ahmad Alsalahat and Talal Almady, youth activist Hussam Abu Laban and women's activist Amal Shabsog.

As a part-time candidate, the work for this thesis was conducted in between various work commitments and would not have been possible without the support of my current and previous employers. I am grateful to the NSW Department of Communities and Justice for facilitating my commitment to this thesis during the challenging period of my work in COVID Support and Disaster Welfare. I am, of course, grateful for my early role with the Department as a Forum Sentencing Administrator, which greatly contributed to this PhD by providing me with further insight into the practice of community-based justice. I am also thankful to Uniting for enabling me to conduct the fieldwork for this thesis during my time as a Coordinator for Youth on Track and Newpin Fathers Centre. A significant part of this study was conducted during my deployment to the Nauru Regional Processing Centre, where I was working as an interpreter. For this reason, I am thankful to the Translating and Interpreting Service.

Many thanks to all my colleagues and friends in Australia and around the world for all the help they have given me, particularly my dear friends Zaydon Alayasa and Neven Bondokji, who were generous in supporting me throughout the development of this thesis. A special thank you to my family in Gaza, particularly my mum Kamla, who continue to endure some of the worst conditions on Earth and yet never abandoned me. Finally, but most importantly, I am forever grateful to my soulmate Rana, my precious three teenage daughters Raneem, Rama and Rita, and, more recently, my three-year-old son Raed, for their support, patience and, above all, the remarkable love that got me though this unique journey.

Glossary of terms

Asabiyya	Tribal solidarity
Atwa	Temporary truce
Awayid	Customs
Dia	Blood money
Foura Aldam	Hot blood
Ird	Family honour
Kafeel	Guarantor
Kafeel Aldafa	Guarantor of protection
Kafeel Alwafa	Guarantor of surety
Karameh	Tribal honour
Khamsa	Fifth degree of kinship – refers to collective responsibility
Jaha	Community delegation
Jalwa	Tribal evacuation
Shahama	Tribal nobility
Sulha	Conciliation settlement
Suk Al Sulh	Conciliation agreement
Urf	Tribal law
Yimin	Oath

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Abstract

Customary legal practices work alongside, under the authority of, or in competition with modern state laws in many Middle Eastern countries. Often the form of legal pluralism adopted is largely tokenistic: customary law is used by dictators to bolster their regimes, or it fills a judicial vacuum in failing states. In Jordan, however, a sustained partnership has emerged between traditional tribal leaders (*sheikhs*) and institutions of the state, particularly regional governors and police. The government supports tribal practices because they provide stability, lend legitimacy to the monarchy and contribute to creating a pan-Jordanian identity. State officials support tribal justice because it is typically faster and more efficient than the state system. Ordinary citizens tend to trust the system because it is accessible, flexible and resolves their conflicts in a practical and workable manner.

The thesis argues that every legal system gives priority to some legal principles over others. The tribal justice system focuses on minimising violence, protecting the reputation of participants, maintaining the honour of tribes and tribal leaders, providing accessible and timely justice and delivering outcomes that are mutually agreeable to the parties. Its success in keeping the peace comes, to some extent, at the expense of other legal principles such as individual accountability, an accused's right to be judged by an impartial decision-maker using rules that are clearly specified in advance, and opportunities to present evidence. Whether or not an outside observer might consider this trade-off appropriate, it is popular among Jordanians, seems to be effective and is supported by agencies of the state.

This thesis examines 12 cases of tribal justice in Jordan representing the range of matters that come before tribal gatherings. These are supplemented by a number of cases from Gaza where the tribal law process is similar but cooperation with the state is more constrained. The case studies are supplemented by personal observation of cases, interviews with informed insiders and examination of official records. The analysis is put into context by a review of the literature on tribal customary law and a comparison of how tribal justice practices have developed in a number of countries around the world.

The thesis identifies the conditions that led to the current partnership between tribal and state law in Jordan and evaluates whether lessons from Jordan can be applied elsewhere. It finds that while the concept of partnership between state officials and traditional leaders may be relevant in other countries, the relative success of the arrangement in Jordan may be the result of fortuitous historical circumstances including a long period of relative stability - something most of Jordan's neighbours did not enjoy - plus a mutual dependence of the monarchy and the tribes on each other's support.

Chapter One – Introduction

1.1 Introduction

Like many Arabs, particularly in rural, remote or displaced areas, the concept of a formal state legal system was foreign to me. I grew up in a refugee camp in the Gaza Strip, where traditional customary practices were the norm and the principal source of peace and security. Thus, the absence of a state legal system during my childhood did not mean living in a lawless or helpless environment. I remember from a very young age how community delegations (*Jaha*) instantly coalesced from respected community members who volunteer to mediate between disputing families, neighbours or even clans when conflict erupted. I used to be fascinated by my uncle's character as an active member of these delegations, which I could see required wisdom, a sense of conscience and a conciliatory approach. The reward of these delegations came in bringing disputing parties together in order to mark the conciliation (*Sulha*) agreement that put an end to the threat to community harmony.

On the other hand, I do recall being resentful of the focus of tribal customary law on collective responsibility, particularly allowing victims' families to vent their anger at the perpetrator's extended families during the period of 'hot blood' (*Foura Aldam*). I must have been about 10 years old when news broke out that a relative had stabbed someone as a result of youth brawl. During that night, my father, adult brothers and other relatives had to go into exile (*Jalwa*) from their homes, fearing revenge attacks from the victim's clan. They sought refuge with a well-respected tribal leader for several days until the appointed delegation reached a truce (*Atwa*) to keep the peace after my extended family made a pledge to repair the harm to the victim's family. In return, the victim's family pledged to restrain its members from revenge. A conciliation was eventually reached which involved blood money (*Dia*) and other conditions that aimed to denounce the perpetrator's behaviour as well as restoring the dignity and honour of victim's family. In addition to the delegation's role, this conciliation would not have been possible without the guarantor of surety (*Kafeel Alwafa*) and guarantor of protection (*Kafeel Aldafa*), who ensured that both parties complied with their obligations during mediation and after the conciliation process.

Studying tribal customary law through the opportunity offered by an academic thesis in law has brought back flashes of my childhood after 20 years of living abroad. It allows me to make more sense of my personal journey and reflect on a system which to some extent has shaped me, my fellow Palestinians and others of a Bedouin heritage. Articulating the journey of tribal customary law through telling personal stories – the academic version of which is

case studies - is arguably the right way to engage with tribal customary law. It may contribute to recording an oral heritage that is still largely undocumented and often neglected. According to some scholars, this system has a sophisticated philosophy of justice, but over time it is fading away and becoming increasingly fragmented.[1] I saw this loss foreshadowed in Palestine in the eyes of my late grandmother, who had an extraordinary life; she lost her husband, fled her homeland during the 1948 war and became the sole carer of many children. She became a businesswoman and travelled to many Bedouin villages, even after she lost her sight. I was at that time old enough to be her walking stick, which I enjoyed as she was a great storyteller. Many stories reflected her resilience and wide networks, which she used to influence the resolution of conflicts. I used to wonder how an old blind woman was able to preserve her status within traditional society in such a harsh environment. This has made me curious about tribal customs more generally, including legal practices, leading me to question how this unwritten system managed to survive for thousands of years and preserve a relative peace for many communities within a troubled region.

Through this research, I investigate the practices of customary law within contemporary legal systems, with a focus on Jordan but with comparative reviews of other countries that allow the special features of the Jordanian experience to be placed in sharper relief. I examine which features of tribal customary law practices in Jordan are indeed distinctive and which features and practices are shared with countries that have Bedouin traditions, or with other countries that have some form of customary legal practices. Many studies have been conducted on traditional and tribal customary law, but few examine how it operates in a relatively modern, largely urbanised society to achieve not just legal outcomes for individual disputes but to contribute to shaping national identity, strengthening political legitimacy, preserving social stability and preventing public disorder.[2] Jordan provides an example of how so-called ‘traditional’ justice works to resolve contemporary problems and at the same time contribute to building the modern state, which are presented in Chapters Four and Five.

In the countries surrounding Jordan, tribal customary law tends to have a somewhat different role. It may fill the gap left by war or state failure by providing an accessible justice system and preventing a volatile situation from getting worse. Even in Israel, which has a robust legal system, a Supreme Court Judge once said that were it not for Arab customary law, many local communities would have fallen into chaos.[3] Whether tribal customary law can be

[1] Frank H Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa', in Dawn Chatty (ed), *Nomadic Societies in the Middle East and North Africa* (Brill, 2006) 239–279.
[2] Frank H Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (1987) 19(4) *International Journal of Middle East Studies* 473.
[3] Doron Pely, 'Resolving Clan-based Disputes Using the Sulha, the Traditional Dispute Resolution Process of the Middle East' (2008) 63(4) *Dispute Resolution Journal* 80.

harnessed to contribute to building tangible and meaningful security and stability in the Middle East is a wider question, but the principles of dialogue, conciliation and compensation used in customary law could all be relevant to any diplomatic solution.

The existing literature suggests that a revitalisation of traditional customary practices is under way in various countries across the world, due largely to the pragmatic recognition that they provide access to justice in a way that more formal state systems struggle to do and that they help to keep the peace.[4] Customary law practices tend also to have more legitimacy than legal systems imposed by colonial regimes, particularly among tribal groups and in remote areas. For this reason, Sharia and some state laws have adopted some of these practices and endeavoured to absorb tribal customary law in an attempt to unify formal legal systems and secure a monopoly over judicial power for the state government. This led to tribal customary law being officially dismantled in many countries shortly after the appearance of modern state systems across the Middle East.[5] However, even in these countries, some customary practices continue to operate outside the new state systems.

With regard to colonial powers, it is important to draw attention to the role of British and French in dismantling indigenous social structures in the region. The creation of the modern Middle East is a direct result of the British and French colonial rule, which came into effect after the collapse of the Ottoman Empire in the early 20th century. After signing the Sykes-Picot agreement (Asia Minor Agreement) in 1916, the French and the British divided the Arab territories under their colonial control and began to take control of the socio-political structures of these territories. Through placing different countries under different spheres of influence, particularly in the Levant and Egypt, both French and British colonial powers imposed their own Western ideologies and government systems, weakening the pre-existing socio-political structures and this, combined with the downfall of the Ottoman Empire, led to the fragmentation of the social justice system of Bedouin people and the emergence of new governance systems. The Balfour Declaration (named after the British Foreign Secretary Arthur Balfour) of 1917 was also imposed on the people of the region by the colonial powers of Britain, which led to the creation of the state of Israel. The Balfour Declaration has since been seen by the local people to be the cause of the social and political turmoil that continue to disturb the Middle East.[6] The impact of the Sykes-Picot Agreement and the Balfour Declaration alone illustrate how the colonial powers left an ever-lasting legacy on the region through imposing political boundaries and dividing locals to serve imperial interests.

[4] Deborah Isser, *Customary Justice and the Rule of Law in War-torn Societies* (US Institute of Peace Press, 2011).
[5] Ahmad Oweidi Al-Abbadi, *Bedouin Justice: The Customary Legal System of the Tribes and its Integration into the Framework of State Polity from 1921–1982* (Dar Jareer, 2006).
[6] Arwa Syed, *The Middle East: An Orientalist Creation* E-International Relations <https://www.e-ir.info/2021/02/25/the-middle-east-an-orientalist-creation/>.

The root of the term 'Bedouin' is *Badia*, an Arabic word for the desert, which further alludes to the nomadic lifestyle in the region. Bedouins are the indigenous people of the deserts that stretch from Mauritania to Iraq (see Figure 1), or the Arab nomads who used to rove on camels throughout the desert.[7] Bedouins are not the only descendants of Arabic-speaking nomadic pastoralists, who also include diverse tribes across the Arab world, although the term 'Bedouin' does tend to be applied fairly widely, and sometimes inconsistently. Bedouin legal practices also spread beyond Bedouin tribes, to sedentary populations right across North Africa. Although Bedouins originated in the Arabian Peninsula, as indeed did King Abdullah the first King of Jordan, customary law is considered to be most highly developed in the Levant region, particularly in Sinai and Negev-Naqab.[8] This thesis focuses on Bedouin customary law in just one country, Jordan, for both substantive and pragmatic reasons.

It is part of the Levant, the area where Bedouin customary law is said to be most developed. Jordan also has a relatively stable modern government, so the juxtaposition of a deeply-embedded tradition and a strong government provides a useful case study about their compatibility.[9] Pragmatically, I had access to key informants in Jordan as well as the opportunity to conduct a field trip and observe a tribal gathering, allowing me to go behind the headlines to provide a nuanced examination of how customary law works in practice. In order to explore how widespread the application of tribal customary law is, it was considered more productive to obtain a range of different types of cases from one jurisdiction than get a limited range of cases from several jurisdictions.

It was noted above that Jordan is relatively stable. It has had a century of relative stability since the creation of the modern state of Transjordan in 1921. Although Bedouins originate in the Arabian Peninsula, customary law was described as highly developed in the Levant region, particularly in Sinai and Negev-Naqab.[10] The century since the creation of modern Jordan in 1921 validates customary law's stability within a volatile region, which some attribute to the relationship between the state and tribal system. The country has been built on tribal values and customs, which form a significant aspect of Jordanian national identity and modern institutions.[11] Defying predictions, tribalism and tribal law have arguably remained strong as Jordan has undertaken state-building over these years. The association between the modern state and tribal law raises questions over their compatibility.[12] For this

[7] Stewart, 'Customary Law among the Bedouin of the Middle East and North Africa' (n 1).
[8] Ibid.
[9] N Johnstone, 'Tribal Dispute Resolution and Women's Access to Justice in Jordan' (2015) *WANA Institute* 1.
[10] Stewart, 'Customary law among the Bedouin of the Middle East and North Africa', above n
[11] Aseel Al-Ramahi, *Competing Rationalities: The Evolution of Arbitration in Commercial Disputes in Modern Jordan* (London School of Economics and Political Science, 2009).
[12] Johnstone (n 9).

reason, the thesis is particularly interested in investigating how these systems can be intertwined when resolving blood feuds and other serious crimes in Jordan.

There are a range of customary practices in Jordan and other Arab societies, including neighbourhood groups, delegations of wise elders delivering oracles to assist community groups in resolving their own disputes, victim–offender mediations, tribal councils and inter-tribe negotiations featuring collective responsibility.[13] These differ between Bedouins in the Negev-Naqab desert and urban dwellers in Middle Eastern cities. Some of these customs share similarities with restorative justice practices in that they operate on the margins of or outside the official legal process, confront the offender with the victim, include community representatives, explore outcomes that restore social harmony and involve participants in decision-making. They deal, in varying degrees, with concepts such as repairing harm, facing up to crime and restoring solidarity. Some tribal justice procedures directly borrow from Sharia – in Sinai a tribal judge is called a qadi, in the Western Desert Bedouin law uses Islamic law classifying injuries. Some may be influenced by British common law or French civil codes, which were imposed in these countries in the mid-nineteenth century.[14]

The 'Orientalist' approach to law typically describes customary practices using categories familiar to Western legal systems, such as ‘the rule of law’ (usually meaning western law), or ‘universal human rights’ (meaning western interpretations of human rights).[15] While this is helpful in identifying common or distinctive features of 'traditional' practices, it should be balanced by an approach that accounts for such practices within their own legal framework and historical trajectory. The use of oracles in the ancient world was widespread, from Delphi to Jerusalem, and some contemporary Bedouin judicators confronted with a civil dispute recount a parable to the parties rather than handing down a binding decision. From an Orientalist perspective this might be quaint but it is not law. For Bedouins this is part of what customary law can entail. Similarly, blood payments to victims (or rather the tribes of victims) can seem from a western perspective to be a rather strange and quite inappropriate way of dealing with a homicide. However, for a tribal society in which tribes take responsibility for the actions of their members, a blood payment is simply the tribe recognising its obligations.[16] The distinction between public and private law is quite important here, with the line being drawn differently in diverse societies. Generally, householders settled theft and violent offences between themselves, within a tribe, although Mosaic law and, following this, Islamic law made many such violations public crimes. Within customary law the distinction is

[13] Stewart, 'Tribal law in the Arab World: A Review of the Literature' (n 2).
[14] Stewart, 'Customary law among the Bedouin of the Middle East and North Africa' (n 1) 245.
[15] Teemu Ruskola, 'Legal Orientalism' (2002) 101(1) *Michigan Law Review* 179.
[16] Mohammad H Abu-Hassan, *Bedouin Customary Law: Theory and Practice* (Jordanian Ministry of Culture, 1987).

slightly different – matters between members of the same tribe (which can be dealt with by the tribal leader in something analogous to a 'private' legal process), and matters between tribes (which can lead to a 'public' process, with several tribal leaders involved).[17]

This thesis examines the practices of tribal customary law in Jordan, in terms of how they operate to resolve blood feuds and other crimes in contemporary society and whether they intersect with the formal legal system. The thesis utilises the lens of 'legal pluralism' to critique tribal customary law practices, assess their implications and predict the prospects of these practices in the future of Jordan. For this purpose, this thesis draws on the lessons learned around the world with regard to how traditional customary laws operate. The narrative of this thesis employs a storytelling style in order to best describe the nature of tribal customary law; thus, a number of case studies are presented throughout the thesis. It also involves explaining the practices of tribal customary law 'in the shadow of or as part of the law', supplemented by ethnographic observations and interviews with a diverse group of tribal leaders, state officials, legal practitioners and community activists.

The exploration of this thesis suggests that customary law shares common features between most societies, including: the significance of the traditional leaders, the concept of honour, and the accessibility and validity of customary law within local communities. Customary law also seemingly faces a number of similar challenges such as the sustainability and fairness of its practices as well as developing a workable relationship with the state system. However, the purpose and needs of the customary system in Jordan indicate that it is unique and differentiated from other countries. Unlike some countries where conflict creates a strained relationship between the customary and state system, Jordan is shown to be unique as customary law operates alongside the state system in a relatively stable environment due to the many challenges that this relationship has experienced, explored throughout this thesis, that has enabled both systems to develop together. Additionally, it will be shown that Jordan is unique due to the modern cooperation of state officials and traditional leaders, where they both engage in the justice process and come up with forward-thinking solutions for the country's emerging challenges. It will also be explored that in other countries such as Israel/Palestine, Iraq, and Yemen, there is a lack of allocated support and collaboration, leading to a generational gap and disconnect with traditional leaders, and thus an ineffective customary system. Hence, it will be further argued that governmental support for customary law in Jordan sets it apart from neighbouring countries.

[17] George E Irani and Nathan C Funk, 'Rituals of Reconciliation: Arab-Islamic Perspectives' (1998) 4(20) *Arab Studies Quarterly* 53.

Finally, it is worth noting that this thesis is mindful that it uses Western prescribed concepts, particularly when referring to 'the rule of law' and 'modern state system, thus these terms deserve some early clarification. Although there are no undisputed definitions of these terms, it would be helpful to draw attention to some common characteristics that seem to be attached to the rule of law and modern state. The modern state refers to a sovereign political unit that has four characteristics such as bureaucracy, legitimacy, territory, and sovereignty. These characteristics constructed during the decolonisation processes to provide the state with a territorial sovereignty. It is a political system that is defined by its geographical location and borders, as considered by Morris as "the fundamental form of political organisation".[18] Also, under international law, when describing the typical characteristics of a State, reference is often made to the 1933 Montevideo Convention on Rights and Duties of States, which refers to a permanent population, a defined territory, a government and a capacity to enter into relations with other States. Although the modern state has not always existed and is believed to arise from Anglo-American political philosophers, it is still a system exercised in 'traditional' societies such as Jordan. While Jordan possesses a modern state system and government, it also incorporates 'traditional' features such as tribes through a distinct hybrid system of tribal confederacy and the state government where state officials and Sheikhs cooperate to deliver the community with justice and the qualities of a modern state system including fairness.[19] Interestingly, Jordan also seems to sanction blood money and forced evacuation in blood feuds cases which occur through tribal customary settlements.

The concept of the rule of law is also a political philosophy with various variations. It generally refers to universally acceptable principles that govern basic human rights. These principles revolve around the sovereignty, equality and application of the law; separation and transparency of legal powers; participation in decision-making; and legal certainty. The core aspect of the rule of law relates to legal legitimacy of the state authorities to enforce the law without bias or arbitrariness. The rule of law however is a concept that has been largely influenced by an Orientalist standpoint. For example, some laws were enacted in colonial India under the justification of enforcing the rule of law when in reality such laws gave brute power to British officials to enforce control over the local inhabitants who are seen as uncivilised.[20] This is additionally seen in colonial Sudan, where the rule of law was embedded within legal politics to reinforce the authoritarian state rather than build an egalitarian legal

[18] Thaddeus Metz, 'Christopher W. Morris, An Essay on the Modern State' (1999) 19(2) *Philosophy in Review* 195.
[19] Yoav Alon, *The shaykh of shaykhs: Mithqal al-Fayiz and tribal leadership in modern Jordan* (Stanford University Press, 2016).
[20] Mark Condos, 'Licence to Kill: The Murderous Outrages Act and the rule of law in colonial India, 1867–1925' (2016) 50(2) *Modern Asian Studies* 479.

system.[21] Within the context of the Arab world, the rule of law attracts further complexity not only due to the colonial history but also due to opposing cultural perspectives on the application of law.[22] For this reason, it is important to examine how Jordan is implementing a local rule of law-based system without the imposition of foreign codes.

Figure 1: The distribution of tribes (Bedouins) over Arab countries[23]

1.2 Background

In 1976, tribal customary law was officially abolished in Jordan. However, 45 years later, the application of customary practices is not only flourishing but expanding across the country.[24] One only needs to read the local newspapers or scroll through social media to realise how widespread, and sometimes controversial, are the practices of tribal customary law within Jordanian society. It seems that there are many perspectives on tribal customary law among Jordanians, which may explain why Jordan presents an interesting space to examine the contemporary interactions between the state legal system and customary practices.

[21] Sally Engle Merry, 'The rule of law and authoritarian rule: Legal politics in Sudan' (2016) 41(2) *Law & Social Inquiry* 465.
[22] Hossein Esmaeili, 'The nature and development of law in Islam and the rule of law challenge in the Middle East and the Muslim World' (2010) 26 *Conn. J. Int'l L.* 329.
[23] Sinan Q Salih and AbdulRahman A Alsewari, 'A New Algorithm for Normal and Large-scale Optimization Problems: Nomadic People Optimizer' (2020) 32(14) *Neural Computing and Applications* 10359.
[24] Jessica Watkins, 'Seeking Justice: Tribal Dispute Resolution and Societal Transformation in Jordan' (2014) 46(1) *International Journal of Middle East Studies* 31.

Tribal customary law practices have been regarded by some as a cultural mechanism that works alongside Sharia and state law to resolve blood feuds and contain social violence by restoring equilibrium and conciliating disputant parties.[25] Others view these practices as hindering the 'rule of law' (using western Orientalist terminology) and at times encouraging vengeance that undermine the state's monopoly of violence and violate principles that they regard as universal human rights.[26] Still others suggest that most Jordanians have no choice but to rely on tribal customary law practices, as they offer access to more expeditious and flexible justice, and deal with community frictions, in ways the state legal system is unable to achieve, particularly as the demand for justice has increased in recent years. Some accuse the state of deliberately allowing these practices to continue because, firstly, they fill a gap the government cannot and, secondly, they divert people's attention from the need for legal reform.[27] One view goes further, suggesting tribal customary law was historically supported in the interest of enabling colonial British rulers and, later, the emerging Jordanian state to gain the loyalty of the tribes, thereby ensuring the security of the country.[28]

The Kingdom of Jordan has made a number of attempts to contain or dissolve the practices of tribal customary law since it became apparent that abolition had not stopped the general population from turning to these practices. On the first week of my field research in Jordan, I was invited to a meeting (5 November 2015) of tribal and distinguished community leaders, hosted by the Minister of the Interior, to discuss emerging issues in tribal customary law practices, particularly as the population is becoming more reliant on these practices. Despite a general consensus among the delegates on the need for and value of the core practices of tribal customary law in terms of community conciliation and solidarity, there were also concerns about some practices, including removing extended families of perpetrators from their towns to forestall revenge killings. It was proposed at that meeting that specific legislation be enacted in relation to customary law practices in order to regulate the scope of their operation. As the need for such meetings becomes evident, Jordan is still negotiating a workable pathway for its ancient tribal customary law within its contemporary legal system. It is believed that state officials and most people in Jordan, including those who oppose tribal customary law, recognise that customary practices are entrenched in society and their existence seems relevant to social balance and stability.[29]

[25] Abu-Hassan (n 16).
[26] Riya Jain, 'The Opportunity for Legal Pluralism in Jordan' (2020) 1 *The Yale Review of International Studies* 1.
[27] L Lousada, 'Tribal Customary Law in Jordan: Sign of a Weak State or Opportunity for Legal Pluralism' (2017) 1 *The Huffington Post* 1.
[28] Al-Abbadi (n 5).
[29] Watkins (n 24).

Jordan seems to be going through considerable soul-searching following the Arab Spring and trying to work out the implications of this movement for the country, and the region. For example, the resulting influx of refugees – which significantly increased the population of Jordan – has emphasised the need for solidarity (*Asabiyya*) and identity-building and increased the demand for justice. The country is experiencing rapid social changes and facing a number of critical debates around the issues of democracy, transparency and public reform.[30] The application of tribal customary law is one important element in that process, one that is relevant both for forms of public participation and providing local security.

On my first day in Amman, I witnessed an argument at a local popular restaurant between a young customer and the owner, which quickly escalated to the point that other witnesses separated the two parties. As the customer was leaving the restaurant, he made serious threats against the owner, upon which the two parties began shouting at each other. A short time later two policemen arrived and started talking to the customer. Almost immediately, the customer walked back into the restaurant and started a calm conversation with the owner, attempting to kiss the owner's forehead (a traditional show of respect), thereby in effect asking for forgiveness. I learned that the owner was a Syrian refugee who had established himself in Amman's thriving food industry following the civil war in Syria. The customer was a native Jordanian and apparently unemployed. I later asked the restaurant owner why he did not insist on taking legal action against a person who had verbally threatened to kill him. The response was that he does not expect any result from formal legal proceedings; moreover, informal solutions are more practical and better regarded within the community. This incident illustrates a number of dimensions relevant to this research, including whether local police are overstretched in dealing with increasing demand for justice and community policing. A second question is whether alternative dispute resolution is becoming the norm - and possibly the only viable option - in Jordan, this is explored throughout the case studies.

The existence of customary law in Jordan and the Arab world stems from a range of complex factors that have enabled it to survive and, in some cases, evolve, despite the socioeconomic changes occurring over the past century. The practices of customary law have been part of the lives of Arab people for thousands of years, prior to the existence of Islam. The hardships of living in the desert and remote areas required local inhabitants to evolve a range of customs (*Awayid*) and traditional practices to regulate their relationships with each other and define how to respond to their grievances.[31] What signifies these customary practices is that they reflect the people's own will and meet their needs or way of

[30] Ann Furr and Muwafaq Al-Serhan, 'Tribal Customary Law in Jordan' (2008) 4(2) *South Carolina Journal of International Law and Business* 3.
[31] Abu-Hassan (n 16).

life. Public acceptance of these practices explains how customary law was able to survive for all these years and remain strong in many parts of the region. In fact, customary law appears to have kept many of its practices despite developments that threatened to restrain or even eradicate its existence within Arab societies that are now largely urbanised and accustomed to modern life in so many forms. Nevertheless, the connection of customary law to the roots of Arab people has enabled its practices to retain a high level of legitimacy despite the various challenges that confront it.[32]

Customary law relates to the tribal nature of its people and reflects their beliefs when resolving conflicts and ensuring social stability. Customary law is considered an integral element of the social fabric of Arab societies, where it connects the young generation with their past and elders who are traditionally regarded as formal institutions. The changes that occurred in the Arab societies in modern history created significant challenges for customary law as it began to collide with many of these developments and navigate through the spread of formal state and Islamic laws.[33] There is evidence that customary law became more limited at certain times or places in the region as formal state and/or Islamic laws became the dominant structures for regulating people's lives.[34] Many people thought customary law to be on the verge of becoming irrelevant in most parts of the region. However, the eruption of the Arab Spring and its impact on social order where the influence of state law had declined or was overstretched, appear to have prompted customary law to fill the gap and provide local people with an accessible means of justice in order to keep the peace. This highlights that the practices of customary law are the reflections of people's circumstances and can be utilised to fulfil people's needs for security.[35] Jordan is part of this narrative, with the exception that it remains largely stable despite the deterioration of security in the wider region. Tribalism also remains visible and active in Jordan, with locals continuing to take pride in their Bedouin heritage and identity.

Customary law is a way of life for the Bedouins, allowing them to preserve their tribal identity and follow the teachings of their ancestors. It is unsurprising that customary law, having survived for thousands of years, has been regarded as a central feature of Bedouin culture.[36] Bedouins regard customary law as a path to survival amidst the hardships of desert life and a means of keeping the peace when interacting with each other. Due to their attachment to the

[32] Al-Abbadi (n 5).
[33] Mohammed Abu-Nimer, 'Conflict Resolution in an Islamic context: Some Conceptual Questions' (1996) 21(1) *Peace & Change* 22.
[34] Al-Abbadi (n 5).
[35] Watkins (n 24).
[36] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

deserts, Bedouins have little regard for the political borders of the state.[37] Bedouins identify mostly with their tribe, collectively determining the form of relationship it has with other tribes and the governing state. It is for this reason that Bedouin customary law is not territorial but, instead, based on personal codes. People receive the protection of customary law by virtue of being a member of a tribe or integrating into the tribal culture.[38] In a practical sense, for individuals to have a legal personality within the Bedouin community, they must be part of a group. Bedouins are generally identified by two main types of groups, the territorial group and blood-money group, which are designed for the purpose of supporting people when they come into conflict with others.[39] For this reason, agnatic ties have significant value within the Bedouin community.

Bedouin customary law traditionally operated on the premise that society has no public authority, which explains why people rely mostly on the support of their tribe when seeking safety and protection. The tribe, in return, is expected to be held liable for individuals' misdeeds, particularly with regard to serious crimes such as homicide and sexual assault.[40] Bedouins refer to this arrangement as the blood-money pact, whereby tribal members – up to the fifth degree of kinship (*Khamsa*) – are liable for blood-money payments for offences committed by their fellow tribe members. Tribal liability is exercised through retaliation or, preferably, compensation. Retaliation is often seen as a last resort when customary law fails to end a serious dispute.[41] Tribesmen, in this case, resort to revenge killing as a way of reclaiming their rights and showing the society that they are not weak. Restoring honour – the right to be treated with respect – is a critical part of any just settlement. Bedouins believe that peace can only be achieved when a fair resolution to the case is reached, including the restoration of honour. Such an outcome usually requires the backing of the tribe, which naturally prefers to not be in constant conflict with other community groups. Tribesmen seek to avoid retribution such as revenge killings because it has the potential to escalate and extend the conflict for many years.[42] This explains why Bedouin customary law focuses on compromise and restitution in settling disputes, offering a practical way of preventing further violence and reaching a peaceful settlement.

1.3 Rationale

As Jordan marks its first centenary, it has become increasingly important to examine the country's relative stability in comparison to the volatility of surrounding countries, particularly

[37] Al-Abbadi (n 5).
[38] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[39] Ibid.
[40] Al-Abbadi (n 5).
[41] Abu-Hassan (n 16).
[42] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

over recent years. Although Jordan has faced numerous challenges since its establishment as Transjordan in 1921, there has been steady progress in state-building efforts that have enabled the country to develop a robust formal justice system.[43] In contrast, surrounding Arab countries have endured the collapse, failure or weakening of their state systems. It is, therefore, useful to examine how tribal customary practices function within a relatively stable country like Jordan and whether they continue to operate in a time-honoured way, whether they wither away as newer forms of justice are developed, or whether they fill a perceived gap in state-sponsored justice.

Despite growing literature on traditional justice around the world, the applicability and viability of this paradigm within the Arabic world remain largely unexplored, particularly within the context of community conflict and civil disorder.[44] It is envisaged that the social, political and economic challenges in the Middle East will continue to raise questions on the appropriateness of traditional justice approaches in relieving or enhancing the overstretched and often-neglected formal legal systems.

It would be useful to provide some background to the characteristics of tribal law. Tribal customary law has been regarded as an integral part of Bedouin and Arab society in general and is reflected in interpersonal, family and clan interactions. It is seen as a way of life, as is illustrated by the use of traditional practices and cultural norms when settling all kinds of social disputes. The process of tribal customary law in Jordan involves various dispute resolution techniques including negotiation, mediation and conciliation.[45] The recognition of tribal customary law practices in the Arab world is not based on the professionalised approach used in western law but, rather, on its ability to derive legitimacy and credibility from its community. Tribal customary law in Arab societies is founded on principles such as honour, identity and security. The collective and tribal identity of Arab societies drives the practices of customary law to focus on social solidarity and group relationships.[46]

Customary law appeals to indigenous and tribal people like Bedouins because of its focus on collective responsibility, public participation and social solidarity. It has been suggested that tribal customary law in Jordan has the potential to bridge gaps in various areas, including relationships between local communities and interstate relationships.[47] The concept of conciliation, for example, appeals to both Arab and non-Arab cultures. The Arab expression for conciliation is *Sulha*, which literally means peace-making and restoring relationships.

[43] Al-Abbadi (n 5).
[44] Watkins (n 24).
[45] Furr and Al-Serhan (n 30).
[46] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[47] Al-Abbadi (n 5).

However, some scholars caution that customary law has the potential to turn conflict resolution from a force that has the potential to bring social change based on collaboration and common concern for society, to a concept focused on managing conflicts in terms of restoring order and preserving the status quo.[48] In a Middle Eastern context, this may mean preserving oppressive regimes and their ruling parties rather than responding to the needs and aspirations of the people. This view, however, seems to be contradicted by the actions of many countries that have sought to abolish customary law from their societies.[49] It thus appears reasonable to suggest that the focus of customary law practices on local empowerment and solidarity can be perceived as potentially either valuable or dangerous when used for a political purpose.

The ongoing unrest in the Middle East presents various challenges for Jordan, including the influx of refugees, rapid socioeconomic changes and additional burdens on the capacity of the legal system. Consequently, there is increasing demand for customary law to keep the peace and fill the gap within local communities.[50] For this reason, it is important to examine the influence of customary law on legal pluralism and its role in facilitating legitimacy and social solidarity. The question is how the state system intersects with and incorporates the features of tribal customary law without compromising the rule of law and human rights. This could be a particularly challenging task when it comes to some aspects of customary law, such as tribal evacuation.[51] Jordan appears to be determined to preserve its tribal customary practices while building a modern state system. The question is how the state government is balancing these competing priorities, and indeed whether they are even compatible. This also raises the question of the strategic value of incorporating tribal customary practices into a modern legal system. It is hypothesised that this type of traditional justice secures legitimacy, trust and collaboration within an evolving society. This thesis will endeavour to answer these questions by examining the engagement of the state system with tribal customary practices in Jordan, as well as how these practices function as a conciliatory approach to resolve blood feuds and other crimes, while preserving, and even augmenting, the legitimacy and capacity of the formal system.

My interest in this research stems from the context of the Middle East, where customary law seems more prevalent when state systems are absent or weak. My vision is to explore whether it is feasible for customary law to engage with a strong and stable state system. Assessing the state's recognition of customary law in this sense would be beneficial, as it is

[48] Irani and Funk (n 17).
[49] Al-Abbadi (n 5).
[50] Jain (n 26).
[51] Watkins (n 24).

often the case that the prevalence of customary law stems from public acceptance. It would be interesting to explore whether the state system engages with customary practices to further its own strategic interests in maintaining peace and stability or merely to fill the gap. These premises, which I intend to use as a broad framework, drive this research.

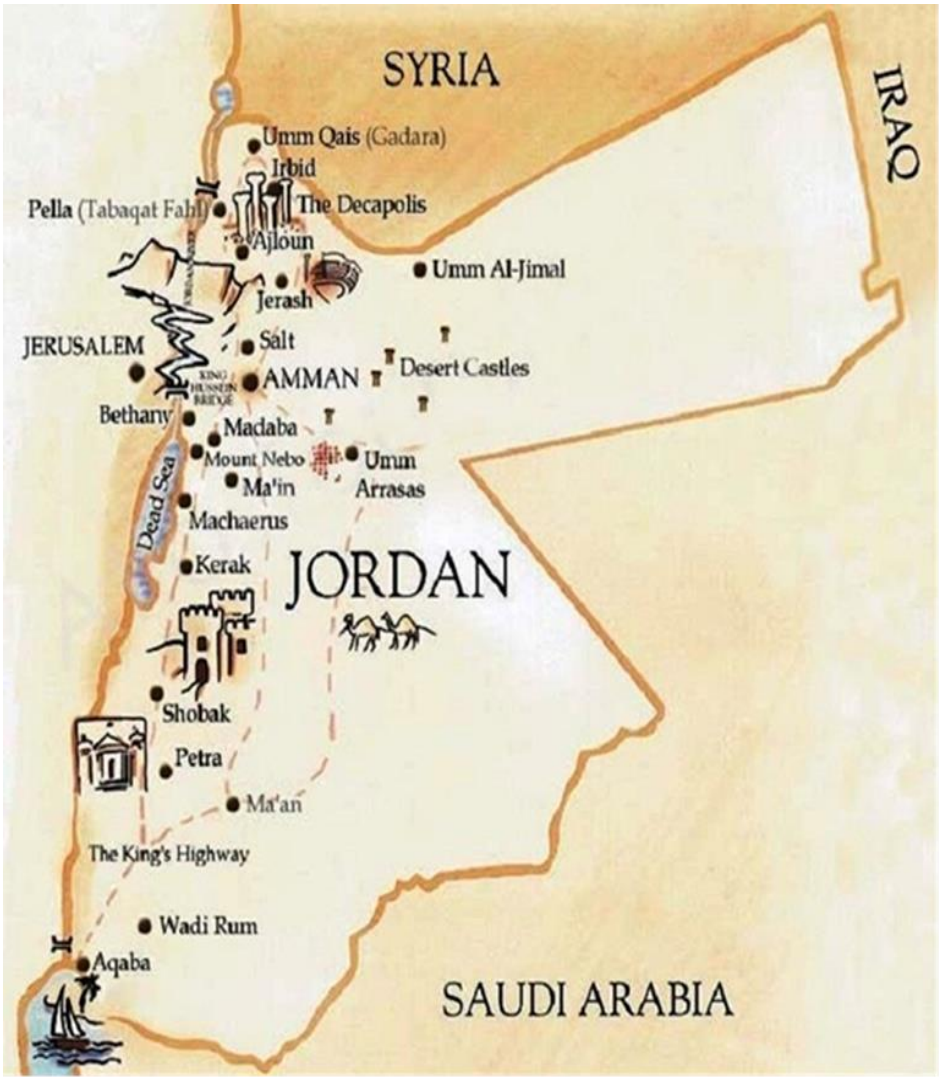

Figure 2: Map of Jordan[52]

Jordan – or the Hashemite Kingdom of Jordan – is located on the East Bank of the Jordan River and is bordered by Palestine/Israel, Syria, Iraq and Saudi Arabia (Figure 2). Jordan's current population is around 11 million people, including the latest refugees from Syria. It has diverse community groups including ethnic minorities of Circassians, Chechens, Armenians, Kurds, Turkomans and Druze. Jordan has three regions, North, Central and South, which are divided into twelve governorates: Amman, Irbid, Zarqa, Mafraq, Ajloun, Jerash, Madaba, Balqa, Karak, Tafileh, Maan and Aqaba. The Central region has the most urban, wealthy and

[52] Rafa Haddad, Salem Harahsheh and Karla Boluk, 'The Negative Sociocultural Impacts of Tourism on Bedouin Communities of Petra, Jordan' (2019) 16(5) *E-review of Tourism Research* 1.

educated population. The North region is more rural but still more developed and connected to the central government than the South. The South region has the least infrastructure and public institutions, and the most rural and tribal population.[53]

Jordan was officially recognised by the United Nations in 1946 as an independent state, which is ruled by a parliament and a hereditary monarchy. There are three main features in the Jordanian state system that underpin the function of justice and security. The first feature is the constitutional monarchy, where executive authority and command is given to the King and a Council of Ministers.[54] The legislative powers are shared by the King and both Houses of Parliament, where the House of Representatives are directly elected by the Jordanian people for a four-year term. Secondly, the codification system enables Jordan to organise laws in a systematic process, where the constitution is seen as the highest legislative material and all other laws must abide by its principles.[55] As opposed to the common law system (based on legislation and case law) that is applied in Australia, Jordan does not apply a system of binding precedent and courts are not forced to follow the 'pattern' set by other courts. Civil law in this sense refers to a system of legal codes. The final feature is diversification and modernisation as while the Jordanian civil code was derived from other sources including the Egyptian civil code in 1948 which was shaped by the Napoleon Code, it has heavy influence from Sharia law. This is made clear in Section 2 of the Jordanian civil code where it states Islamic jurisdiction to be the second source of civil law and conduct when the legal matter at hand does not fall under the scope of the civil code. For example, while matters of contracts, ownership, labour, and lease fall under the scope of the Jordanian civil code, family matters such as divorce and custody are not addressed by this code and are governed by independent acts, often being Islamic law. Other Jordanian laws such as criminal law are derived from French law while trade and insurance laws are influenced heavily by British law.[56] The Jordanian justice system is further discussed in Chapter Two.

1.4 Purpose

The purpose of this thesis is to analyse tribal customary practices in Jordan, where they are widely used and accessible. Jordan is relatively stable, with a functioning formal legal system that offers people, at least in principle, the choice between two legal pathways for resolving their disputes. This thesis seeks to investigate the intersection between customary practices and the state legal system in Jordan. It assesses how these practices resolve blood feuds

[53] Jain (n 26).
[54] Mohamed Olwan, 'The three most important features of Jordan's legal system' (Pt IALS Conference) (2010) 135 <http://www.ialsnet.org/meetings/enriching/olwan.pdf>.
[55] Ibid.
[56] Ibid.

and other crimes within local communities and whether they are supported, tolerated or repressed by the state system.

I. Research objectives

This thesis has the following key objectives:

1. Describe how tribal customary law works in Jordan, across a range of crime types and populations.
2. Analyse the relationship between tribal customary law and state law in Jordan.
3. Interpret the relationship between state law and customary law in Jordan in terms of the theory of legal pluralism, and compare this relationship to other countries where customary law is available

II. Research questions

The thesis is designed to answer the following questions:

1. How are tribal customary practices in Jordan organised? What facilities are used, what rituals and procedures are followed, who is involved and what role do different participants play?
2. What was the impact of the official abolition of tribal customary law in Jordan? How did it influence the prevalence of tribal justice processes, the range of cases they handled, the populations served and the role of tribal leaders?
3. How do state officials at a local level contribute to tribal justice processes in Jordan? Specifically, how do police officers and regional governors help to establish truces, manage evacuations and administrative detentions, and enforce decisions?
4. How successful are the outcomes of tribal justice processes in Jordan, in terms of restoring order and keeping the peace, satisfying the grievances of disputing parties, and producing agreements that the parties consider fair?
5. How does tribal justice contribute to the stability and legitimacy of the Jordanian state, and in turn how does tribal justice benefit from the support of the state?
6. What problems and limitations of customary law are revealed in the case studies, and how are they being addressed?

1.5 Methodology

The methodology of this thesis is designed to answer the research questions. It is shaped by the purpose of this thesis – namely, to examine the concept of customary law, the intersection between customary law and the state system, how customary law resolves blood

feuds and other crimes in Jordan, and whether Jordan's model of engagement is similar to or different from other inspected models. The research uses a mixed method comprising qualitative and quantitative approaches. The major method used, however, is qualitative, including theoretical, comparative and analytical approaches across various jurisdictions. It covers ethnographic observations, photographs, interviews, case studies and news stories. The qualitative approach aims to explore and interpret the research materials in depth. The methodology of this thesis consists of the following seven stages.

The first stage, in which the literature on the concept and features of customary law are examined and analysed. This entails exploring the concept of law, as the thesis seeks to identify the sources of recognition for customary law. This review also briefly examines the application of customary law in seven countries: Albania, Afghanistan, Timor-Leste, Somalia, Yemen, Iraq and Israel/Palestinian territories. These examples were chosen to ensure that adequate materials on the application of customary law were examined in this thesis. Customary law was examined in depth in Jordan through historical and contemporary lenses.

The second stage, in which theories of legal pluralism are explored broadly to pave the way for assessing legal pluralistic relationships in the seven selected cases. The thesis examines existing models of legal pluralism and chooses one particular framework devised by Geoffrey Swenson, which presents appropriate archetypes and strategies to understand the dynamics of relationships between state systems and customary law.[57] This provides an appropriate tool for comparison and analysis for this research as it assists in determining the archetypes and strategies used for these seven cases. The findings are then further examined within the context of Jordan's model of legal pluralism.

The third stage involves six case studies of blood feuds collected from Jordan to analyse how customary law resolves these types of crimes and whether the formal legal system engages in this process. Two cases of blood feuds are obtained from Gaza to compare similarities with and differences from Jordan. The same number of cases involving other crimes and disputes are also collected from Jordan and Gaza. These cases are analysed in depth by identifying the core principles of customary law used to resolve blood feuds and other crimes. They are also utilised to investigate the extent of engagement between the state system and customary law in the two jurisdictions.

The fourth stage, in which comparisons are made between the seven cases and Jordan. The function of customary law and extent of legal pluralistic relationships in these cases are

[57] Geoffrey Swenson, 'Legal Pluralism in Theory and Practice' (2018) 20(3) *International Studies Review* 438.

correlated with Jordan's model. This tests the hypotheses and overall arguments of this thesis on the engagement between the state system and customary law in Jordan.

The fifth stage involves 30 interviews conducted with various people to obtain their perspective on the role of customary law and its intersection with the state system. The fieldwork was conducted in Jordan between 30 October and 27 November 2015 and comprised semi-structured interviews with the following groups: tribal leaders, senior state officials, police officers, legal practitioners and community activists representing women and young people. Interviews were chosen based on their availability and willingness to participate in this research. The researcher was actively seeking to interview a diverse range of informants from various areas and tribes. The interviewees are asked a set of 12 questions (see Appendices) which touch on some of the research questions. The answers to these questions are inserted into the text at points where they are most relevant. However, the most informative parts of the interviews are included as comments in relation to particular case studies or the subsequent interpretative chapter.

The researcher intended to conduct part of the fieldwork in Israel and the Palestinian territories but, unfortunately, was denied access by Israel due to his Palestinian background. The purpose was to make a comparison between Jordan and other surrounding countries, which share large populations of Bedouin and tribal communities. The research plan was then adjusted to focus primarily on Jordan and refer to the other surrounding countries through the literature review and case studies.

For the sixth stage, a conciliation settlement ceremony (*Sulha*) involving a high-profile homicide case between two influential tribes was observed by the researcher in Amman on 7 November 2015. The *Sulha* ceremony is examined through a structured approach with the process and dynamics carefully analysed. For this purpose, an observation checklist (see Appendices) was created to identify the unique features of *Sulha* conciliation ceremonies in light of personal observation and the available literature.

For the seventh stage, photographs are presented and analysed throughout the thesis to illustrate various aspects of customary law and its intersection with the state system. Some of these photographs were taken by the researcher and provide first-hand insight into the functioning of this system within contemporary Jordan.

1.6 Overview

This thesis is divided into a number of theoretical and practical chapters to paint a picture of tribal customary law that focuses on its contemporary application in selected countries.

This Chapter (Chapter One) explains the background and rationale of the thesis with regard to the significance of the Arab Spring. It deals with the research purpose and methodology by explaining the research questions, hypotheses and limitations. It then outlines the fieldwork in terms of how the sources of information were collected from the interviews and observations.

Chapter Two provides a review of the literature on customary law with a particular focus on the features and contemporary practices in selected countries. It provides a further focus on tribal customary practices within the Arab world, particularly Jordan.

Chapter Three offers a theoretical framework which utilises legal pluralism to critique the applications of customary law. It examines the concept of legal pluralism to highlight the implications of customary law practices for the usual reality of state monopoly over local security. It examines existing models of legal pluralism with a particular focus on one particular framework, which presents appropriate archetypes and strategies to understand the dynamics of relationships between state systems and customary law. It then presents selected cases of legal pluralism around the world in comparison to Jordan.

Chapters Four and Five present a number of case studies exploring the operation and features of tribal customary law when dealing with blood feuds and other crimes in Jordan. It also offers the researcher the opportunity to discuss the findings of the fieldwork and observations on how the customary conciliation process works at a local level.

Chapter Six analyses three key principles underpinning tribal customary law – honour, identity and security. These principles are purposefully examined to determine whether there are any aspects of Arab customary law in Jordan that distinguish it from legal customary practices in other countries.

Chapter Seven examines the relationship between statutory and customary law in Jordan, particularly in addressing blood feuds, tribal truce and conciliation process.

Finally, Chapter Eight summarises the discussions and provides the conclusions of this thesis, including a set of findings, implications and limitations around the prospect of tribal customary practices in Jordan.

Chapter Two – Literature Review

2.1. Introduction

This chapter examines the available literature grouped into three topics, beginning with an overview of customary law including the definition, features and application of this system and how they distinguish it from other legal models. It also explores perceptions and common practices of customary law in a number of key countries. Second, customary law within the Arab societies is examined to pinpoint the social, geographical and political circumstances that make Arab tribal customary law different from other customary practices. The argument that there are specific conditions that have enabled customary law practices to survive significant changes in the Middle East is also examined. Finally, the practices of tribal customary law within the Hashemite Kingdom of Jordan are scrutinised. Jordan presents a unique model for tribal customary law in the Middle East and an important source of study for customary practice across the world.

The purpose of this literature review is to identify the concepts and common features of traditional and tribal customary law in theory and practice, and, in the process, to identify literature 'gaps' in this field. The literature on customary law and its role in local governance not only recognises that these traditional systems continue to exist but also argues that, in some instances, they are more suitable for restoring peace and security within local communities.[58] This review will examine these claims and highlight why customary law is, in some cases, preferred over statutory legal systems. The review will draw on the experience of a number of countries with traditional legal customs and explain how these interact with the formal legal system, triggering debate on the role of traditional customary law in the context of legal pluralism.

The review also highlights the significance of this research by demonstrating why Arab tribal customary law – with particular reference to Jordan – merits further research. This review will examine the functions of and relationship between tribal customary law and the Jordanian state system to compare how customary practices operate in different settings. The existing literature recognises that Arab tribal customary law is a sophisticated system which focuses on keeping the peace through rituals, oral deliberation and compensation.[59] Although modern state sovereignty, judicial bureaucracy and written contracts are foreign concepts in

[58] H Bobseine, 'Tribal Justice in a Fragile Iraq' (2019) *The Century Foundation* 1.
[59] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

customary law, this traditional system has been applied in many modern settings across both developed and developing countries. This indicates customary law's adaptability and its potential relevance to modern social issues, which this thesis sets out to examine.

2.2. Concepts of customary law

There is a wealth of research on customary law around the world which covers a range of topics, including definitions, features and practices that underpin this system. However, knowledge in this field is far from being settled, particularly around the concepts and principles of customary law. The real issues revolve around whether customary law is, in fact, a source of law and whether customary norms actually exist. Several scholars have examined the issues that arise from the intersection of custom and public law. A key pioneer in this debate was HLA Hart, whose theory of rules and model of legal development were applied to these issues to address the issue of rule-scepticism in legal anthropology.[60] Hart describes law as rules made by humans, comprising primary rules that govern conduct and secondary rules that govern contracts.[61] Law, to Hart, is a legal system that combines these types of social rules, which are defined by internal and external aspects of a common standard of certain patterns of behaviour.[62]

Ronald Dworkin argues that Hart's descriptive concept of law fails to explain all aspects of law, particularly in regarding law merely as a code of rules or a union of primary and secondary rules. Dworkin defines law as an interpretive concept that combines jurisprudence and adjudication.[63] He also describes the legal system as involving more than legal norms of primary and secondary rules, also requiring sets of legal principles.[64] The model of rules, according to Dworkin, is limited to legal positivism and does not take into account the fact that the legal system as an institution needs to be based on principles, standards and policies. While Hart's theory of legal positivism emphasises that the legal system is socially constructed, Dworkin criticises this and states that the law follows from a constructive interpretation of legal history, leading to the opposing theory of legal interpretivism. Law, in Dworkin's legal system, is a set of rights and moral norms that justify the application of legislation, custom and precedent, rather than merely an acceptance of conventional patterns of recognition.[65] The legal philosophies of both Hart and Dworkin are relevant to this thesis, particularly for identifying the validity of customary law as a source of law from various

[60] Herbert Lionel Adolphus Hart, *The Concept of Law* (Oxford University Press, 2012) 587–596.
[61] Ibid.
[62] Ibid.
[63] Ronald Dworkin, *Taking Rights Seriously* (A&C Black, 2013).
[64] Ibid.
[65] Ibid.

perspectives. These arguments reinforce the conceptual conflict surrounding the concept of customary law and its validity.[66] Dworkin's notion of principles and moral norms appears to reflect Arab customary law in Jordan, in which tribal leaders adopt a 'storytelling' approach to resolving conflict that reveals the moral judgement of their ancestors and depicts the local community as bound by a set of traditional principles that keep the peace.

This thesis is particularly interested in Hart's theory of law as a union of primary and secondary rules, as this offers a meaningful approach to analysing the practices of tribal customary law practices in Jordan, especially with regard to Hart's rules of recognition. Hart describes law as a legal system of primary and secondary rules that are social in nature, as they regulate and guide the conduct of individuals in society. Primary rules create obligations on members of the society, which are deemed binding due to the general acceptance of these rules. Secondary rules enable the recognition, change and adjudication of such primary rules, which is necessary in situations of uncertainty or inefficiency.[67] These rules stem from human social practices and provide standards for criticising social conduct. Hart claims that a society that utilises primary rules without any reliance on secondary rules is a pre-legal or primitive society, without legislature, courts or officials. Hart further explains that 'only a small community closely knit by ties of kinship, common sentiment, and beliefs, and placed in a stable environment, could live successfully by a regime of unofficial rules'.[68] Otherwise, a regime of primary rules would suffer from the defects of uncertainty, inefficiency and being static in nature. The question is whether Hart would consider those Arab tribal community groups, especially in remote areas, that rely heavily on customary law practices as pre-legal societies, whose characteristics Hart does not, unfortunately, describe in detail.

Dworkin, on the other hand, believes that law should be grounded in moral integrity and legal principles rather than social rules. Dworkin claims that secondary rules are not social in nature; they impose duty and establish power based on moral principles.[69] Dworkin claims that Hart's notion of legal norms is inaccurate as it does not take into account the influence of legal principles and morality; he argues that rules apply in an 'all or nothing fashion', whereas principles have a dimension of weight or importance.[70] According to Dworkin, most of the rules of law are valid because they were enacted by recognised institutions and created by legislatures or judges through statutory enactments or case deliberations.[71] The validity of

[66] Dennis Patterson, 'Dworkin's Criticisms of Hart's Positivism', in Torben Spaak and Patricia Mindus (eds), *The Cambridge Companion to Legal Positivism* (Cambridge University Press, 2019) 675–694.
[67] Hart (n 60).
[68] Ibid.
[69] Dworkin (n 63).
[70] Ibid.
[71] Ibid.

law, in Dworkin's model, is determined by a set of legal principles and based on moral duty. This view would seem to suggest that social customs and traditions do not constitute legal rules, and hence cannot be a source of law. For Dworkin, the ultimate test to recognise law as a legal system comes down to moral norms and a standard of principles. This perspective may be useful for this thesis in assessing the validity of customary law. However, a problem similar to that with Hart's analysis of a pre-legal society arises, as Dworkin does not provide much detail concerning those unregulated pre-existing legal principles.

Hart seems to offer some answers in his legal theory around social rules, which helps to articulate the relationship between the nature and source of law and custom. The concept of custom, according to Hart, is defined by regular, habitual or convergent behaviour which can constitute a force of law.[72] Hart distinguishes between customs and social habits, describing social rules through internal and external aspects. Internal rules involve a 'critical reflection to certain patterns of behaviour as a common standard'.[73] For social rules to be binding, they require an internal aspect for people to use as a standard for judging and condemning deviations. Hart argues that social habits have no internal aspect that can ground criticism when they are broken, and that therefore people have no obligation to maintain these habits. However, people have obligations under social rules, as they experience criticism when they deviate from such rules and are subjected to some form of pressure to conform to the rules. Hart argues that rules or legal life can be explained solely by virtue of external pressure or external patterns of behaviour.[74] This explanation seems plausible in relation to the practices of customary law, as they are perceived as binding on, and by, the whole local community. This thesis will illustrate how customary law systems ensure compliance with social norms by virtue of public participation and acceptance of the rules.

The ultimate test for the validity of law in Hart's model revolves around the secondary rules of recognition, one of three types of rules that Hart articulated. Hart argues that the rules of recognition are social rules because they stem from specific social practices and represent certain social facts. According to Hart, the rules of recognition rely on social constructs and validity as well as the interconnection between primary and secondary rules. The rules of recognition highlight how legal rules must be identified and followed within the local community. Hart, in this sense, indicates that the rules of recognition are a form of custom that rest on social acceptance, rather than on recognition of power or authority. However, it is not clear whether the rules of recognition of social customs validate individual legal rules or the actual legal system as a whole. Additionally, the rules of change explain the mechanism

[72] Hart (n 60).
[73] Ibid.
[74] Ibid.

for changing primary rules, which occur by empowering individuals to introduce new rules. Such rules are critical, in Hart's view, as they enable legal systems to adapt and preserve their validity as a source of law. Legal systems that are unable to change become rigid and inefficient. Finally, the rules of adjudication, according to Hart, empower individuals to determine whether a primary rule has been violated and establish the procedure that is required in these situations.[75] In summary, Hart regards the rules of recognition as the criteria of legal validity, which must be supported by the rules of change and adjudication as common public standards of official behaviour.

Although these arguments are not directly relevant to the focus of this thesis, they provide some basis for a general concept of customary law and are useful in paving the way for the later discussion of the features and legitimacy of customary law systems. They also assist in examining the intersection of customary practices with public law in Jordan. While they are utilised in the thesis's analytical framework, neither Hart's nor Dworkin's model considers the topic of legal pluralism, which requires looking beyond their theories. Various studies on customary law reports that such systems focus on keeping the peace and ensuring solidarity within the local community. The question, then, is whether the internal point of view provides a plausible explanation of this focus. This thesis examines whether customary practices have a special legitimacy that could explain their prevalence within local communities; the concept of rules of recognition may be useful in exploring the different perspectives on this question. Finally, reporting suggests that tribal customary law in Jordan relies largely on notions of honour and identity to achieve local security; thus, the concepts of principles and morality may be helpful, refer to Chapter Six – Principles of Customary Law.

It is clear, however, that some customary practices cannot be fully explained using Western legal analysis. In Hart's and Dworkin's concepts of law, legal systems in non-Western cultures are not carefully examined; for example, it is unclear how their arguments define social norms that, having no written text of law or official institutions, seem to be regarded as pre-legal systems. These arguments, however, are a useful starting point for further investigation of non-Western legal customs. This thesis is mindful that the assumptions of positivists and other Western theories of Arab customary law regard it as lacking a written format and archaic, creating a need for a conceptual analysis to examine the key features of customary practices from a balanced perspective to gain a comprehensive understanding. The Cheyenne Way is a framework of customary law that provides an example of anthropological legal analysis, particularly as its practices have been examined by many

[75] Ibid.

scholars – including Hart when developing his notion of primitive law.[76] As a result of their work on the Cheyenne Way, Adamson Hoebel and Karl Llewellyn developed a theory of investigation that articulates three methods. The first is an ideological method that investigates rules by distinguishing the ideal patterns from the real actions that need to be measured. The second is a descriptive method that investigates practices and explores patterns in the behaviour that occurs. Finally, the use of 'trouble case' examples investigates unwritten laws by studying grievances and disputes.[77] These methods have since been of interest to many legal anthropologists, particularly the 'trouble case' method, which will also be relevant to this thesis in its examination of various case studies.

John Hund has discussed the above methods of investigations, which, he argues, together have the ability to determine whether customs are in fact a source of legal rules. Hund argues that scholars should utilise all three methods and suggests that these methods of investigation would enrich the social science of law and establish that judicial decisions are not the only source of law. Customs can, in fact, be a source of law, he argues, because they constitute legal obligations, as legal rules often arise outside the context of litigation or dispute institutions.[78] The question that arises from this argument relates to how the methods of investigation can be integrated into a holistic approach that can establish how social norms are differentiated from other cultural practices so as to meet the criteria of legal rules. Unless this question is answered, these methods are confined to analysing pre-legal societies rather than examining the validity of custom as a form of law.

Along with the Cheyenne Way, it is useful to examine the Cherokee nation as an example of how tribal customary law can be adapted to accommodate formal state systems. The Cherokee nation are one of the Indigenous groups of the United States South-eastern Woodlands and are currently the largest recognised tribe in the United States. After facing and resisting colonisation by the Europeans, the Oklahoma Statehood designated land under their ownership and promised that there would be no further attempts of colonisation. Rennard Strickland's research 'Fire and the Spirits' describes that, to survive colonisation, the Cherokee nation incorporated a western tripartite democratic system, with an executive, judiciary, and legislative branch while still using clans and respecting the authority of tribal leaders.[79] The Cherokee Nation had adopted the alphabet system into their oral tradition, and

[76] E Adamson Hoebel and Karl N Llewellyn, *Cheyenne Way: Conflict & Case Law in Primitive Jurisprudence* (University of Oklahoma Press, 1983).
[77] Ibid.
[78] John Hund, '"Customary Law is What the People Say It Is"—Hart's Contribution to Legal Anthropology' (1998) 84(3) *Archiv für Rechts-und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy* 420.
[79] Rennard Strickland, *Fire and the spirits: Cherokee law from clan to court* (University of Oklahoma Press, 1982) vol 133.

instituted a legal system that incorporated tribal customs into their adjudicative system. The case of Cherokee nation appears similar to Bedouins and other indigenous nations whose customs were incorporated into the newly established state legal system. It also provides a unique example of traditional leaders influencing the modification of customary law through utilising written constitution and working through the judicial process.

The concept of customary law arises out of *opinio juris*, which establishes a legally binding custom as a result of cognitive or behavioural practices that are repetitive in nature.[80] Customary law, by definition, has two elements: one which relates to the practice that emerges out of the spontaneous and uncoerced behaviour of individuals, and one which stems from these behaviours as being driven by a sense of obligation.[81] This obligation means that deviation from customary rules draws criticism and pressure for conformity. According to Hart, criticism of deviation and pressure to conform is regarded as legitimate or justified, unless there is a challenge to the rule where it must be proven that the justification is authentic.[82] This is an interesting feature of social rules, as this thesis examines the legitimacy that seems to be associated with tribal customary practices.

Customary law is typically uncodified, not existing in written form or incompletely systemised. It is also known for being accessible and dynamic, with practices that can change over time and adapt to specific contexts. Sandra Joireman argues that customary law is not unique in its adaptive and dynamic features, as other legal systems also embrace flexibility; however, Joireman believes that customary law is more unpredictable and inconsistent, leading to uncertainty[83]. Such features would present critical challenges to customary law as it can be difficult to precisely define, and this thesis therefore considers each of these issues to assess their validity and impact on local customary practice in Jordan.

Despite the ample literature, there is no universally accepted definition of customary law. Most descriptions of customary law, however, refer to it as a system of traditional, informal and/or community-based practices of customs and norms, which are widely recognised for solving disputes. Australia's definition of its Aboriginal tradition was initially articulated in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), section 3(1), which defines it as:

> *the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs*

[80] Niels Petersen, 'Customary Law without Custom-Rules, Principles, and the Role of State Practice in International Norm Creation' (2007) 23(2) *American University International Law Review* 1.
[81] Francesco Parisi, 'Spontaneous Emergence of Law: Customary Law' (1999) 5(9500) *Encyclopedia of Law and Economics* 603.
[82] Hart (n 60).
[83] Sandra Joireman, 'Aiming for Certainty: Kanun, Blood Feuds and the Ascertainment of Customary Law' (2014) 46(2) *The Journal of Legal Pluralism and Unofficial Law* 235.

and beliefs as applied to particular persons, sites, areas of lands, things or relationships.[84]

This description represents the view that traditional or indigenous customs do not constitute a source of law within Western legal systems. The concern is that there should be only one law for all, otherwise customary could negatively impact on the rule of law of the state. On the other hand, some have argued that customary practices are, in fact, a source of law and constitute part of the state legal system. Clark makes this argument based on John Burke's definition of customary law:

Custom is a rule of conduct obligatory to those within its scope, established by long usage. A valid custom has the force of law. Custom to the society is what law is to the State. A valid custom must be of immemorial antiquity, certain, reasonable, obligatory and not repugnant to statute law, though it may derogate from the common law.[85]

It is, then, fair to presume that the use of customary law, in that sense, leads to legal pluralism where society has access to multiple sources of law.

This meaning, though, does not cater for local practices of customary law from diverse cultural perspectives, particularly with regard to indigenous and nomadic communities. Former South Sudanese Chief Justice Ambrose Thiik, for instance, has described customary law as:

a manifestation of our customs, social norms, beliefs and practices. It embodies much of what we have fought for these past twenty years. It is self-evident that Customary Law will underpin our society, its legal institutions and laws in the future.[86]

This reflects the perceived imperative within many African communities of rejecting restrictive, imposed or colonial interpretations of customary law. This description indicates that the use of the term 'law', when referring to customary systems, is a Western-centric approach that disregards the distinctive and extensive application of 'customary law' within African and other traditional societies. William O'Brien Lindsay, Chief Justice of the Sudan in the 1950s, stated that *'Custom refers to local custom originating by usage in the Sudan, and is not applicable to the imported rule of law of foreign origin'*.[87] The diversity of customary law

[84] Geoff Clark, 'Not Just Payback: Indigenous Customary Law' (2002) 5(80) *Australian Law Reform Commission* 5.
[85] Francis Deng, *Customary Law in the Modern World: The Crossfire of Sudan's War of Identities* (Routledge, 2009).
[86] Ibid.
[87] Ibid.

challenges a precise definition since there are a range of practices across the world; these are discussed in the next section by selecting models from various geographical places.

2.3. Application of customary law

There has been a growing interest in the practices of customary law across both developed and developing countries. It has been argued that this growing interest stems from the deep roots of these practices and the potential opportunities they provide for indigenous and tribal communities with regard to access to justice, public participation and dispute resolution.[88] Australia, Canada and New Zealand have developed a number of customary justice models, such as Circle Sentencing and Koori, Nunga and Murri Courts, in order to break down barriers faced by indigenous communities. Jordan, Afghanistan and, more recently, South Sudan have adapted their legal systems to work alongside nomadic practices of customary law. At a global level, the United Nations has recognised customary law in international instruments, including the International Labour Organization's Convention which states that indigenous peoples 'shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights' (Article 8).[89] The UN Declaration on the Rights of Indigenous Peoples articulates a similar point: 'Indigenous people have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights standards' (Article 33).[90] These statements highlight the level of support for traditional customary laws, yet acknowledge potential challenges with respect to procedural fairness and human rights.

The applications of customary law around the world reveal conflicting perceptions of the benefits and limitations of this system. In a white settler colony like Australia, lacking a treaty with Indigenous people, customary law was not recognised by the occupiers, despite its success over many millennia in resolving disputes and dealing with crime. In the eyes of the occupiers, tribal law was sometimes branded as being primitive, and associated with tribal punishments, such as spearing, banishment and payback. Clark argues that this stigma overlooks the philosophy and historical conditions of traditional and indigenous customary law and ignores the fact that the practices of customary law are a reflection of people's

[88] Lee Swepston, 'Indigenous and Tribal Peoples Convention, 1989 (No. 169)', in *The Foundations of Modern International Law on Indigenous and Tribal Peoples: The Preparatory Documents of the Indigenous and Tribal Peoples Convention, and Its Development through Supervision. Volume 2: Human Rights and the Technical Articles* (Brill Nijhoff, 2015) 343–358.
[89] Ibid.
[90] Ibid.

values, identity and historical circumstances.[91] Former Australian High Court of Australia Justice Michael Kirby articulated this point over 30 years ago: 'Just as our legal rules change, so we should expect Aboriginal laws to change and adapt. While rejecting oppressive elements, we may still find in Aboriginal traditional law answers that will restore social control to at least some Aboriginal communities'.[92] There have since been various acknowledgments of customary law in Australia as it became more widely accepted that it is an integral part of Aboriginal and Torres Strait Islander identity. For instance, under criminal law, magistrates and judges have the discretion to take customary law into consideration when sentencing Indigenous defendants. Australia's recognition of customary law is limited, however, and does not qualify it to be an additional source of law. Additionally, New Zealand's recognition of Māori people stems from the Treaty of Waitangi of 1840, a binding constitutional treaty. The treaty has, however, never been incorporated into the legal system. Nevertheless, the judicial system recognises the existence of Indigenous customs in New Zealand. Canada's recognition of Indigenous people and their justice system appears more explicit than that of New Zealand and Australia. This recognition extends over 300 years; the Treaty of Nanfan, signed in 1701, is reflected in the constitution. Such recognition remains limited, however, as it does not define Indigenous rights, including access to their legal system.[93]

In contrast, customary law in South Sudan remains the predominant source of law for this newly emerging country, where over 90 per cent of criminal and civil proceedings are dealt with through customary law.[94] There is, however, growing recognition in South Sudan that customary law is clashing with the newly introduced statutory law system. There have been claims that customary laws have unintentionally triggered conflicts in some tribal areas.[95] There have also been concerns over customary law's capacity to deal with human rights issues, such as protection of women from discrimination and violence.[96] As a result, there have been attempts to refine customary law by formalising its applications within contemporary South Sudan. These include training for both traditional mediators and formal legal officials, as well as documenting and regulating the practices of customary laws in order to prevent biased interpretation or unintended consequences of these practices.[97] It is worth mentioning that South Sudan's fragile society has prompted initiatives that work with tribes at a grassroots level in order to ensure a peaceful improvement of customary laws.

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[91] Clark (n 84).
[92] Michael Kirby, 'In Defense of Mabo' (1994) 1(51) *James Cook University Law Review* 51.
[93] Benjamen Franklen Gussen, 'A Comparative Analysis of Constitutional Recognition of Aboriginal Peoples' (2016) 40(3) *Melbourne University Law Review* 1.
[94] Deng (n 85).
[95] Mohamed Fadlalla, *Customary Laws in Southern Sudan: Customary Laws of Dinka and Nuer* (iUniverse, 2009).
[96] Deng (n 85).
[97] Ibid.

The prevalence of customary law in South Sudan makes it critical for reconciliation and dispute resolution, which explains why tribal traditional leaders have been the focus of considerable attention from state officials and the international community. This highlights the role of customary law in stabilising fragile communities and assisting in the capacity-building of war-torn countries. The exercise of customary law in South Sudan has, nevertheless, been faced with complications. The devastating impact of Sudan's civil war – which led to South Sudan's independence – also penetrated the system of customary law, where traditional leaders were weakened and local solidarity shattered as a result of mass displacements.[98] Additionally, state-building in South Sudan and the changing demographics of the country following the break from Sudan and return of refugees has placed additional pressures on customary law to adapt and reform its mechanisms to align with the newer forms of law and order.[99] It is no coincidence that a recent study has found that a majority of South Sundanese people support making changes to their customary law as long as these changes are formulated within local communities[100]. The significance of the South Sudan model stems from its statutory law being designed to accommodate customary law, which has a designated court within the judicial system.

Anthropological literature provides extensive descriptions of customary law that note long-established and diverse practices of dispute resolution and conflict management within traditional and indigenous societies across all continents. A key feature of customary law that has been the subject of scholarly debate that is unwritten; customary systems function orally through speeches, storytelling and other verbal means. It has often been suggested customary law be written down so it can be codified and statutorily recognised. Albanian customary law (*Kanun*) presents useful insights on this issue, despite its unique circumstances. The Kanun is one of the oldest customary laws in Europe to survive into the mid-twentieth century, despite having been banned and repressed for nearly half a century under the Communist regime.[101] It operates in Albania, Kosovo and Macedonia, and represents one of the oldest Albanian customary systems and was initially an unwritten code governing various social aspects, including honour and blood feuds. The *Kanun* was eventually written down in the twentieth century under twelve sections of various social rules but is not currently codified as part of Albania's statutory system. The *Kanun* is perceived as having helped bring peace and order to local communities, particularly in northern Albania; however, it is also blamed for providing conflicting interpretations of blood feuds which leads

[98] Fadlalla (n 95).
[99] Ibid.
[100] Deng (n 85).
[101] Nebi Bardoshi, 'Albanian Communism and Legal Pluralism. The Question of Kanun Continuity' (2012) 16 *Ethnologia Balkanica* 107.

to revenge killings in Albanian society. The code of honour, especially family honour, seems integral to the *Kanun* system. Joireman argues that there is a lack of engagement and understanding when it come to the *Kanun* written text, as aspects that relate to family honour are unclear and interpreted differently.[102] This ambiguity seems to have severe consequences for Albanian society with regard to revenge killings.

There is also an overreliance on the *Kanun* system because the statutory law, particularly in northern Albania and Kosovo, is seen as weak and inefficient by the local community. Joireman claims that writing down the *Kanun* has not had positive outcomes in terms of strengthening customary practices and integrating them into the statutory system.[103] On the contrary, the written text provides a rigid yet ambiguous interpretation of the *Kanun* rules. Thus, the example of the Albanian *Kanun* suggests that the assumption that writing down and codifying customary law will lead to it becoming consistent, predictable and aligned with public law may be misplaced.

Despite the issues that Albanian customary law faces with regard to blood feuds and misinterpretation, the *Kanun* seems to enjoy high levels of community acceptance as a code of law, being preferred over the statutory system. This element of legitimacy attached to traditional form of legal customs is different from the concept of recognition outlined in Hart's, Dworkin's and other Western scholars' theories. It would be useful to further examine this notion within other non-Western cultures. Afghan customary law (*Jirga*) provides a good example, especially as it functions within a war-torn society. *Jirga* is a traditional tribal institution of informal justice that operates as a mechanism of dispute settlement at a village level. It is commonly used at gatherings of local people where village elders facilitate consultation between disputing parties and reach a collective decision about the dispute, which has a binding status. *Jirga* is the primary source of justice for the village and is relied on for security and solidarity. Braithwaite calls the *Jirga* model a village and reintegrative type of justice, as it reflects a normative approach in maintaining a sense of belonging, value and norms in the village.[104] The rules of *Jirga* are unwritten and, again, have a strong focus on honour and identity. The notion of honour revolves around people's reputation and relationships within the local community. Identity is also interconnected with honour when conflict arises, because people tend to defend their family and tribal identity. There are concerns, however, that the *Jirga*'s dispute resolution techniques – being driven by the notions of honour and identity – can have implications on honour killings, gender equality and

[102] Joireman (n 83).
[103] Ibid.
[104] John Braithwaite and Ali Wardak, 'Crime and War in Afghanistan: Part I: The Hobbesian Solution' (2013) 53(2) *British Journal of Criminology* 179.

basic human rights.[105] Such concerns are not necessarily unique to Afghanistan, as this thesis shows that these are common issues arising from customary law across various countries.

Survey data on *Jirga* tends to suggest that tribal elders are preferred over state officials and religious leaders when people need to resolve disputes. An Asia Foundation survey in 2019 estimates that over 46 per cent of Afghans have used *Jirga* to solve disputes, while 42 per cent used state courts, and around 25 per cent used Islamic Sharia law. While a survey in a war-ravaged country needs to be interpreted with some caution, the survey did find that the vast majority of Afghans believed that *Jirga* mechanisms are fair and trusted (81%), that they follow local norms and values (74%), that these practices are effective at delivering justice (74%) and that they resolve cases quickly and efficiently (73%).[106] The devastation of war and inefficiency of statutory governance systems, which are tainted by corruption, have also contributed to people's reliance on *Jirga*. Wardak, however, claims that the primary reason for *Jirga* popularity relates to the traditional authority of this system, the village elders who are known for their personal qualities, social status and expertise in resolving disputes.[107] This suggests that the key concepts of *Jirga* relate to people having ownership of the justice system and being viewed as legitimate by the local community.

The moral authority of the village elders in Afghanistan seems integral to the function of *Jirga*, in terms of meeting the demands of the moral order and filling the gaps in state-provided justice. It would be useful to further examine these notions of moral authority and access to justice within a different context. From an African perspective, Somalia offers a unique perspective on customary practices. Somali customary law (*Xeer*) is a traditional dispute resolution mechanism that has been used to maintain peace and security. *Xeer* is a cultural code of values and rules of social behaviour and deals with tribal disputes over land ownership and criminal behaviour, including blood feuds. It is an elder-based customary system with a strong emphasis on identity and clan lineages. In the effective absence of the state in Somalia, councils of elders play a critical role in exerting social pressure on disputant tribes and using *Xeer* as a tool for achieving community conciliation. When a tribal conflict erupts, the elders facilitate a community gathering, traditionally under trees, to resolve the dispute, often through compensatory means.[108] In the autonomous region of Somaliland,

[105] Hamid M Khan, *Islamic Law, Customary Law, and Afghan Informal Justice* (JSTOR, 2015).
[106] Tabasum Akseer et al, *A Survey of the Afghan People: Afghanistan in 2019* (The Asia Foundation, 2019).
[107] Ali Wardak, 'Building a Post-war Justice System in Afghanistan' (2004) 41(4) *Crime, Law and Social Change* 319.
[108] Mohamed Malim Kulow, 'Silent Cry of Somali Customary Law "Xeer"', Conference paper, International Conference on Social Science, Humanities, and Education, Berlin, 21–23 December 2018.

Xeer appears to work alongside civil law, as Hart and Saed illustrate through the following case.[109]

> *A member of one tribe murdered a member of a different clan. The offender was arrested, and the victim's family was given a choice [by the court] to have the perpetrator tried in the court system [under civil or case laws] or to have the case adjudicated by a traditional council of elders [customary law]. If the latter, the agreement would be rendered on the local level [by the elders], and would be taken back to the court as a binding resolution. In this case, seven Elders from each clan were chosen to decide the case. They came together in council and agreed that the perpetrator should make amends to the family of the deceased by giving [the victim's family and clan] 120 camels or the equivalent in Somali currency. That agreement was then taken to the court and the signatures of all parties involved bound the agreement [for the families and the court].*[110]*.*

This shows the degree to which *Xeer* interacts with state officials and, sometimes, religious leaders when tackling conflicts, including security challenges emerging from the civil war, such as banditry, kidnapping and piracy.[111] The elder-based system of *Xeer* reflects the significant authority of these elders, who are revered for their wisdom, humility and integrity. However, this community-based justice has faced challenges in dealing with the demands and growing complexity of Somalia's internal conflict, particularly as local elders are reporting that they do not have the resources or training to tackle some of these issues. *Xeer* is also criticised for being a male-dominated model and not preventative in nature, as often outcomes do not last for long.[112]

While *Xeer* offers useful insights into the functioning of legal customs within a war-torn society, it is also important to examine such systems within a post-conflict environment. Timorese customary law maintained its relevance throughout Portuguese colonisation and Indonesian occupation. The literature suggests that this system has been adapting to, and prevailing over, the formal laws imposed by these external regimes for over 500 years. It was a symbol of Timorese struggle for self-governance. Timor-Leste gained its official independence on 20 May 2002, whereupon customary law was recognised in the constitution

[109] Barry Hart and Muhyadin Saed, 'Integrating Principles and Practices of Customary Law, Conflict Transformation and Restorative Justice in Somaliland' (2010) 3(2) *Africa Peace and Conflict Journal* 1.
[110] Ibid.
[111] Kulow (n 108).
[112] Hart and Saed (n 109).

(albeit as a subordinate to statutory law).[113] Timorese customary law is commonly referred to as *Adat*, which is an Indonesian term for customs, or *Lisan*, meaning local justice. *Adat* or *Lisan* is highly diverse and encompasses more than legal rules, as it also covers social norms, morality and rituals. It is also a localised justice system that provides community leadership and governance.[114] However, Timorese customary law is not unified but rather comprises a range of social norms, which are not written down or regulated. Although state courts and other formal institutions take into account the settlements of customary law, the constitutional recognition of this system is not enacted by the central government. The prevalence and inherited legitimacy of Timorese customary law suggest that the new modern state will continue to rely on its core values of settling disputes within local communities.[115]

Timorese customary law involves various traditional mechanisms for resolving family affairs, community conflicts and natural resources management. It is a bottom-up process, with disputes initially reported to the family, then to the village leaders, and eventually to the chiefs of villages, who oversee the settlement process depending on the extent of the conflict. Typically, customary law involves financial restitution, an offer of apology and other reparation gestures. It also includes public shaming, forgiveness and reconciliation through community participation. Reliance on local customs leads to a number of concerns, including settlements being unrealistic; lack of enforceability of the agreements; and an inability to resolve the underlying causes of conflicts, particularly with regard to domestic violence. Timorese customary law is viewed as a highly hierarchical and patriarchal system, which focuses on collective over individual rights, does not allow women to be involved and can subject them to abuse,[116] Despite these concerns, customary law remains the dominant mechanism for resolving disputes within Timor-Leste society.[117]

2.4 Tribal customary law in the Arab world

The preceding section outlined key practices of customary law across different jurisdictions, paving the way for discussion of its features within the Arab world. This section seeks to identify whether there are any striking differences or similarities between Arab customary practices and the broader concept of customary law. The previous section found that the validity of customary law relies on local community acceptance. It also stems from the recognition of traditional authority figures, who are perceived as trusted and integral within

[113] Laura Grenfell, 'Legal Pluralism and the Rule of Law in Timor Leste' (2006) 19(2) *Leiden Journal of International Law* 305.
[114] Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012).
[115] Grenfell (n 113).
[116] Carolyn Julie Graydon, *Valuing Women in Timor Leste: The Need to Address Domestic Violence by Reforming Customary Law Approaches While Improving State Justice* (Melbourne Law School, 2016).
[117] Grenfell (n 113).

the system. On the other hand, customary law was shown to face challenges with regards to its association with deep-rooted social concepts like honour and identity, which sometimes trigger blood feuds and other violations of human rights. It has also been criticised for being a male-dominated institution that can perpetuate gender bias. These issues are further examined within the context of Arab customary law.

There is substantial literature on customary law practices across a number of Arabic countries, most of which are historic and generic narratives of Bedouin customs. Customary law in the Arab world is conceptually tribal and historically driven by Bedouin customs and norms, which predate Islam.[118] Frank H. Stewart, one of few scholars to undertake comprehensive research into Bedouin customary law, argues in 1987 that customary law is a key feature of Bedouin people in the Arab world, regulating almost every aspect of their lives.[119] . Stewart's findings provide a valuable foundation for subsequent research on the subject. Haley Bobseine offers the most recent study on tribal law, which, although focused on Iraq, provides useful insights that seems applicable to tribal people across the region.[120] Various other scholars have written on this subject, but their contributions are either dated or limited to short articles. Like Stewart, Mohammad Abu-Hassan offers substantial research in the Arabic language yet much of it is outdated.[121] Most of the other available literature is focused on specific countries rather than examining the application of customary law across the Arab world. For example, Palestine has been the subject of extensive research due to interest in its conciliation model (*Sulha*), which is used as a form of alternative dispute resolution.[122] Sulha is presented in practice through Chapter Four and Five.

Stewart claims that Arab customary law is driven by the desire to achieve justice. He argues that the notion of peace being more important than justice does not always appeal to tribal Arabs as they believe conciliation cannot satisfy both parties. Stewart suggests that tribal Arabs draw on a litigation process, yet he acknowledges that most blood feuds are settled by compensation, which often involves financial reparation.[123] Stewart seems to indicate that Arab customary law appears to focus through its process on the desire for justice, but its end result is often conciliation through blood money and other forms of restitution. Asfura-Heim argues that the objective of Iraqi customary law is to achieve peace and stability through the restoration of harmony in the community, and that the system's role is to preserve traditional

[118] Patricio Asfura-Heim, 'Tribal Customary Law and Legal Pluralism in Al-Anbar, Iraq', in Deborah Isser (ed), *Customary Justice and the Rule of Law in War-torn Societies* (US Institute of Peace, 2011) 239–284.
[119] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[120] Bobseine (n 58).
[121] Abu-Hassan (n 16).
[122] Sharon Lang, 'Sulha Peacemaking and the Politics of Persuasion' (2002) 31(3) *Journal of Palestine Studies* 52.
[123] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

social structure and values.[124] Bobseine reinforces that the function of the tribal law in Iraq is to maintain community peace and collective responsibility to prevent an escalation of conflict and secure stability.[125] Corstange suggests that customary law is a means to achieve rule of law,[126] with his findings explaining how the security vacuum in Yemen has prompted customary law to focus on public order. Pely argues that customary law in Palestinian society is focused on peace-making through alternative dispute resolution practices,[127] while Abu-Hassan suggests that the goal of tribal law in Jordan is to achieve conciliation and normalise relations within the tribes.[128] Thus, all these authors stress the adaptability of tribal customary practices which stems from local needs rather than their distinctive differences.

A possible reason for these varying analyses is that customary law appears to adapt its focus to meet local needs and fill gaps in local justice, rather than the system being conceptually different between these countries. Stewart recognises this reality, noting that tribal customary law evolves to remain relevant and survive cultural socio-political changes.[129] Thus, Iraqi customary law is adapting its focus to meet the community's need for security and stability in the post-war context. Similarly, in Yemen the pressure on tribal customary law is to provide law and order, while in Palestine and Jordan the focus is on maintaining peace and social harmony. However, this does not fully explain the prevalence of tribal customary law in the Arab world, particularly as these mentioned objectives overlap. As outlined, the common reasons revolve around the increased demand for justice, the weakening of statutory law and the need to fill the 'justice gap'.[130]

A key feature of tribal customary law noted by Stewart outlines that the system is faster, cheaper and perceived as less corrupt than state legal systems, which explains why local tribal people prefer this system over statutory law. Additionally, according to Stewart tribal people perceive state legal systems as incompatible with their identity and social norms, particularly with regards to formal court procedure and the use of imprisonment, which contrast with customary law's provision for coexistence and community support.[131] Ashura-Heim agrees and expands upon these features, arguing that tribal law is perceived as fair and competent in contrast with state system, which lends legitimacy to the former. Asfura-Heim states that customary law is an expression of collective identity, reinforcing loyalty and

[124] Asfura-Heim (n 118).
[125] Bobseine (n 58).
[126] Daniel Corstange, 'Tribes and the Rule of Law in Yemen', Conference paper, Annual Conference of the Middle East Studies Association, Washington, 2008).
[127] Pely (n 3).
[128] Abu-Hassan (n 16).
[129] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[130] Bobseine (n 58).
[131] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

solidarity within the tribal community. Dupret, in his research on customary law in Yemen and Egypt, reports that the enforcement of tribal solidarity and identity is the common feature of local customary law, which provides critical support for conciliation.[132] Al-Abbadi argues that tribal customary law is built on community consensus, as it uses kinship solidarity and Bedouin values to achieve peace and security.[133] This indicates that social solidarity and legitimacy underpin the core features of tribal customary law.

Bobseine argues that tribal law in Iraq is characterised as a client-centric, localised system that facilitates better access to justice and services. According to Bobseine, there is increased demand for tribal law in Iraq because it is perceived as fairer and less corrupt than the state system.[134] Tribal law thus enjoys growing influence in Iraq as a result of the existing security vacuum. Corstange's findings in Yemen are similar: since the civil war, there has been a renewed interest in the role of tribal law in providing local security. Corstange emphasises the capacity of tribal law institutions to provide civil order and economic development.[135] This was echoed by Bobseine, who argues that tribal law in Iraq is not positioning itself as an adversary or rival to the state system but, instead, complements it by filling the gaps in state-sponsored justice.[136] Al-Abbadi similarly reports that tribal customary law has operated alongside statutory law under the Ottoman caliphate, British rule and the emerging Kingdom of Jordan.[137] However, Dupret notes that state authorities in Egypt, in contrast to much of the region, deny the authority and relevance of customary law.[138]

This conflicting recognition of tribal customary law suggest that the realisation of legal pluralism in the Arab world is at different levels; sometimes customary law functions in parallel with state law, and at other times state law acknowledges the authority of customary law. The concept of legal pluralism will be outlined as part of the theoretical discussion in the next chapter. The relationship between customary law and state legal system will also be examined in Chapter Seven, using Jordan as a case study. The literature review indicates that the characteristics of the traditional authority of customary law are a determining factor in this debate and for the overall validity of this system. Stewart argues that the sheikhs are the central feature of tribal customary law in the Arab world as they are the guardians and administrators of customary practices. Sheikhs, according to Stewart, play various roles,

[132] Baudouin Dupret, 'Legal Traditions and State-centered Law: Drawing from Tribal and Customary Law Cases of Yemen and Egypt', in Dawn Chatty (ed), *Nomadic Societies in the Middle East and North Africa* (Brill, 2006) 280–301.
[133] Al-Abbadi (n 5).
[134] Bobseine (n 58).
[135] Corstange (n 126).
[136] Bobseine (n 58).
[137] Al-Abbadi (n 5).
[138] Dupret, 'Legal Traditions and State-centered Law' (n 132).

including interacting with state officials and religious leaders when mediating between disputant parties. They also have differing levels of authority, including adjudicators, who are the highest authority for settlement of serious cases when they are being appealed.[139] Terris and Inoue-Terris incorporate Stewart's narrative of sheikhs as charismatic figures with perceived honorary status and quasi-legal standing within the tribal community. Sheikhs have a high level of discretion due to the flexibility of customary law, and some are known for being adept at handling particular legal customs.[140] This does not seem unique to Arab customary law, as it was shown previously in the cases of Albania, Afghanistan and Somalia that traditional authorities have significant influence within this system.

Corstange, however, warns that there are distorted images of sheikhs and Arab tribal law, as either being romanticised or described as uncivilised. Customary law, according to Corstange, is a basic feature of tribal people whose lives are imperfect.[141] Bobseine discusses current developments in the sheikhs' role in Iraq, including an emerging distinction between traditional 'honourable' sheikhs and 'new sheikhs', who are perceived as corrupt and subservient to state officials. While traditional sheikhs continue to play a critical role in providing security at a village level, Bobseine comments that 'new sheikhs' have become leaders in recent times as an avenue for gaining influence and wealth through political and business connections.[142] It appears that the devastation of war in Iraq is impacting tribal law, with these emerging leaders suspected of deception and corruption. However, the influence of civil war and anarchy on the integrity of tribal law is beyond the scope of this thesis.

There are a number of issues that have been documented with regards to the practice of tribal customary law in the Arab world. Dupret argues that tribal customary practices in Egypt and Yemen are often inconsistent and sometimes applied in a superficial way as an expression of tradition.[143] This appears to refer to the tendency of seeing customary practices as a product of traditional heritage rather than a mechanism of dispute resolution. Stewart also identifies that the outcomes of tribal law are sometimes focused on symbolic amends, like publicly retracting a defamatory statement to reconcile with the opposing tribe. This seems to relate to the gesture of goodwill which is common within Arabic culture. Stewart also highlights that tribal law views offences involving women as an attack on the

[139] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[140] Robert Terris and Vera Inoue-Terris, 'A Case Study of Third World Jurisprudence-Palestine: Conflict Resolution and Customary Law in a Neopatrimonial Society' (2002) 20(1) *Berkeley Journal of International Law* 462.
[141] Corstange (n 126).
[142] Bobseine (n 58).
[143] Dupret, 'Legal Traditions and State-centered Law' (n 132).

honour of the family and the whole tribe, which can further disadvantage women.[144] Bobseine reinforces such concerns, noting that tribal law can sometimes be harmful to marginalised women due to patriarchal gender dynamics.[145] Asfura-Heim illustrates that tribal customary law is based on traditional values, like honour codes, which may contribute to honour killings and gender violence.[146] Although the code of honour is not unique to Arab tribal law, it has significant weight in its practices. For this reason, the tribal concept of honour will be further examined in the literature and the thesis's analysis, particularly in Chapter Six.

Furr and Al-Serhan outline some the challenges facing Arab tribal customary law in relation to blood feuds and women's rights. They argue that although tribal law is focused on maintaining social harmony, a number of its processes raise human rights concerns as they are based on collective punishment.[147] This refers to the customary practices of blood money and tribal evacuation in Jordan, which have been the subject of previous research and will be further examined in this thesis. For this reason, as Watkins argues, a number of these processes have undergone modification to alleviate these concerns. For example, tribal evacuation has been restricted to the direct relatives of the offenders rather than the extended family.[148] Corstange notes that often concerns around the prevalence of tribal law view it as an impediment to the rule of law. Tribal law, according to Corstange, tends to be seen as a source of lawlessness. However, issues like revenge killings and blood feuds should be viewed in the context of the security vacuums in countries like Yemen, rather than as a result of tribal law in itself.[149] In fact, tribal customary law is seen to emerge out of a desire to address the issues relating to a lack of security and access to justice.

As previously indicated, a striking feature of customary law in the Arab world relates to the code of honour, as tribal Bedouin people place a high value on their honour. A number of scholars have drawn attention to the application of honour within Arab customary law. Stewart describes the concept of honour as the most remarkable feature in the construction of legal institutions. Honour, according to Stewart, is a legal expression, referring to the right to be treated with respect – conceptually referred to as 'face' – whereby an individual or a tribe could be dishonoured if a certain conduct is performed or not performed. For this reason, Stewart points out that honour impacts on people's daily lives and is used in their contracts with others – when someone makes an agreement, it is a pledge of honour.[150]

[144] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[145] Bobseine (n 58).
[146] Asfura-Heim (n 118).
[147] Furr and Al-Serhan (n 30).
[148] Watkins (n 24).
[149] Corstange (n 126).
[150] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

Hence, it features in the processes of tribal customary law and is a driving force in ensuring compliance. However, while this account depicts honour as a positive force used to enable people to deliver their commitments, Furr and Al-Serhan argue that it is also associated with revenge and honour killings, noting that in a patriarchal society, honour sometimes serves to suppress women and legitimise gender-based violence.[151] As a result, the code of honour may invite conflicting views on the application of tribal customary law.

Asfura-Heim highlights that honour plays a critical role in strengthening community cohesion and survival, whereas shameful conduct causes disruption and division. Tribal law, according to Asfura-Heim, regulates all aspects that relate to the code of honour, often through blood money and other types of compensation. Asfura-Heim asserts that honour reinforces traditional masculine values, including safeguarding women. For this reason, offences involving women are offences of family dishonour and lead to serious consequences, with both customary and statutory law perceiving honour as a mitigating factor in some crimes.[152] Bobseine argues that some practices of tribal law in Iraq undermine women's rights and hinder social equality. For example, a customary resolution may involve an arranged marriage as a peacebuilding measure to re-establish trust between disputant tribes.[153] However, Stewart argues that honour involving women's status is one aspect of the concept of honour applied in the tribal law setting.[154] Pely asserts that honour is purposefully applied to exert social pressure on the disputing parties to reconcile, as displaying generosity and forgiveness restores people's honour and sense of pride.[155] This shows that the restoration of honour has multiple dimensions. It also indicates that honour is interconnected with the notion of identity and sense of belonging, which will also be examined in Chapter Six.

Al-Abbadi asserts that tribal law in the Arab world was built on kinship identity, which is the basis of tribal society in the Arabian desert. The notion of identity is embedded in every aspect of Arab tribal law, as it operates to preserve kinship, relationships and tribal solidarity. Al-Abbadi further states that tribal identity is intertwined with moral values, religious beliefs and national patriotic identity.[156] The identity of the sheikhs is integral to tribal law because of the delicate balance between keeping the peace and security within a tribal mosaic. Watkins highlights customary settlements in Jordan as a manifestation of tribal and national identity. Watkins notes that the prestige associated with the identity of Bedouin heritage has encouraged other sectors of the population, including Palestinian Jordanians and

[151] Furr and Al-Serhan (n 30).
[152] Asfura-Heim (n 118).
[153] Bobseine (n 58).
[154] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[155] Pely (n 3).
[156] Al-Abbadi (n 5).

Circassians, to embrace tribal customs.[157] This indicates that tribal identity is reconstructed in the Jordanian community and exhibited through customary practices. On this basis, Terris and Inoue-Terris argue that social solidarity is directly linked to notions of identity and honour being driven by a sense of obligation. Tribal customary law facilitates informal settlements based on close networks of kinship and social norms, rather than being regulated in a statutory or corporate setting. According to Terris and Inoue-Terris, tribal law stems from a patriarchal system that reinforces identity through support and protection.[158]

Corstange suggests that the revival of tribal customary law in Yemen reflects two realities: the prevalence of social tribal identity, and public support for tribal law. According to Corstange, the maintenance of tribal identity stems from the benefits of support and access to justice gained from customary practices and tribalism, whereas the national identity is weakened by the collapse of the state system in Yemen. Corstange argues that in the current context of civil war in Yemen, there is no credible state supplier of the rule of law; thus, tribal law fills a gap by providing some security and sense of tribal belonging.[159] Asfura-Heim examines this in the context of tribal customary law in Iraq, where there is a strong group identity supported by the rise of tribalism and the prevalence of customary practices. Asfura-Heim argues that Arab tribal people believe that an honourable life is possible only within the confines of one's own community; hence, conformity with social norms is critical to the maintenance of tribal identity. Asfura-Heim suggests that, in this sense, customary practices are an expression of the collective tribal identity in Iraq, which helps to regulate relations between the individual and the group.[160] This, it appears that concepts of honour and identity are operationalised within tribal customary law for the purpose of achieving conformity, loyalty and solidarity with the community.

The existing literature on the procedures of tribal customary law in the Arab world highlights five mechanisms: evacuation (*Jalwa*), truce (*Atwa*), conciliation committee (*Jaha*), blood money (*Dia*), and conciliation settlement (*Sulha*). These mechanisms are often carried out systematically in serious cases of blood feuds, whereas other crimes may only requires a truce and conciliation committee to reach a settlement.[161] Abu-Hassan cites three types of tribal penalties that deal with serious cases of blood feuds: expulsion, evacuation and compensation. Expulsion occurs in extreme cases, with the offender forced to leave the local community as per the tribal settlement, while evacuation is an instant response to blood feuds whereby the offender's relatives leave their homes to forestall revenge killings. Abu-

[157] Watkins (n 24).
[158] Terris and Inoue-Terris (n 140).
[159] Corstange (n 126).
[160] Asfura-Heim (n 118).
[161] Furr and Al-Serhan (n 30).

Hassan explains that when a blood feud occurs, it is tribal custom for relatives of the offender to leave their houses and seek protection from another neutral tribe. This practice, according to Abu-Hassan, is designed to prevent confrontation and allow a period of calm between the disputing tribes.[162] Furr and Al-Serhan report that evacuation has been modified by agreement between tribal leaders and the state legal system in order to limit the number of families that have to evacuate (to the second level of kinship), with agreement also that children, women and the elderly should not be forced to evacuate.[163] This signifies that tribal customary practice in Jordan has undergone some changes in recent time. For this reason, this thesis will examine the practice of tribal evacuation in Jordan and its impact on the community.

Furr and Al-Serhan also state that local police often facilitate the evacuation and protect the property of the offender's relatives. This enables the disputant tribes to agree on a period of truce during which a conciliation settlement can be negotiated. According to Furr and Al-Serhan, the truce is designed to prevent revenge killings, with the truce agreement binding by virtue of tribal guarantorship. This arrangement involves two types of guarantors: one ensures that protection and security is provided to the offender's relatives from the victim's family, and the second ensures that the offender's family fulfils its commitment to reconcile with and compensate the victim's family.[164] Al-Abbadi articulates that the role of guarantor is vital to tribal law as it provides a policing function in the tribal society, ensuring compliance with the truce agreement and persuading the disputant tribes to reconcile. Al-Abbadi asserts that any breaches of the agreement are regarded as a serious offence in the eyes of Arab tribal people; tribal customary law regards these as an attack on the honour of the guarantor, which threatens tribal cohesion.[165] Refer to Case 4.6 in Chapter Four for further insight.

Abu-Hassan reports that the next step in this process is the function of the conciliation committee, which consists of a group of neutral tribal leaders (sheikhs) who come together for the sole purpose of bringing an end to the conflict. According to Abu-Hassan, members of the conciliation committee are influential tribal leaders known for their expertise in resolving conflicts and have a sense of wisdom and humility. Abu-Hassan refers to this committee as the foundation stone of the tribal law.[166] Pely states that the conciliation committee has a moral authority and certain legitimacy, as it is customary for the disputing parties to seek its intervention and to give their authorisation for it to manage the dispute resolution process. Pely notes that the conciliation committee will ensure it has the express consent of the disputing parties, often by virtue of a traditional statement delivered at a local gathering to

[162] Abu-Hassan (n 16).
[163] Furr and Al-Serhan (n 30).
[164] Ibid.
[165] Al-Abbadi (n 5).
[166] Abu-Hassan (n 16).

initiate the process of conciliation. According to Pely, securing mutual consent is critical to the integrity and potential success of the process as it provides the disputing parties with a sense of ownership and self-determination over the outcome.[167] For this reason, it appears that the rulings of these committees have considerable weight, particularly as they are also backed by the influence of the guarantors and public tribal support. Furr and Al-Serhan highlight this by noting the specific rituals that are associated with this process. These include erecting a Bedouin tent in the local community to denote the mission of this committee. It is also reflected in the refusal of the committee to drink the host's cup of coffee until its requests are met, which constitutes social pressure on the parties, as continued refusal would dishonour the host.[168] Stewart also documents the seriousness of failing to honour the guarantor's promise through the metaphorical 'blackening of the face'.[169]

As Stewart outlines, the conciliation committee settles most blood feud-related conflicts through a combination of symbolic amends and blood money, which is determined based on the circumstances and often follows a ritual negotiation over the amount.[170] Al-Abbadi reports that blood money in Jordan serves as a restitution for the victim's family and punishment for the offender's family. It also aims to prevent revenge killings, as often blood money is divided into three instalments over a period of three years, intended to facilitate certain outcomes: the re-establishment of good relations between the disputing tribes, easing the financial burden on the offending tribe, and ensuring the injured party continues to abide by the conciliation agreement.[171] Asfura-Heim argues that blood money in Iraqi tribal law is not a punishment, but it has an obligatory and monetary value.[172]

The final step of the Arab tribal customary law has been a subject of interest for scholars, reflecting its distinctive nature as a tool for achieving security and peace. Abu-Hassan states that the conciliation settlement is an ancient Arab concept and describes it as a masterpiece of tribal customary law in the Arabian desert. It functions to restore relationships and redeem the honour of both parties. Abu-Hassan argues that it is a platform for local community cooperation and empowerment, as the conciliation committee assembles a peace-making gathering in a Bedouin tent, attended by community leaders, state officials and civil organisations.[173] The use of a Bedouin tent is often preserved for serious crimes, as tribal dispute resolution practices can be held at the sheikh's home. Pely describes the conciliation

[167] Pely (n 3).
[168] Furr and Al-Serhan (n 30).
[169] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[170] Ibid.
[171] Al-Abbadi (n 5).
[172] Asfura-Heim (n 118).
[173] Abu-Hassan (n 16).

settlement as a highly ritualised and ceremonial practice, filled with symbolic amends and goodwill gestures to highlight the honourable act of making peace. This practice saves face and restores honour for all parties, yet warns against any vengeful act.[174] Asfura-Heim asserts that the conciliation settlement follows a structural process of negotiation and social pressure led by the conciliation committee. According to Asfura-Heim, there are two types of conciliation settlements: the public peace-making practice, and a private practice, which takes place internally when the crime or conflict involves one tribe.[175] It appears that this peace-making tool is a dynamic process of rituals and cooperation.

Stewart asserts that all conditions agreed as part of the conciliation settlement are given legal force by means of the three-party contract, which is a pledge of honour by the disputing parties given to the guarantors that they will abide by the agreement. Any party that breaches the settlement will be accountable to their guarantor. Stewart states that Arab tribal law has an appeal process, whereby any of the disputing parties can have their case reconsidered by a higher group of tribal arbitrators.[176] Bobseine reports that contemporary tribal customary law in Iraq relies on various forms of evidence, such as property deeds, court orders, autopsy reports, physical damage reports, witness statements and other written documentation.[177] Tribal law can thereby deal with a range of civil and criminal matters including ownership disputes, car accidents and personal crimes. Furr and Al-Serhan argue that tribal customary law relies on oaths (*Yimin*) as a source of evidence, underlining the value of honour in this process.[178] Al-Abbadi states that the purpose of these rituals is to ensure justice is perceived as being achieved, and as being based on the principles of Bedouin customs that underpin the system of customary law in the Arab world.[179] Stewart posits that evidence in Arab tribal customary law typically takes the form of footprints, documents or confessions. Oaths in this sense are rarely used, only when other forms of evidence are not available.[180]

2.4.1. Tribal customary law in Palestine

Aref al-Aref was one of the first scholars to write about tribal customary practices in Palestine. He published a book on Bedouin law in 1933 when he was the Governor of Bir Saba', which at the time was the centre of the Bedouin judicial system. Aref provides a historical narrative of Bedouins' life and their customary practices.[181] Kennett also published

[174] Pely (n 3).
[175] Asfura-Heim (n 118).
[176] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[177] Bobseine (n 58).
[178] Furr and Al-Serhan (n 30).
[179] Al-Abbadi (n 5).
[180] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[181] Aref Al-Aref, *Justice Among Bedouins* (Institute for Arab Studies, 2004).

a book on Bedouin justice in the Sinai Peninsula in 1925, following his service as a British official in the region. Kennett presents a series of commentaries on Bedouin law, such as the traditional ritual of trial by ordeal and blood money.[182] These descriptive accounts cover tribal people in some parts of Palestine at the time. El-Barghuthi published an article in 1922 outlining the basic practice of Bedouin law. El-Barghuthi discusses the judicial courts among the Bedouin of Palestine, which handle the customary practices of semi-nomadic populations, including the practice of tribal evacuation that existed to that date.[183] Although these remain useful for historical and comparative studies, this thesis focuses on analysing current practices, particularly within the context of Jordan's experience.

Khalil argues that tribal customary law in Palestine continued to operate to varying degrees under Ottoman, British, Jordanian, Egyptian, Israeli and Palestinian Authority rule, which influenced the changes to this informal system. Khalil notes that despite the limitations on and some modifications to tribal law over the years, certain practices are still present in Palestine. The most notable function of tribal law is the process of conciliation settlement (*Sulha*).[184] Abu-Nimer posits that the tribal conciliation process is embedded in the local community and regarded as a legitimate tool for collaborative work when managing conflict. According to Abu-Nimer, the conciliation rituals enable the disputant parties to vent their anger and take ownership of the restoration of their relationship with the other party. Abu-Nimer argues that this practice challenges Western assumptions regarding conflict resolution in Arab tribal context.[185] Khalil argues that while the conciliation settlement is partly a reflection of the tribal background of Palestinian society, it is also a genuine expression by the society's desire for self-determination.[186] For this reason, this process was heavily relied on under the Israeli occupation as it provided an alternative mechanism for dispute resolution.

Welchman reports that the tribal conciliation practice was revived in the occupied territories when the First Intifada started, as a means of adopting a self-governing strategy in the face of occupation. The conciliation rituals became a platform to assert social solidarity and contemporary Palestinian life under the occupation. Welchman outlines cases where the rulings of tribal law in Palestine were regarded as severe. This served a number of objectives: deterring other offenders, preventing the victim's family from pursuing retaliation, and containment of the situation. Welchman notes that the Palestinian Authority, Hamas and

[182] Austin Kennett, *Bedouin Justice: Law and Custom Among the Egyptian Bedouin* (Routledge, 2013).
[183] Omar Effendi El-Barghuthi, *Judicial Courts Among the Bedouin of Palestine* (Journal of the Palestine Oriental Society, 1922).
[184] Asem Khalil, 'Formal and Informal Justice in Palestine: Dealing with the Legacy of Tribal Law' (2009) 1(184) *Etudes Rurales* 169.
[185] Abu-Nimer (n 33).
[186] Khalil (n 184).

other factions have tapped into tribal law to build on its community-based legitimacy and garner public support.[187] Khalil argues that although the majority of people interviewed in his survey believed that tribal law has a positive impact on the Palestinian community, its resolutions are not always fair and sometimes did not prevent retaliation. Khalil suggests that conciliation settlements achieve peace through social pressure and at the expense of justice.[188] Zilberman argues that although there are concerns and doubts about the function and integrity of customary law, it provides a viable alternative for Palestinians to resolve their conflict and maintain internal social order. For example, in East Jerusalem, most traffic accidents involving Palestinians are settled through local customary law.[189]

Much of the existing literature refers to conciliation practices within Palestinian communities in Israel, in various settings including the Palestinian–Israeli conflict, neighbourhood disputes, and other civil or criminal offences. Jabbour, a leading scholar in these practices and a founder of the House of Hope in the Galilee region of Israel, published the book of 'Sulha Palestinian Traditional Peace-making Process' (1996), which discusses the role of the conciliation committee (*Jaha*) in this process and provides a useful account of peace-making activities between families and tribes. Jabbour explains that the *Jaha* is the 'anger absorber', with everything in *Sulha* depending on the wisdom and humility of the peacemakers in order to gain the trust of the community.[190] Pely quotes a retired Israel Supreme Court judge: 'without Sulha, the Arab part of the country will descend into chaos'.[191] This reflects the unique contribution of these peacemakers.

2.4.2. Tribal customary law in Iraq

The existing literature on Iraq is also a mixture of historical and contemporary descriptions of tribal customary law. Stewart refers to a number of scholars who documented these practices through the modern history of Iraq. Fariq al-Misher was a sheikh of an influential tribe in central Iraq and published a book in 1941, which contains official documents relating to tribal disputes settled by customary law. Mustafa Huseyn produced a book in 1967, which consists of government archives and first-hand resources on tribal law's interaction with state government and its use of blood money. Al Nafisi wrote in 1973 about customary law practices among the Bedouin in southern Iraq and Kuwait.[192] This indicates the prevalence of tribal law in Iraq and surrounding areas over the past century. It also appears from the

[187] Lynn Welchman, 'The Bedouin Judge, the Mufti, and the Chief Islamic Justice: Competing Legal Regimes in the Occupied Palestinian Territories' (2009) 38(2) *Journal of Palestine Studies* 6.
[188] Khalil (n 184).
[189] Ifrah Zilberman, 'Palestinian Customary Law in the Jerusalem Area' (1995) 45(3) *Catholic University Law Review* 795.
[190] Elias J Jabbour, *Sulha* (House of Hope Publications, 1996).
[191] Pely (n 3).
[192] Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (n 2).

emerging literature that tribal customary practices have gained new momentum since the collapse of the Saddam Hussein regime. Asfura-Heim asserts that tribal law in Iraq has not only endured significant changes within the country but has continued to provide a viable alternative to statutory law and fills a vacuum in security. Asfura-Heim argues that the recent revival of tribal law in Iraq is due to increased demand for security and justice in the absence of the central government. According to Asfura-Heim, the new state system must address the contemporary challenges of tribal law while, on the other hand, utilising the opportunity this system provides for accessible dispute resolution in the post-conflict period.[193] It appears that there is an emerging recognition of tribal law in Iraq.

Hamoudi, Al-Sharaa and Al-Dahhan argue that, despite the constraints of tribal law, its recent revival is necessary and useful, particularly as there are very serious problems relating to state legitimacy in Iraq. Hence, a closer relationship with tribal customary law would enhance the state system's capacity and public acceptance. According to Hamoudi, Al-Sharaa and Al-Dahhan, Iraqi people have a strong affiliation with their tribe; hence, the customary system is directly relevant to maintaining public order.[194] Asfura-Heim reports that about 80 per cent of Iraqis claim a tribal identity, which connects with their culture and sense of solidarity within society. Linkages between the state system and tribal customary system can assist in establishing a new social order and a fresh approach to the concept of justice within Iraq.[195] However, it remains unclear how the state and tribal systems are forging their relationship in a post-conflict era.

Bobseine argues that tribal law in today's Iraq plays a significant role in negotiating disputes, preventing reprisals and facilitating access to justice within local communities, and that tribal sheikhs are currently cooperating with statutory law but experience a lack of proper support from the state. Sheikhs report that they are overwhelmed by the increased demand for justice and the challenges of filling the gap as the state's capacity has weakened over recent years. However, Bobseine also notes grievances among local residents that some sheikhs are taking advantage of tribal warfare by using social coercion for material benefit.[196] It appears that social coercion is an area of concern for tribal customary law. Hamoudi, Al-Sharaa and Al-Dahhan argue that the vast majority of tribal disputes in Iraq are resolved through customary law in a mutually beneficial fashion, with tribes rarely resorting to violence against each other. According to Hamoudi et al., tribes are in 'repeat plays' in their social

[193] Asfura-Heim (n 118).
[194] Haider Ala Hamoudi, Wasfi H Al-Sharaa and Aqeel Al-Dahhan, 'The Resolution of Disputes in State and Tribal Law in the South of Iraq: Toward a Cooperative Model of Pluralism', in Michael A Helfand (ed), *Negotiating State and Non-State Law: The Challenge of Global and Local Legal Pluralism* (Pepperdine University School of Law, 2015) 215-260.
[195] Asfura-Heim (n 118).
[196] Bobseine (n 58).

interactions and constant engagement in disputes; hence, it is in their best interest to seek a resolution rather than confrontation. Aggrieved tribes are mindful that if they choose confrontation over conciliation, they set a precedent whereby an opposing tribe may refuse their future overtures for making peace.[197]

Asfura-Heim describes tribal law in Iraq as dealing with a range of civil and criminal disputes, through remedies including apology, compensation, forgiveness and conciliation. As in other countries, tribal law in Iraq also uses a number of mechanisms for defusing tension, such as exile, sanctuary, truces and the use of intermediaries, all of which are designed to prevent the escalation of conflict. Asfura-Heim asserts that tribal law in Iraq is focused on securing stability rather than achieving justice,[198] suggesting a local feature of customary law focusing on security. Bobseine argues that the relationship between tribal law and state system in Iraq has multiple dimensions that overlap and coordinate with, and sometimes challenge, each other.[199] Bobseine further reports that sheikhs are now taking on a security coordination role in local communities as they communicate and share intelligence with the state. This has enabled sheikhs to establish strong networks with business and political leaders, which provide the opportunity for some to usurp influence and wealth by offering paid protection services to oil companies and other international companies. As noted earlier (section 2.4), Bobseine labels these 'new sheikhs' to distinguish them from the 'traditional sheikhs' historically viewed as legitimate bearers of authority.[200]

2.4.3. Tribal customary law in Yemen

Research on tribal customary law suggests that, as elsewhere in the Middle East, customary practices have existed in Yemen for centuries. Rossi and Serjeant collated a set of texts that appear to date back to the sixteenth or the very early seventeenth century.[201] These offer insight into the extent to which tribal law was embedded into social life in Yemen. Anthropologist Najwa Adra gives a more recent account into tribal law in Yemen in her PhD dissertation on the concept of tribe, exploring tribal law in rural Yemen and the notion of honour and women's status in this system.[202] Varisco, in an article on water allocation systems in Yemen, examines the viability of tribal customary law for regulating access to water and land and recognises that tribal customary law has been the basis of dispute

[197] Hamoudi, Al-Sharaa and Al-Dahhan (n 198).
[198] Asfura-Heim (n 118).
[199] Bobseine (n 58).
[200] Ibid.
[201] Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (n 2).
[202] Najwa Adra, *Qabyala: The Tribal Concept in the Central Highlands of the Yemen Arab Republic* (Temple University, 1982).

resolution in Yemen.[203] Stewart identifies these and other scholars in concluding that tribal law is highly developed in Yemen.[204]

Al-Dawsari states that tribal law in Yemen is employed to resolve a range of disputes involving tribes, extractive mining companies and government departments. It deals with conflicts over resources, development services and natural resources. According to Al-Dawsari, tribal law has a role to play in containing complex issues such as revenge killings and civil unrest, as it provides a level of security within local communities.[205] Adra asserts that tribal law acts as a code of conduct in Yemen and hence intersects with all aspects of social behaviour, including those relating to marriage, divorce or inheritance, which historically were not covered by customary practices. Adra argues that tribal law in Yemen brings people together by binding them to a set of expectations, which reinforces a sense of collaboration and conciliation.[206] Al-Zwaini suggests that tribal law in Yemen focuses on collective responsibility and restitution of social balance, and is driven by a traditional code of honour and a desire to prevent conflict. Al-Zwaini, however, argues that the process of tribal law in Yemen is focused on containment rather than resolution of conflict, ensuring that disputant parties refrain from further aggression and comply with keeping the peace.[207]

Al-Dawsari recognises that tribal customary law faces challenges in Yemen, such as the gender and generation gap, revenge killings and achieving permanent settlement. Al-Dawsari argues that most of these challenges stem from the deterioration in security, which undermine the effectiveness of tribal law and its ability to resolve conflicts. That said, approximately 90 per cent of conflicts in Yemen nowadays are resolved through tribal law.[208] This correlates with Corstange's findings that the dysfunctionality of the state system and the rise of violence and poverty in Yemen have overwhelmed the tribal customary system through growing demand to fill the gaps in state-sponsored justice. Corstange argues that the heavy reliance on tribal law is a result of the absence of central government and increased tribal warfare and revenge killings due to instability and lawlessness in Yemen. He stresses, however, that focusing on tribal wars and revenge killings creates a biased view, as

[203] Daniel Martin Varisco, 'Sayl and Ghayl: The Ecology of Water Allocation in Yemen' (1983) 11(4) *Human Ecology* 365.
[204] Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (n 2).
[205] Nadwa Al-Dawsari, *Tribal Governance and Stability in Yemen* (Carnegie Endowment for International Peace, 2012), <https://carnegieendowment.org/2012/04/24/tribal-governance-and-stability-in-yemen-pub-47838>.
[206] Najwa Adra, 'Tribal Mediation in Yemen and its Implications for Development' (2011) 19 *Austrian Academy of Sciences* 1.
[207] Laila Al-Zwaini, 'State and Non-state Justice in Yemen', Conference paper, Conference on the Relationship between State and Non-State Justice Systems in Afghanistan, Kabul, December 2006.
[208] Al-Dawsari (above n).

tribal peace is still more prevalent than tribal conflict.[209] For this reason, the role of tribal law in Yemen should be examined through a balanced lens.

Al-Dawsari highlights that the generational gap represents a critical challenge for tribal law in Yemen, with young people increasingly disengaged from social life and exploited by the factions involved in the civil war. As in Iraq, the rise of 'new sheikhs' is undermining the integrity of tribal law with these figures accused of exploiting their positions for personal financial and political gain rather than for the good of the community. Al-Dawsari argues that revenge killings also undermine the legitimacy of tribal law in Yemen, with sheikhs sometimes failing to secure a permanent settlement of complex tribal conflicts, which disrupt local peace. Tribal law also struggles to ensure the protection of public facilities, as these belong to the state system and are perceived to be outside tribal law's scope.[210] For this reason, the relationship between tribal law and state systems is critical. Dupret asserts that sheikhs and state officials in Yemen are accustomed to dealing with each other on a whole range of disputes, jointly influencing the way the rule of law is enforced. The two systems have variable attitudes towards each other, sometimes cooperating in the implementation of customary rulings, sometimes challenging each other, particularly when the settlements of tribal law are perceived to contradict Islamic law. Dupret argues that the two systems nonetheless rely on one another and use their rulings to exert pressure on disputing parties to resolve conflicts.[211] Corstange states that the notion that tribal law is inherently independent or opposed to the state's rule of law is misguided[212].

Finally, it is worth noting that the status of tribal law in the Arab world was influenced by how the nomadic Bedouin people were perceived in the eyes of the emerging modern states. Following the collapse of the Ottoman regime, Bedouins have been subjected to different perceptions and treatments. For example, Bedouins in the Negev desert are viewed by the Israeli state as uncivilised nomads that have no legal rights to own their land. While the Bedouin population in 1940 was recorded as 75,000, an Israeli census in 1950 indicated their population as 11,000 demonstrating the sheer displacement and mistreatment of the Bedouin community.[213] While some of this difference may have been due to undercounting of nomadic populations, the sharp decline indicates that the nomadic population had declined substantially after Israeli occupation which stems from local inhabitants not trusting Israeli census. This injustice also extends to the discriminatory treatment of the Bedouins in the

[209] Corstange (n 126).
[210] Al-Dawsari (n 205).
[211] Dupret, 'Legal Traditions and State-centered Law' (n 132).
[212] Corstange (n 126).
[213] Emanuel Marx and Avinoam Meir, 'Land, towns and planning: The Negev Bedouin and the State of Israel' (Pt Transaction Periodicals Consortium) (2005) 25(2005) *Geography Research Forum* 43.

Sinai desert in Egypt, where the nomadic Bedouins have been marginalised and excluded from the region's economic development and advancement.[214] In Iraq, Saddam's regime had contradictory approaches to the local Bedouin community, where they were initially confined to certain areas and not allowed to travel freely. The regime later resorted to using the Bedouin population in restraining other communities, in which their sons were conscripted into the army once they turned a certain age. Saddam appeared to have moved to rely on the loyalty of some Bedouin groups during his final phase of survival.[215]

Table 1: Practices of customary tribal law

Cases	Features	Challenges
Albania	• Available in a written text • Deals with blood feuds • Focuses on social order and honour • Embedded in the cultural identity	• Subject to various interpretations • Spread of revenge killings • Overreliance on the system • Lack of community engagement
Afghanistan	• Village elders resolve local disputes • Focuses on security and solidarity • Emphasises on honour and identity • Highly regarded by local communities	• Spread of honour killings • Perceived gender inequality • Operates in a volatile setting • Hostility with the state system
Somalia	• Tribal elders have moral authority • Provides access to justice • Focuses on clan linages and identity • Engages with young people	• Overwhelmed with the civil war • Fragmented society • Settlements do not last long • Lack of resources and support
Timor-Leste	• Operates in a post-conflict setting • Village Chiefs provide local leadership • A symbol for self-determination • Deals with a range of disputes	• Unsustainable settlements • Perceived as a patriarchal system • Domestic violence resolved unfairly • Focuses on collective responsibility
Palestine	• Focuses on conciliation settlements • Asserts a sense of self-governance • Adapted to many conflicting settings • Depends on conciliation committees	• Involves disproportionate outcomes • Lacks proper support and resources • Used for political means • Perceived as biased
Iraq	• Fills the vacuum of security • Gains momentum and recognition • Provides a sense of solidarity • Focuses on tribal identity	• Some sheikhs are seen as corrupt • Increased demand for security • Violates basic human rights • Spread of honour killings

[214] Matthew Ellis, *The Bedouin People Who Blur the Boundaries of Egyptian Identity* <https://www.zocalopublicsquare.org/2018/07/20/bedouin-people-blur-boundaries-egyptian-identity/ideas/essay/>.

[215] Hussein D Hassan, *Iraq: Tribal structure, social, and political activities*, LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE No (2007).

Yemen	• Involved in most disputes • Tribal leaders are highly connected • Reinforces social balance and order • Resolves conflicts via containment	• Gender and generational gap • Securing permanent settlements • Deterioration of security • Integrity of some sheikhs

2.5 Tribal customary law in Jordan

As the preceding discussion indicates, there are some common features of tribal customary law across a number of Arab societies. The significant role of the sheikh, the concept of honour and the legitimacy of tribal customary law are some of the key themes. The literature also suggests that the process and outcomes of customary practices are overall regarded as faster, cheaper, enabling easier communication and more flexible than the state legal system. There are also some common challenges tribal customary law encounters across the Arab world, mostly relating to the sustainability and fairness of its settlements, meeting the increased demand for justice and the relationship with the state system. However, there are also some differences in tribal customary law between the Arab societies, which largely revolve around the purpose and needs of this system at the local level. The existing anthropological literature provides extensive accounts of tribal customary law in the Arab world, describing long-established practices of dispute resolution and conflict management techniques, including mediation and arbitration.

According to Stewart, until the appearance of modern states after World War II, customary law provided the basis for Arabs' cultural systems, institutions and practices and guided their tribal life in the desert.[216] Since then, Arab societies have evolved various identities, including nationalist, sectarian and religious affiliations. Tribalism, however, continues to be a dominant feature in many Arab countries, and in turn influences the relationship between the people and the state system. The relationship between customary institutions and the state has also taken a number of forms across the Arab world.[217] Historically, the first approach is marked by a formal state rejection of tribal law, with customary practices downplayed in favour of a public image of the modern secular or religious state, which can be seen to varying degrees in Tunisia and Saudi Arabia. However, the existence of a tribal system can still be seen in some practices and has gained ground over recent years.[218] The second approach is uniquely attached to Egypt, where there are almost two legal systems: the official state system has absolute control over most regions except the Sinai desert, where

[216] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[217] Dupret, 'Legal Traditions and State-centered Law' (n 132).
[218] Sebastian Maisel, 'Tribes and the Saudi legal System: An Assessment of Coexistence' (2009) 18(2) *Middle East Institute* 100.

tribal people rely on their own customary system to regulate their life.[219] A third approach is represented by dysfunctional state systems such as Yemen and Iraq, where tribal law is gaining influence due to the lack of state-sponsored security and increased demand for justice.[220]

A different approach from the above is evident in Jordan, where tribal law appears to operate alongside the state system in a relatively stable environment. The relationship between the two institutions has taken many forms and has survived various challenges, which suggests that Jordan's attachment to customary practices is unique, in terms of how they operate.[221] The application of tribal customary law in Jordan thus deserves scholarly examination, due to the country's ability to sustain a functioning system with strong institutions despite severe challenges. There are ample resources available on tribal customary law in Jordan and its relationship with statutory systems since the emergence of the Hashemite Kingdom. Stewart argues that Transjordan, Palestine and Sinai contain the best-known system of Arab tribal customary law in the region. The process and features of tribal law are similar within this area, and arguably more complex than in the rest of the Arab world. Stewart cites a number of scholars, including Graf, who collected field data in 1952 on Bedouin tribal law within Transjordan communities. Chelhod wrote about the tribal judicial system in 1971, covering the processes of litigation and tribal sentencing, and Qusus authored a book on tribal law in 1972, following his experience as a lawyer and judge in Jordan.[222] Al-Abbadi also cites a number of authors who have documented the practices of tribal law in the area, including Burkhardt, who documented first-hand observations during his expedition in 1831 and refers to various customs relating to blood feuds and restitutions. Fordan documented the social life of the tribes in Transjordan during his work as a missionary doctor in 1905. Musil provided an outline in 1926 of the customary practice among the tribes in southern Jordan, while Salam offered insights into tribal law from his time as a missionary priest in 1929, referring to customary procedures such as use of evidence, witnesses and appeal.[223]

Abu-Hassan published the first edition of his book on Bedouin customary law in 1974, based on his insight as a former police officer, judge and anthropologist and examining the function of tribal judges, types of evidence and the tribal conciliation process. This work provides first-hand information on the application of Bedouin law at the time, particularly with regards to the tribal courts and other ancient features of this system that were abolished in 1976. Abu-Hassan reflects on his work with tribal judges when resolving a range of tribal disputes, a

[219] Dupret, 'Legal Traditions and State-centered Law' (n 132).
[220] Bobseine (n 58).
[221] Furr and Al-Serhan (n 30).
[222] Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (n 2).
[223] Al-Abbadi (n 5).

useful comparison with how dispute settlements are conducted in present times.[224] Abu-Hassan also draws attention to a number of misconceptions around tribal law in Jordan, which Stewart notes are a common barrier to research in this area, particularly in relation to linguistic difficulties, inaccurate descriptions and often biased sources of information.[225]

The fall of the Ottoman regime was a turning point for the tribes and their customary system in the region, as until that point there had been no political boundaries between Arab societies. Abu-Hassan asserts that local tribes had a degree of autonomy and relied on customary law for the administration of justice. Tribal law was a complete system of institutions and customs that governed people's lives, particularly in rural and remote areas. Abu-Hassan, however, points out that the relationship between the Ottoman regime and local tribes was symbolic, and often marked by tension and suspicion. Abu-Hassan also argues that tribal communities were divided by the new emerging Arab states, which applied different rules to tribal customary law. For example, Syria and Iraq decided in 1958 to dismantle tribal customary institutions. However, the tribal judicial system continued to operate in Jordan until 1976. According to Abu-Hassan, the Hashemite Kingdom sought to abolish tribal law in order to integrate the tribes into the state system.[226] This decision was another significant change for tribal law since it dissolved tribal courts, which represented the customary legal institution in Jordan. Furr and Al-Serhan agree that prior to 1920, tribal nomads were, to some extent, isolated and relied on tribal law to govern themselves on most matters without engaging with the Ottoman regime. The establishment of Jordan's kingdom became a defining moment for the tribal system, as it influenced the autonomy, kinship and nomadic nature of Bedouin people.[227]

Al-Abbadi explains that the Bedouin Control Laws (BCL), referred to as the tribal court law, were initiated in 1924, soon after the emergence of Transjordan in 1921 as a British protectorate. The BCL contained 23 articles and is the first known attempt by a formal state authority to regulate the social norms of the nomads in the region. Al-Abbadi argues that the purpose was to absorb the tribes and their traditional system into the newly formed state. The law enabled the state to exercise control over the country, while allowing the tribes to maintain their customs and lifestyle. Al-Abbadi also notes that the tribal court law was amended in 1936 in a further attempt to consolidate the authority of the state and confine tribal authority to the local level. As a result, the tribal sheikhs were no longer the bearers of supreme authority. Al-Abbadi argues that the aim of this was to establish a new national

[224] Abu-Hassan (n 16).
[225] Stewart, 'Tribal Law in the Arab World: A Review of the Literature' (n 2).
[226] Abu-Hassan (n 16).
[227] Furr and Al-Serhan (n 30).

identity in place of the kinship membership.[228] Abu-Hassan states that these laws allowed continuity in tribal jurisprudence, while making changes that met the needs of the new state environment. For example, article 9 of the BCL prevents tribal courts from allowing the exchange of women as part of the blood money.[229]

Al-Abbadi asserts that the BCL also regulated the practice of tribal evacuation in cases of blood feuds, limiting collective tribal responsibility to the immediate family of the offender up to the fifth degree of kinship (whereas responsibility for blood feuds was traditionally placed on the entire tribe). This is an indication that the matter of tribal evacuation has been subject to modification from the beginning of the modern state. Al-Abbadi also notes that the tribal court law of 1936 clarified its jurisdiction by listing all the recognised tribes in Transjordan that were subject to this law. It identified the territorial jurisdiction of the law, which was adapted to the circumstances of the Bedouins at the time; hence, the entire desert region was subject to this law. Al-Abbadi notes that the law allowed tribal people to choose their tribal judge from a preselected list, as a way of ensuring the tribes' support for the state's Bedouin Control Laws. These judges were often recognised by the Royal Diwan (Council) due to their expertise, tribal and kinship lineage. These laws were thus a measure by the state to incorporate tribal law.[230] Furr and Al-Serhan reiterate that these laws were designed to regulate the jurisdiction of tribal law, while providing tribal people with the flexibility to have their disputes resolved by their local sheikh.[231] It is unclear, however, whether these laws received sufficient support to achieve their intended goals.

Watkins argues that the political and socioeconomic challenges that faced Jordan in 1970s, especially after the civil war, led to the Bedouin Control Laws being abolished in 1976. Watkins asserts that these laws were created in the hope that, with social changes, the tribes would eventually abandon their customary practices and adapt to the state legal system. The rationale for abolishing tribal law was that it had unintended consequences in terms of reinforcing kinship identity and hindering tribal people's integration into society. Watkins argues that tribalism and kinship ties were on the rise, which became a defining feature for the country as it influenced the way in which Jordan's national identity was being forged.[232] It appears that Jordan at the time was becoming a culturally polarised country, and the tribal institution was perceived as a contributing factor. Al-Abbadi asserts that following the civil war of 1970, it was necessary to build on the national identity of all Jordanians and ensure that tribalism was a unifying feature rather than a dividing factor. In contrast, tribal law

[228] Al-Abbadi (n 5).
[229] Abu-Hassan (n 16).
[230] Al-Abbadi (n 5).
[231] Furr and Al-Serhan (n 30).
[232] Watkins (n 24).

suggested that tribal people had a different status within the country, with customary law practices exclusive to these tribes. Al-Abbadi argues that the Ottoman regime failed to forge a national identity for the tribes and that this became a challenge for Transjordan when asserting its political boundaries and central administration.[233]

Watkins argues that despite state efforts, including abolishing the BCL in 1976, tribalism persisted as a predominant feature of Jordan's society. Kinship networks were revived as a source of support and social solidarity for local communities. Tribal dispute settlements are a recurrent practice in both urban and rural areas, and among all cultural backgrounds, including non-Jordanians, reflecting the system's place as a shared tradition bringing people together to encourage conformity with the hegemonic values of the country. Watkins suggests, however, that tribal law became a more localised process of dispute settlement, focused on keeping the peace within local neighbourhoods.[234] This explains, to some extent, the prevalence of tribal customary practices within Jordanian communities over the past 50 years. Stewart refers to kinship ties as a blood-money group, a distinctive feature of the tribal customary system which unites people by the blood-money pact and holds them liable for any misdeeds. Stewart argues that tribal kinship establishes cooperative groups that have legal personality for tribal Arabs. It facilitates mutual support and responsibility within the network. This explains why, in blood feud cases, group liability is exhibited either through retaliation or conciliation.[235] Thus, the kinship system works as a mechanism of social support and pressure to achieve conformity.

Abu-Hassan notes that the state's abolition of the tribal laws included a provision for certain customary practices to continue operating. The state's decision was designed to dismantle tribal law as an institution, while allowing some legal customs to function under the auspices of statutory law. The three tribal customs that were sanctioned by the state relate to settling blood crimes, honour offences and violation of the security promised by the guarantor of a tribal truce. Abu-Hassan argues that the continued existence of these customs reflects the state's recognition of these practices and their role in restoring peace and order.[236] Thus, it appears that the validity of the existing tribal customary law in Jordan rests on two forms of legitimacy: the community's acceptance and state's recognition. Al-Abbadi argues that this provision enabled the maintenance of the core procedures of tribal customary law when dealing with cases involving honour and blood feuds. Al-Abbadi refers to the procedures of tribal truce, evacuation, the delegation committee and the conciliation ceremony and argues

[233] Al-Abbadi (n 5).
[234] Watkins (n 24).
[235] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[236] Abu-Hassan (n 16).

that customary practices have become entrenched in the identity of Jordanians, regardless of whether they have a tribal background, with the informal system since being used by all people.[237] It appears that the changes of 1976 have facilitated a level of integration of tribal people into the modern state, in turn integrating customary law into the state legal system.

Following the decision to abolish the Tribal Control Laws, King Hussein sought to reassure the Jordanian people and clarify the kingdom's position on the question of tribal identity and customary system, making the following remarks on 9 June 1976:

> *We are Arabs and we shall not neglect our worthy customs and lose our distinctive characteristics inherited from our noble ancestors. The BCL were abolished so that in the future criminals will be prosecuted in the civil courts which will be pronounce stricter judgements so that only the criminal himself will be punished for his crime, and not the community as a whole. Nevertheless, the traditional customs, of which we justly proud, will continue to be observed.*[238]

These words appear to be carefully chosen to maintain the delicate balance between the state's desire to unify its legal system and the kingdom's commitment to preserving tribal customs as a defining feature of the country. Abu-Hassan argues that the kingdom's approach was critical in preserving tribal customs, which underpin the solidarity of the society. It was necessary to put an end to the tribal isolation and enable all Jordanians to access tribal customs as a means of keeping the peace. Abu-Hassan suggests that this enhanced equality among Jordanians through a shared sense of identity, which in turn made tribal customs even more prevalent. The relative stability of the country since 1976 has also supported social integration, contributing to the gradual modification and increasing entrenchment of legal customs.[239]

Al-Abbadi asserts that the approval of tribal law's continued role in dealing with cases of blood feuds, honour crimes and breaching sureties was a recognition that these are very serious issues in the eyes of tribal people and have the potential to disturb the peace and social balance of the tribes. This explains why the intervention of tribal law is considered necessary to prevent the risk of escalation of violence and revenge killings. Al-Abbadi argues that the incorporation of these customs by the state created new avenues for tribal people and state officials to work together. It also offered local people a choice between accessing statutory and tribal law legal systems. Previously, Jordan had two legal systems: customary

[237] Al-Abbadi (n 5).
[238] Ibid.
[239] Abu-Hassan (n 16).

law for the tribes, and state law for the wider society.[240] Under the present arrangement, it is not uncommon for Jordanian people to be dealing with the tribal sheikh while liaising with local police and going through the court system when resolving their disputes.

Furr and Al-Serhan state that there are three legal systems the people of Jordan interact with and navigate for separate areas of law: the formal legal system, Sharia law and tribal law. Furr and Al-Serhan argue that although these systems work alongside each other, the jurisdiction of each is not always clear.[241] The formal legal system has been influenced by French law during the Ottoman Empire and English law during the British Mandate in Transjordan. The Egyptian civil code of 1948 and the Iraqi civil code of 1951 are also regarded as having influenced Jordan's legal system. The influence of French law is evident in the Jordanian criminal legal system, while trade, insurance and other civil laws were derived from the English principles of common law.[242] There are four levels of civil courts – the magistrates' court, the courts of first instance, the court of appeal and the court of cassation – which have jurisdiction over civil and criminal matters throughout the country. Sharia law has jurisdiction over personal matters for Muslims, such as marriage, divorce and inheritance. There are tribunals for family laws allocated for non-Muslims, which are driven by the Christian faith.[243]

Furr and Al-Serhan argue that, despite all Jordanians having free access to the formal legal system, the customary tribal system continues to be the preferred option in most dispute situations. It is also often the case that state police, courts and other formal agencies will refer people to tribal sheikhs for dispute settlement.[244] Watkins suggests that people's preference for tribal law stems from it being more localised, culturally appropriate and easier to navigate than the formal legal system.[245] This reinforces the common features of Arab customary law, particularly with regards to the flexibility and acceptance of this system. Furr and Al-Serhan argue that while the formal state legal system has the capacity to manage serious crimes like murder, it remains inefficient in dealing with the community frictions that follow these crimes. Tribal law therefore becomes involved, often at the request of the state or the disputing parties, to contain the situation and prevent blood feuds.[246] This indicates that the involvement of tribal customary law in this sense represents a mechanism of

[240] Al-Abbadi (n 5).
[241] Furr and Al-Serhan (n 30).
[242] Rana Husseini, 'From Jordan' (2002) 1(99) *Al-Raida Journal* 7.
[243] Mohamed Olwan, 'The Three Most Important Features of Jordan's Legal System' Conference paper, IALS Conference – Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World, 2010, 135, <http://www.ialsnet.org/meetings/enriching/olwan.pdf>.
[244] Furr and Al-Serhan (n 30).
[245] Watkins (n 24).
[246] Furr and Al-Serhan (n 30).

cooperation between the state legal system and community groups. Since the cancellation of tribal courts in 1976, the country has adapted to a new form of cooperation between the formal legal system and tribal law, largely manifested in the relationship between tribal sheikhs and the regional governors, which stems from the provisions of the Crime Prevention Law 1954.[247]

The Crime Prevention Law grants regional governors a wide range of powers for the purpose of preventing certain crimes that can undermine public order, such as blood feuds and honour killings. Despite some concerns that the law infringes on people's rights and freedoms, the state regards it as a preventative measure to ensure the security of the country. It allows governors to intervene in cases involving murder and honour crimes, for example, by authorising administrative detention for the purpose of protecting someone's life and enabling tribal settlements to take place.[248] It is for this reason that this law has been aligned with the function of tribal law and facilitates cooperation between the governors and the sheikhs. This interaction often manifests when a blood feud erupts and the sheikhs seek to negotiate *Atwa* (truce) between the disputing tribes.[249] In this situation, the governors can authorise administrative detention if there is a risk of revenge killings, which in turn exerts pressure on the disputing tribes to de-escalate their conflict. The governors can also enforce a *Jalwa* (evacuation) pursuant to the Crime Prevention Law, whereby they, along with representatives from state police and the Ministry of the Interior, visit the offender's and victim's families to sign the truce agreement. This entails allowing the offender's family to leave their homes safely and facilitating the sheikhs' role in mediating between the two parties during the truce period, which usually lasts for a minimum of three days.[250]

The formal state system seems to further lend itself to supporting tribal law through the recognition of personal rights. The Jordanian penal code distinguishes between public rights and personal rights, which clearly intersects with local tribal law. Violations of a public right obligate the state to prosecute offenders, while violations of personal rights enable tribal law to seek amends for the victims and repair community relations. From a civil lawsuit perspective, a personal right refers to the provision of compensation that the victim as an individual is entitled to claim. Tribal law views a personal right as a claim for the victim's

[247] Ali Jabbar Saliha and Hazem Suleiman Toubatb, 'The Crime Prevention Law No.(7) of 1954 in Jordan from a Constitutional Perspective: Analytical Study' (1954) 14(3) *International Journal of Innovation, Creativity and Change* 200.
[248] Ibid.
[249] Danielle Sutton, *Tribal Law at the Crossroads of Modernity: Jordanian Attitudes towards Jalwa* (Independent Study Project Collection, 2018).
[250] Watkins (n 24).

family, or the whole tribe.[251] The state system fulfils its public rights obligations when a person is convicted before a formal court. If tribal law facilitates a settlement between the disputing parties and the victim's family relinquishes their personal right, then the state court can reduce the offender's sentence. This means that the state court deems tribal dispute settlements as a mitigating factor, whereas unresolved tribal conflicts are considered as aggravating circumstances.[252] It appears that Jordan is initiating deliberate strategies to incorporate tribal customary practices into the formal legal system through incentives, rather than disregarding their relevance within the community.

2.5.1. Strengths of Jordan's use of tribal customary law

The literature review suggests that Jordan's reliance on tribal customary law has been strategically important for the country's resilience and survival. The relationship between the state and the tribes was founded on mutual recognition following the establishment of the kingdom. St Ledger argues that the modern state of Jordan has depended on the tribes for legitimacy and grassroots support. The state sought to preserve the social norms of the tribes by embracing them as a source of pride for the country. The state also took deliberate measures to integrate tribal people and their customary systems into the state. St Ledger suggests that the state has devised a number of successful strategies to integrate the tribes – such as recruiting them into the military and intelligence services and allocating designated seats for tribal representatives in the parliament – which in turn ensured their loyalty.[253] Abu-Hassan asserts that the Hashemite Kingdom recognised the strengths of tribal custom among the Jordanian people, and hence supported these practices. The significance of these customs lies in their ability to achieve security, social balance and stability within local communities.[254] Jordan's relative stability is indicated by its level of security in comparison with other surrounding countries in the region; Jordan's homicide rate, for example, was 1.4 per 100,000 people in 2017 (latest available data) compared to a region estimated average of 3.2 per 100,000 for the same year (2017).[255]

In terms of Jordan's stability, Watkins argues further that the maintenance of tribal customary practices ensures conformity with society's hegemonic values, which strengthens public safety. This reflects the influence of tribal customs in Jordan, as they represent a set of shared and deeply rooted values among the community. Watkins suggests that tribal

[251] Furr and Al-Serhan (n 30).
[252] Watkins (n 24).
[253] B St Ledger, 'Comparative Analysis of the Relationship Between Tribes and State in Modern Jordan and Yemen' (Bacherlo's thesis, George Mason University, 2010).
[254] Abu-Hassan (n 16).
[255] United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2019* (United Nations, 2019).

customs in Jordan tap into three critical cultural values – kinship, tribal identity and honour – to promote solidarity and collective responsibility.[256] St Ledger likewise argues that tribal customs establish common ground for society to achieve peace and conciliation. For example, kinship ties constitute a tribal mechanism for facilitating support and compliance. Tribal identity and honour often evoke a desire for participation and to offer protection. St Ledger further suggests that Jordan has adopted a deliberate policy of utilising tribal traditions to strengthen national identity, which enables state officials and tribal sheikhs to work together to maintain security.[257]

The relationship between the tribal sheikhs and the state appears to be a significant aspect of the way tribal customary law functions in Jordan. Sheikhs appear to enjoy high levels of acceptance and legitimacy within the community, which strengthens their role in tribal dispute resolution. Jordanians regard tribal sheikhs not as individual figures, but as representatives of their traditional values, tribal heritage and Bedouin lineage.[258] While the significant role of the tribal leader in customary law is not unique to Jordan, the level of influence of this role on both the community and the state system seems to be a special feature. As discussed previously, the monarchy appears to value and rely on the support of the tribal system, devising a range of strategies to integrate the tribes and capitalise on their Bedouin lineage to strengthen the identity and solidarity of Jordanian society.[259] It is for this reason that sheikhs are seen to be influential when engaging with the legal state system. Watkins points out that the Royal Diwan (Council) offers tribal sheikhs a letter of recognition and endorsement for their practice in dispute settlements. Additionally, members of the royal family and government ministers are sometimes involved in these tribal settlements as a show of support for and association with the conciliation rituals.[260] This reflects how integral sheikhs are to the system, and such expectations and support afford the sheikhs considerable mobility and influential networks when exercising their conciliatory role.

Al-Abbadi argues that following the cancellation of tribal laws in 1976, it became the duty of the state to cooperate with the sheikhs and support their mission in keeping the peace and preventing escalation of violence. The Interior Ministry now mandates that regional governors consult with sheikhs when conflict arises and in developing local customary procedure. The abolition was a turning point and a breaking down of isolation for tribal customs, as they became a source of law for the country and merged into the Jordanian national identity. The engagement of the state and the wider community in tribal law produced a mosaic of legal

[256] Watkins (n 24).
[257] St Ledger (n 253).
[258] Al-Abbadi (n 5).
[259] St Ledger (n 253).
[260] Watkins (n 24).

practices and facilitated reform on a number of fronts, including modifying certain practices of tribal law, facilitating legal pluralism, and integrating tribalism into the national identity. As noted above, St Ledger asserts that this was precisely the aspiration of the monarchy: to utilise the tribal system and cultural elite of sheikhs in order to achieve national integration.[261]

Jain points out that the existing cooperation between state officials and tribal leaders has placed community and international pressure on the country to enhance tribal and civil law. This was manifested in the latest modification of the *Jalwa* practice (tribal evacuation), with sheikhs and state officials agreeing to limit the degree of kinship affected by this. Jain notes the level of state engagement in this practice, with local police taking responsibility for ensuring the safety of evacuated families and engaging with the tribal leaders in formulating the *Atwa* (tribal truce) between the disputant parties.[262] However, evacuation is still a contentious issue as it involves uprooting extended families from their community to prevent revenge killings. Watkins reports that the practice of *Jalwa* has been subject to a number of reviews over the past 30 years and the state continues to accept its validity, despite mounting pressure to limit the practice to the offender's immediate family. For example, in 2011 there was a serious blood feud incident involving the killing of three men. The sheikh involved in the case decided that only relatives up to the second degree of the offenders' families were to be evacuated to prevent revenge feuds; however, the governor insisted that all five degrees of kinship must be evacuated to preserve public stability.[263] This is an interesting example as it illustrates that tribal law is accepted and influenced by the state.

The significant level of public acceptance and support of customary law in Jordan stems from a range of factors. Al-Abbadi claims that tribal law forms part of the personal and collective identity of Jordanian people. It is regarded as a feature of people's identity, reflecting traditional values such as honour, which relate to their Bedouin heritage. It is recognised by the society as a social norm, and as a means for local communities to keep the peace and prevent the escalation of violence.[264] Jain likewise argues that tribal law in Jordan constitutes part of the culture and reflects people's identity, even those who do not agree with some of its practices. The Program on Governance and Local Development (GLD) conducted a public opinion survey in 2014 which found that 29 per cent of Jordanians support tribal law in resolving blood feuds, while 59 per cent prefer the two systems of tribal and statutory law to work together. The remaining 12 per cent of Jordanians responded that the formal legal system alone should be resolving blood feud matters. It is worth nothing that 75 per cent of

[261] St Ledger (n 253).
[262] Jain (n 26).
[263] Watkins (n 24).
[264] Al-Abbadi (n 5).

the surveyed participants described tribalism as part of their identity.[265] This reflects the popular support for and level of legitimacy of tribal law within Jordan.

Most of the literature notes that the value of tribal customary law is a key factor in this debate, as the system is founded on achieving community consensus and fulfilling people's needs for security and maintaining their reputation. Abu-Hassan suggests that people are content with tribal law because it resolves disputes through social deterrence and prevention, thus preserving the social equilibrium and solidarity of the tribes. It also enables people to be active participants in the process of dispute settlements, which in turn promotes collective responsibility. Tribal law places great emphasis on tribal identity and honour in the administration of justice, invoking social solidarity and collective responsibility on the basis of kinship ties. These notions are critically important for tribal people, a fact that customary law relies on to restore social balance and community harmony. King Hussein echoed this sentiment when he made the following remarks in response to the criticisms of the influence of tribal customs on the state legal system:

> *Whatever harms tribes is considered harmful to us. Law will remain closely connected to norms, customs, and traditions. Our traditions should be made to preserve the fabric of society. Disintegration of tribes is very painful, negative and subversive.*[266]

This reveals the revered nature of tribal law within Jordanian society, as well as its a complementary role to the state.

Finally, tribal customary system is commonly considered to be much faster, cheaper and simpler than the formal system, which is known for being complex and daunting. In Jordan, the state encourages tribal law to take precedence as it recognises that sheikhs have public support and are more likely to meet community needs than civil court judges. For instance, state courts tend to not make a final ruling until the sheikh reaches a settlement with the disputant tribes, which indicates the value of tribal law in restoring peace and security.[267] Al-Abbadi provides an example in response to some attacks on tribal law from state judiciary:

> *Killani is a civil judge in Jordan, and he saw the Bedouin judges as competitors and he was annoyed when he saw an illiterate Bedouin judge dealing with a complicated case and solving it in a short time and by simple means to the pleasure and*

[265] Jain (n 26).
[266] Abu-Hassan (n 16).
[267] Kristen Elaine Kao, *Electoral Institutions, Ethnicity, and Clientelism: Authoritarianism in Jordan* (PhD thesis, University of California, 2015).

satisfaction of both litigants (without looking at X, Y or Z articles), a case which would have needed months or even years for Killani to solve and ultimately would not have satisfied either party.[268]

It is also argued that customary law is more efficient, accessible and flexible than statutory law, which – being largely based on the French and British legal codes – lacks an understanding of Jordanian culture. In contrast, tribal law views injury and offending behaviour through a collective lens, as requiring a shared responsibility and remedy.[269]

2.5.2. Challenges of Jordan's use of tribal customary law

The literature notes a number of contemporary challenges that Jordan faces with regard to the function of tribal customary law. The most common concern relates to the influence of the tribal system on the rule of law and state sovereignty. Furr and Al-Serhan argue that the intersection between the state legal system and tribal law is blurred, and at times contradicts the state's constitution and principles of universal human rights. Tribal law seems to be focused on social control and preserving traditional values, such as family honour (*Ird*). This can have implications for women's rights and potentially sanctions honour killings, which also jeopardises the rule of law in Jordan. Tribal law is seen as a reflection of patriarchal systems that serve to repress women. For example, in domestic dispute settings, tribal law focuses on preserving the honour and reputation of the family rather than protecting individual rights.[270] Jain echoes this concern by stating that tribal customary practices place strong emphasis on family honour and protecting the reputation of tribesmen. This can put some women at risk, because family honour is often linked to the reputation of women. For this reason, tribal law is seen as resolving family-related disputes by pressuring people to keep family affairs private and not seek state intervention.[271]

It has also been suggested that tribal law strengthens tribalism and emboldens tribal conflict at the expense of state sovereignty and nationalism. Kao argues that although tribal law provides the main source of access to local justice, it can undermine the legitimacy and capacity of the state to implement the rule of law for all Jordanians. Tribalism often seems to take precedence over national identity and statehood. For instance, in 2013 alone there were 40 recorded student altercations within Jordanian universities fuelled by tribal conflict, including a serious clash in southern Jordan that resulted in the death of four people and injured many others. Kao also claims that the prevalence of customary law empowers tribal

[268] Al-Abbadi (n 5).
[269] Jain (n 26).
[270] Furr and Al-Serhan (n 30).
[271] Jain (n 26).

identity and enables people to rely on their tribe rather than the state when a conflict arises. In this sense, tribal law is perceived as challenging the formal state system and weakening national institutions. It is argued that such weakening is evident in state courts accommodating tribal conciliation agreements by reducing the offender's sentence, and recognising blood money as compensation.[272] Watkins reinforces such concerns by highlighting that the function of tribal law can sometimes have implications for state authority, national identity and credibility of the formal legal system.[273]

Another major concern relates to the fairness and due process of tribal customary law in Jordan. The practice of *Jalwa* (tribal evacuation) is a contentious example that raises some concerns about the validity and fairness of such a practice in a modern state system. Lousada explains that while *Jalwa* has undergone some modifications over the years, it violates a number of human rights and undermines the Jordanian constitution. In situations of blood feuds, it is expected that the relatives of an offender's family will be evacuated from the locale for their own protection and to prevent revenge killings. This process is usually facilitated by tribal sheikhs and regional governors under the supervision of local police. It further appears that the formal state system is heavily involved in validating this practice. In January 2016, Deputy Prime Minister and Minister of Education Mohammad Thneibat was directly involved in negotiating *Atwa* (tribal truce) and ensuring the demands of the victim's family were met by evacuating the offender's relatives.[274] This apparent state-sponsored practice has since been subject to various criticisms. Johnstone notes that there were 16 incidents of *Jalwa* reported in Jordan in 2011, one of which involved 100 families from the town of Al-Zarqa. This practice is still regarded as a necessary measure to reach a tribal truce and prevent revenge killings.[275] For this reason, it appears that offenders' relatives usually evacuate willingly rather than by coercion or force.

Although the practice of *Jalwa* is relatively rare in Jordan in the present time, being preserved for the most grievous crimes, its uprooting aspect is problematic and harmful, particularly to the evacuees' families. Jain argues that *Jalwa* imposes a collective punishment on the offender's relatives by uprooting them from their community, workplaces and schools for the sake of community security. Many Jordanians, including tribal leaders, seem to agree that *Jalwa* is becoming outdated in light of rapid social change in the country, with people no longer living in tents and their lifestyle being heavily reliant on being connected to their local community. Some sheikhs and state officials, however, seem to

[272] Kao (n 267).
[273] Watkins (n 24).
[274] Lousada (n 27).
[275] Johnstone (n 9).

believe that there is still public support for *Jalwa* because it calms tension, prevents revenge killings and enables disputant tribes to reach a truce. However, according to Jain's findings, there is increasing support for restricting *Jalwa* to fathers and brothers and not extending beyond the offender's immediate family.[276] Lousada supports this conclusion, pointing out that the modifications to *Jalwa* in recent years have been the result of tribal leaders advocating to limit the degree of kinship involved. Interestingly, tribal leaders who agreed to these changes believed that the tribal honour code obligated them to not allow *Jalwa* to inflict unintended consequences on tribal people.

The ritual of *Atwa* (tribal truce) also raises some concerns because it is perceived to be driven by social coercion and state interference. *Atwa* is designed to provide the disputing parties with a cooling-off period until they agree on a conciliation settlement. It is intended to be a temporary truce and often the terms of the truce are formulated quickly to stop the escalation of conflict. However, *Atwa* sometimes lasts several weeks, months or even years while the final settlement is reached. For this reason, sheikhs require that the disputant parties have a guarantor, often an influential tribal figure, to ensure that they abide by the agreement and avoid any retaliation. State police and regional governors today are directly involved when a tribal truce is put together, especially when it involves serious crimes.[277] As Lousada points out, *Atwa* illustrates the intersection between tribal law and formal system, which influences the way the truce is handled at the present time. This suggests that *Atwa* is becoming a state instrument to exert pressure on disputing tribes and/or to seek to appease sheikhs.[278] For example, it has been reported that regional governors use the Crime Prevention Law 1954 mandate to authorise the administrative detention of individuals for their protection and to exert pressure on the disputing parties to abide by the conciliation process.[279] The concern is that both state and tribal systems are using *Atwa* as a coercive measure to force the tribes to stop infighting.

Dia (blood money) is another aspect of tribal law that has attracted some concern, especially with regard to the appropriateness of some restitution agreements. Tribal law in Jordan perceives *Dia* as a gesture for the restoration of honour, rather than as compensation for the monetary value of a person or their family. It is for this reason that a victim's family usually forfeits the offered blood money, for the sake of restoring their honour and forging new relations with the opposing tribe. This aligns with the Bedouin wisdom: 'Getting justice is for reputation, not for filling the belly'. However, negotiating the amount of blood money requires

[276] Jain (n 26).
[277] Johnstone (n 9).
[278] Lousada (n 27).
[279] Jain (n 26).

delicate trading and balancing techniques to maintain amity and emphasise the honour of all parties.[280] Watkins shares first-hand stories illustrating the challenging aspects of *Dia*, which sometimes involves a staggering amount of money and can be used outside the Bedouin spirit to perpetuate punishment and revenge. This was shown in a case where a police officer fatally shot a man following a pursuit, triggering a standoff between the authorities and the tribe involved. The police eventually agreed to a tribal settlement by compensating the victim's family, in return for not disclosing the name of the police officer involved to prevent revenge attacks against the officer's tribe.[281]

A final concern revolves around the inconsistency and unpredictability of tribal customary practices in Jordan. Watkins highlights that the plurality of Jordanian legal systems causes some contradictions in the way justice is administered. The proliferation of tribal customs and rapid changes in the country over the past 45 years have changed the hegemonic nature of tribal law in Jordan. Although tribes have forged a new dimension of national identity, they maintain their own norms and outlook on tribal justice. Sheikhs currently have diverse views on a number of contentious issues, such as *Jalwa* and honour crimes. There are also new offences, such traffic accidents and machinery incidents at work, which did not exist before the twentieth century. In addition, the function of tribal law is no longer supervised solely by sheikhs, with other community leaders also facilitating dispute settlements. For example, a number of high-profile disputes in Jordan have been negotiated by politicians, including the prime minister himself.[282] This may create a sense of bitterness among sheikhs and undermines the integrity of tribal law. The current plurality of legal systems also places a strain on tribal and statutory laws because of the perceived inconsistency between their judgements. For instance, decisions of tribal law are seen to be based on personal relationships, reputation or other motivating factors, while decisions of statutory law are based on written procedures, historical reference etc.[283]

Although sheikhs are known for their abilities to make decisions based on wisdom, consensus and local knowledge, they are increasingly being challenged by socioeconomic and political changes. The younger generation do not necessarily align themselves with tribal law and, hence, may be more inclined to comply with the state system. However, the state police and court system often defer a range of legal disputes to tribal law. The judicial system tends to incorporate the successful outcomes of tribal law in court rulings, which often means

[280] Johnstone (n 9).
[281] Watkins (n 24).
[282] Ibid.
[283] Jain (n 26).

a reduction in the offender's sentence.[284] This is seen by some commentators as detrimental to the credibility of the state legal system. These factors may explain growing resentment, especially among some young people, of both the state system and tribal law. Some believe that sheikhs should not be resolving legal matters because they are unqualified in contemporary law. Additionally, tribal law's reliance on unwritten rules is incompatible with the modern legal system, which is more formally procedural.[285] It is for these reasons that some people consider the judgements of tribal law inaccurate or inconsistent in comparison with statutory law. These are real challenges that are given careful examination in this thesis.

2.6 Conclusion

The literature review reveals a number of important aspects of this field of study, which pave the way for a careful examination of these issues throughout this thesis. The concept of customary law was examined through three lenses. First, the meaning of customary law across the world was explored, particularly with reference to Albania, Afghanistan and Somalia. Second, the key features of customary law in the Arab world were mapped using Palestine, Yemen and Iraq as examples. Finally, Jordan's unique experience with this system was examined. It is important to examine the validity of customary law as a source of law from different perspectives. The theory of rules and models of legal development was used an entry point for this discussion, which revealed some intersection between custom and public law. However, it was argued that Hart's descriptive concept may not be sufficient for fully understanding the concept of customary law, particularly as it refers to law merely as a code of rules or a union of primary and secondary rules. Dworkin's interpretive concept describes the legal system as a set of principles and moral norms that justify the application of legislation. These notions of law illustrate the conflicting attitudes towards customary law which reflect the unsettled debate around its validity as a body of legal rules and a defined system of law.

The notion of legal principles and moral norms seem to correlate with customary law, as tribal people have a tendency to use storytelling in resolving conflict to illustrate the moral judgement of their ancestors and to inspire their community. The theory that law is a union of primary and secondary rules is a useful approach in analysing customary law, particularly with regard to the rules of recognition, change and adjudication. The challenge for customary law in terms of whether its rules can meet Western tests of validity is that these tests were devised for rules created by legislatures or judges. The rules of recognition and voluntary acceptance are more appropriate to determine the validity of customary practices as a

[284] Furr and Al-Serhan (n 30).
[285] Watkins (n 24).

source of law, rather than comparing them with Western legal institutions. In this sense, it is useful to distinguish between customs and social habits by describing social rules through internal and external aspects. For social rules to be binding, they need an internal aspect for people to use as a standard for judging and condemning deviations; hence, as noted earlier, internal rules involve a 'critical reflection to certain patterns of behaviour as a common standard'.[286] In a customary setting, this indicates that conformity to legal rules rests on social acceptance rather a recognition of authority. The rules of change refer to the process of modifying primary rules by empowering individuals to introduce new rules. The rules of adjudication determine whether a primary rule has been violated and establish the procedure that is required in these situations.

The Cheyenne Way represents a useful example of anthropological analysis in examining customary practices from different lenses, particularly through the trouble case method. Customary law has two elements, one relating to the practice that emerges out of the spontaneous and uncoerced behaviour of individuals, and another stemming from these behaviours being driven by a sense of obligation. Much of the literature notes that customary law focuses on keeping the peace and ensuring solidarity within local communities. It is apparent that the legitimacy of customary practices mostly stems from being deeply rooted within cultures and remaining a source of justice for many community groups. Customary law is also regarded as being accessible and dynamic, with its practices changing over time and adapting to specific contexts. The applications of customary law around the world show that there are conflicting perceptions of the benefits and limitations of such systems.

A key feature of customary law that it is unwritten. It has often been suggested customary law be written down so it can be codified and statutorily recognised. The example of the Albanian *Kanun* illustrates that codification can lead to customary law being consistent, predictable and aligned with public law. Afghan customary law (*Jirga*) presents an interesting example of the legitimate nature of these systems, as it functions within a war-torn society. The core concept of *Jirga* relates to people having a sense of ownership over the justice system. The moral authority of the village elders in Afghanistan seems integral to the function of *Jirga*, in terms of meeting the demands of the moral order and filling gap in justice. From an African perspective, Somalia offers a unique perspective through its customary law (*Xeer*), which has been used to restore peace and security. Overall, it appears the validity of customary law relies on community acceptance and the recognition of its traditional authority. However, the literature reveals that customary law faces challenges in relation to its

[286] Hart (n 60).

association with deep-rooted social concepts like honour and identity, which sometimes trigger blood feuds and other responses that some see as a violation of human rights.

Customary law is a key feature of tribal people in the Arab world, regulating almost every aspect of their life. Arab tribal law is built on community consensus, using kinship solidarity and tribal values to achieve peace and security. It is also characterised as a client-centric and localised system that facilitates better access to justice and enhances social solidarity. Tribal people perceive the state system as incompatible with their identity and social norms, particularly with regard to formal court procedures and use of imprisonment, whereas tribal law provides avenues for coexistence and community support. There are some discrepancies in tribal law between countries; however, it appears these reflect its adaptation to local needs and gaps in justice, rather than conceptual differences between Arab countries. Iraqi tribal law is adapting its focus to meet the community's need for security and stability in the post-war state. Similarly, in Yemen the pressure on tribal law is to provide public order, while in Palestine and Jordan the focus is on keeping the peace and social harmony. There is also inconsistent recognition of tribal law across countries, which suggests that the realisation of legal pluralism in the Arab world is at different levels; sometimes tribal law functions in parallel with but outside state law, while at other times state law acknowledges the authority of this system.

Tribal law in Jordan operates alongside the state system in a relatively stable environment, with the relationship between the two systems built into many aspects of each. It has also survived various challenges, which suggests that Jordan's attachment to tribal law is somewhat unique. Tribal law was initiated in 1924 after the emergence of Transjordan, and then abolished in 1976 as a code of law. The proliferation of tribal customary practices over the past 45 years suggests that the country has been incorporating the tribal system and forming a de facto partnership with the sheikhs. The sheikhs are the central feature of tribal law in Jordan, as they are the guardians and administrators of customary practices. Sheikhs play various roles, including interacting with state officials and religious leaders when mediating between the disputing parties. They also have different levels of authority. However, there are distorted images – whether romanticised or depreciatory – of sheikhs and Arab tribal law. There are also real challenges facing tribal law in Jordan, mostly revolving around the need to further build on its relationship with the state system and coordinate a balanced approach to tackle the issues that arise from blood feuds and honour killings. There is a need for both systems to engage with the wider community and address the growing concerns around the tribal practices of truce and evacuation. State officials and

tribal leaders have an opportunity to engage in this process and come up with forward-thinking solutions for these emerging challenges.

The thesis seeks to fill some gaps in the existing literature by examining the engagement between the state legal system and tribal customary law in Jordan. Such engagement is illustrated through various cases in which customary practices has resolved blood feuds, honour crimes and other disputes within local community groups. This evidence will advance socio-legal research by identifying the extent of legal pluralism in Jordan, in comparison to other countries where customary practices operate alongside the formal state system.

Chapter Three – Legal Pluralism

3.1 Introduction

The previous chapter examined the concepts of law and legal rules within the context of customary law and outlined some problems in recognising customary practices as a source of law. It also discussed the key features of customary law across a number of countries to pinpoint their common strengths and challenges. The development and function of customary law in the Arab world were also discussed in more detail. This allowed for a consideration of the distinctive nature of customary practices through a specific cultural lens and exploration of their adaptability to different societies within the Arab world. Finally, the Chapter Two examined the history of customary law within modern Jordan, illustrating the unique conditions that have shaped how the system currently operates.

This chapter explores and analyses the socio-legal approach of legal pluralism in order to examine the different relationships between customary law and the state legal system. It provides the theoretical basis of this thesis by proposing legal pluralism as an appropriate framework to understand and critique the range of relationships between state and non-state systems. The chapter begins by outlining the concept of legal pluralism, including the core archetypes and strategies that are relevant to the relations between state and non-state systems. It illustrates how the application of legal pluralism assists in determining the level of recognition and acceptance of customary law as a non-state concept within the formal state system. Legal pluralism, in this sense, serves a useful function in highlighting the existence of multiple legal orders in society and examining their level of cooperation.

In addition to the theoretical explanation, this chapter will examine the available empirical information on legal pluralism, in terms of how some of the relations between non-state and state systems have been applied within different settings. This will provide insights into how these relations evolve, whether in a negative sense or in a more positive direction. Articulating the approaches to contemporary legal pluralism will enable an assessment of the relation between tribal customary law and the formal state system in Jordan. It will also reveal the lessons learned from these examples and whether there are some trends that can be utilised to envisage a framework, further articulated in Chapter Seven, for the relationship between tribal customary law and the formal state system in Jordan. Hence, legal pluralism is critical to this thesis, in terms of how tribal customary law functions in Jordan, and how its

relationship with the state legal system could potentially reach a crossroads at which it could either become a liability to the country or further enhance access to local justice and security.

3.2 Concept of legal pluralism

Legal pluralism has been the focus of many socio-legal studies and constitutes a central theme in legal theory. It is regarded as a distinct analytical concept, used to describe the existence of multiple legal systems within one society. Despite this, there are a number of conceptual and analytical issues related to legal pluralism.[287] The unsettled debate around legal pluralism largely revolves around the question of how to define law and the state – hence the reason for examining these issues in the literature review. Shahar asserts that the presence of legal pluralism revives the old debate around the definition of law, which has been the central focus of legal anthropology since the beginning of the twentieth century. The underlying issues of legal pluralism relate to how to draw a line between state and non-state legal ordering, and whether law can exist independently of the state or central government.[288]

Although there is no universal definition of legal pluralism, most accounts refer to the simultaneous operation or coexistence of several systems of law in the same social field.[289] Moore's description of legal pluralism as a semi-autonomous social field is significant as it emphasises that multiple legal orders operate within one geographic area, where none have absolute autonomy and are prone to influencing each other. Griffiths goes further, arguing that legal pluralism exists in every society and, hence, that the idea that state-based law is a form of legal centralism is a myth.[290] For this reason, legal pluralism operates on the premise of rejecting the ideology of legal centralism, and advocating for the coexistence of multiple legal systems within the social field. Other scholars, such as Tamanaha, have criticised Griffiths' concept of legal pluralism, arguing that it tends to concentrate on the old debate concerning the definition of law and disregards the ontological divide between state law and other normative orders. Tamanaha questions the reality of non-state laws and claims that the concept of law must be reserved for the state legal system.[291] It appears that the central argument remains focused on the distinction between the state and non-state legal ordering. This also shows that there are many conceptions of legal pluralism, which mostly intersect with the concept and function of law, explored later in Chapter Seven, Figure 36.

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[287] Ido Shahar, 'State, Society and the Relations Between Them: Implications for the Study of Legal Pluralism' (2008) 9(2) *Theoretical Inquiries in Law* 417.
[288] Ibid.
[289] Sally Falk Moore, 'Legal Pluralism as Omnium Gatherum' (2014) 10(1) *Florida International University Law Review* 5.
[290] John Griffiths, 'What is Legal Pluralism?' (1986) 18(24) *The Journal of Legal Pluralism and Unofficial Law* 1.
[291] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30(3) *Sydney Law Review* 375.

It is worth noting, however, that legal pluralists' basis for rejecting the theory of legal centralism revolve around three grounds: the concept of 'law as universal across time and space', the monopolistic claim of 'state power over the recognition, legitimacy and validity of law', and the state's 'claims to integrity, coherence and uniformity'.[292] Griffiths further distinguishes between two definitions of legal pluralism, a weak version and a strong version, using the regulations of the state as criteria.[293] The weak conception of legal pluralism refers to situations where other norms in society exist under the regulation of the state. The state, in this situation, decides whether to acknowledge or exclude the existence of these norms. The strong conception of legal pluralism refers to situations where other norms operate separately from and alongside the state law. The formal legal system, in this situation, seeks to validate or recognise non-state legal orders.[294] This suggests that Griffiths takes a descriptive approach to legal pluralism by emphasising the fundamental distinction between state and non-state systems. Shahar argues that Griffiths adopts a monolithic perception of the state and interprets legal pluralism mandated by state law as lacking social significance and public legitimacy. Such a view suggests that state law operates autonomously and has no impact on the social field.[295]

As outlined in the preceding chapter, the theories of Hart and Dworkin also contradict Griffiths' perception of legal pluralism and state law. Dworkin's interpretive notion of state law is not an intrinsically logical system bound by or distinct from non-state ordering. Dworkin highlights that the state legal system is shaped by moral norms that drive the function of legal practices.[296] Hart, meanwhile, argues that there is no inherent connection between law and morality and that law is naturally not static, with any legal system bound by the rules of recognition, change and adjudication. According to Hart, the existence of a legal system is highly dependent on its ability to change and adapt to the surrounding circumstances.[297] Tamanaha also rejects Griffiths' conception of state–society relations as incompatible with the reality of the state's role in defining legal ordering, including relations relevant to the non-state system.[298] Shahar argues that the conflicting conceptions of Griffiths and Tamanaha reflect the ideological assumptions around state and non-state ordering, which tend to conceive of each system as a separate, autonomous and self-contained legal universe.[299]

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[292] Griffiths (n 290).
[293] Ibid.
[294] Baudouin Dupret, 'Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification' (2007) 1 *European Journal of Legal Studies* 296.
[295] Shahar (n 287).
[296] Dworkin (n 63).
[297] Hart (n 60).
[298] Tamanaha (n 291).
[299] Shahar (n 287).

Dupret suggests that the challenge of understanding legal pluralism is that many studies focus on the description of practices, rather than their evaluation. Such an approach often seeks to avoid normative and evaluative engagements of legal plurality. Legal pluralism should be examined through people's interactions with what they consider to be their source of law, as opposed to focusing on the fragmented spectrum of law. For this reason, Dupret suggests that the legal pluralistic study of law revolves around three issues: the definitional problem, the functionalist premise and the culturalist conception (see below), which undermine legal pluralism.[300] This seems to offer a useful understanding of the gaps in socio-legal studies. According to Malinowski, legal rules are prevalent in every society, including those that may lack any formal institution to enforce the law. Law, in this sense, should be assessed by its function in maintaining social order and conformity.[301] The notion of legal centralism was also disputed by Ehrlich through his theory of 'living law', which holds that the state and its judicial systems are not a prerequisite for the creation of law.[302] State centralism was further refuted by Gurvitch, who argues that there is no fundamental unitary principle in law and distinguishes between three types of law in any social field: state, intergroup and social law. Gurvitch also asserts that there is a difference between the plurality of the sources of law and legal pluralism.[303] Despite their difference, however, these scholars all agree that law is plural in nature and intersects with social order.

It is apparent that Griffiths takes a radical approach against legal centralism. According to Griffiths, law is embedded in social control and reflected through the self-regulation of every social field. Legal pluralism represents social institutions that safeguard the legal customs of society.[304] Despite Moore's concept of the semi-autonomous social field being subject to some criticism, it remains widely accepted in socio-legal studies, perhaps because she refers to rules and norms rather than the code of law when articulating the function of semi-autonomous fields. According to Moore, semi-autonomous fields can be characterised by three conditions: that social controls underpin these settings and are displayed through social norms, that community members can be associated with multiple social fields as part of a larger social matrix, and that normative orders are not immune to change as they have no absolute independence.[305]

[300] Dupret, 'Legal Pluralism' (n 294).
[301] Bronislaw Malinowski, *Crime and Custom in Savage Society: With a New Introduction by James M. Donovan* (Routledge, 2018).
[302] Eugene Ehrlich and Klaus A Ziegert, *Fundamental Principles of the Sociology of Law* (Routledge, 2017).
[303] Georges Gurvitch, 'L'idée du droit social notion et système du droit social: Histoire doctrinale depuis le 17e. siècle jusqu'à la fin du 19e. siècle' (1932) 2(307) *Siècle Jusqu'à la Fin* 191.
[304] Griffiths (n 290).
[305] Moore (n 289).

The most notable criticism of semi-autonomous fields comes from Woodman, who argues that this concept assumes that non-state orders are clearly recognised as a set of distinctive characteristics. According to Woodman, legal orders of state and non-state systems cannot be limited to a specific social field or set of circumstances. Legal orders are naturally fluid and bound to integrate with each other as people choose which practice to follow based on their circumstances.[306] Woodman thus appears to suggest that legal orders should be defined by the community groups that practise them, rather than by their social field. For this reason, Dupret argues that many socio-legal studies evaluate legal pluralism by the gap between legal practices and formal legal systems, rather than by assessing the implications of such gaps for the efficiency of law. Some of these arguments assume that these legal practices are independent from state law, whereas others hold that the state system dictates the application of these practices. Nevertheless, these studies agree that the existence of non-state legal practices challenges the legitimacy of state law.[307] This shows the significance for legal pluralism of Llewellyn and Hoebel's work on the Cheyenne Way – particularly the trouble case method – as it demonstrated that much can be learned from situations of social tension and conflicting legal systems, thus affirming the value and relevance of the case studies and ethnographic descriptions in this thesis.

Chiba offers a non-Western perspective on legal pluralism through an analytical approach to legal culture. He argues that Western socio-legal studies are inadequate to explain plural legal systems and are particularly biased when it comes to non-Western cultures. For this reason, he proposes a set of dichotomies to analyse legal pluralism through a cultural lens: official law vs unofficial law, legal rules vs legal postulates, and indigenous law vs transplanted law. Unofficial law, in this sense, refers to customary practices that are sanctioned by community consensus, which appear more meaningful than the description of non-state rules. Legal postulates refer to a set of values and ideals that intersect with both official and unofficial laws. Interestingly, Chiba articulates that non-Western societies struggle with assimilating foreign law into their legal system because it lacks cultural connection with local communities. Therefore, the concept of identity postulates functions to incorporate unofficial law into the wider legal system as a way of preserving cultural identity.[308] Chiba seems to suggest that the maintenance of cultural identity should be relevant to legal pluralism and resolving contradictions between official and unofficial law.

[306] Gordon R Woodman, 'Ideological Combat and Social Observation: Recent Debate About Legal Pluralism' (1998) 30(42) *The Journal of Legal Pluralism and Unofficial Law* 21.
[307] Dupret, 'Legal Pluralism' (n 294).
[308] Masaji Chiba, 'Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-western Law' (1993) 25(33) *The Journal of Legal Pluralism and Unofficial Law* 197.

In addition to the element of legal culture, legal pluralism has also been examined from a postmodern perspective, which reveals other dimensions of this concept. Santos advocates for a postmodern alternative to legal pluralism because of the gap he identifies between the history of colonialism and modernity's promise of peace, justice and equality. The modern state, in this sense, is inadequate to deliver equity and integrate cultural diversity into the contemporary society.[309] Santos argues that the postmodern conception of law stems from the premises of legal pluralism and inter-legality, which captures people's interactions with constructive normative orders. Such orders have multiple dynamic networks that are shaped by people's experiences.[310] Santos's interpretive theory of legal pluralism emphasises the importance of examining human engagements and conflicts in pluralistic societies by taking into account whether they have been unjustly excluded or marginalised. In contrast, the selective focus of socio-legal studies on state domination of legal systems leads to further marginalisation of local communities along with their deeply rooted legal norms. Santos also outlines a range of legal orders, including domestic law, which encompasses norms of social relations in the household; community law, which stems from group identities; and state law, which refers to formal legal rules.[311] In these ways, the postmodern concept offers a useful analytical framework as an alternative to legal pluralism.

The other theory of legal pluralism, proposed by Teubner, emphasises the interactions between state law and the local laws of ethnic, cultural and religious communities. According to Teubner, legal pluralism offers the means to evaluate authentic legal phenomena and communicative networks within social fields.[312] It operates on the basis of three assumptions: law, as an intrinsically autonomous field, constructs its own social system; law, as a communicative mechanism, enables individuals and communities to forge their own systems of knowledge; and law, as a conformity system, balances between cognitive autonomy and heteronomy. This would enable legal pluralism to clearly distinguish between law and other normative orders within social fields.[313] Teubner asserts that legal pluralism is a multiplicity of diverse communicative networks that facilitate social interactions within the local legal system.[314] Teubner suggests that legal pluralism should focus on legal legitimacy and the rules of recognition, rather than on conflicting social norms.

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[309] Boaventura De Sousa Santos, *Toward a New Common Sense Law, Science and Politics in the Paradigmatic Transition* (Routledge, 1995) 31.
[310] Dupret, 'Legal Pluralism' (n 294).
[311] De Sousa Santos (above n).
[312] Gunther Teubner, 'The Two Faces of Janus: Rethinking Legal Pluralism' (1991) 13(1443) *Cardozo Law Review* 119.
[313] Dupret, 'Legal Pluralism' (n 294).
[314] Teubner (n 312).

It is argued that legal pluralism is unable to offer a conclusive definition of law in the same manner that other legal theories do, which in turn impacts on the uniformity of existing legal pluralistic theories. Dupret outlines three fundamental flaws that undermine the concept of legal pluralism. First, there is a definitional deadlock around what constitutes law and the parameters of legal pluralism. It is evident that socio-legal studies are engaged in an ongoing debate over how to define law, with respect to legal norms and the relation between state and non-state systems. The issue is often attributed to the confusion between descriptive and non-descriptive concepts of legal orders. Many of these studies are focused on the analytical concept of law, which naturally leads to a lack of consensus on a shared theory and the boundaries of law. The focus, instead, should be on how people perceive and self-affirm the law and other normative orders.[315] This suggests that law should be defined and evaluated based on how humans interpret and engage with it. Secondly, there is a functionalist issue in the way legal pluralism has been constructed. Many legal pluralists assume that normative orders are bound to become normative expectations, which are interpreted as various functions.[316] Law is viewed as a product of an intentional agency created to perform social functions. This challenges the notion that these legal institutions are autopoietic and have autonomous subsystems, which are constantly adapting.[317]

Thirdly, the essentialist and culturalist description of legal pluralism – particularly when advocating for indigenous and native law – assumes the existence of 'true' law that stems from an authentic society. This offers an unrealistic representation of law and society that lacks tangible empirical evidence and is based on untested theories. Culturalism views law broadly in an attempt to reflect the world, including its cultural code and social institutions. Essentialism focuses on the static nature of law, which carries the same basic principles throughout history with minimum influence exerted by historical events. Cultural interpretivists also tend to focus on why, rather than how, the law operates. Culture is not necessarily a set of permanent presumptions, as it constantly adapts to various settings.[318] These represent the conceptual dilemma of legal pluralism in determining whether the concept of law can, or should, be defined; whether there is a fundamental difference between state and non-state normative orders; and, most importantly, whether it is feasible for legal pluralism to operate within a state system. It is evident that there is little uniformity in the conceptualisation of legal pluralism, particularly with regard to the relations between state and non-state systems, explored further in Section 3.5 Local Framework of Legal Pluralism.

[315] Dupret, 'Legal Pluralism' (n 294).
[316] Teubner (n 312).
[317] Dupret, 'Legal Pluralism' (n 294).
[318] Ibid.

3.3 Models of legal pluralism

Legal pluralism has been evident in almost every society, both throughout various stages of human history and at the present time. Approximately 80 to 90 per cent of disputes in the developing world are resolved outside of the state legal system.[319] It is also documented that the weaker or more dysfunctional the state system, the greater the reliance on non-state orders such as customary law. It is often the case that state systems have limited capacity or lack legitimacy, which prompts non-state systems to fill the gaps.[320] However, there are other situations in which the state and non-state systems reach some arrangement to share the burden of providing justice, out of convenience or for other reasons. In such circumstances, the relationship between state and non-state systems may branch in various directions, which influences the scope of legal pluralism and community harmony. For this reason, a capable state system is central to the effectiveness and success of legal pluralism and local governance.[321] The state's ability to engage in legal pluralist practice is critically important to local communities, as this determines the effectiveness and sustainability of access to justice. Additionally, a functioning and engaging non-state system directly impacts the level of legal pluralism in the country and, consequently, impacts upon public order. State and non-state systems can have a negative influence on the process of legal pluralism and the rule of law, especially when they are engaged in unproductive relationships.[322]

A number of scholars have examined the interaction between state and non-state orders, with many recognising that it can either have significant implications and/or present unique opportunities for legal pluralism. These relations are often fluid and ambiguous, which leads to inconsistency and encourages 'forum shopping' in community justice. Legal authority can be contested, especially when central governments seek to impose a monopoly on legal order and reaffirm their exclusive legitimacy. Legal pluralism signifies a community's preference for accessible, efficient, legitimate and cost-effective rules; hence, it can challenge the state's claim to a monopoly over legal authority. Although they are seen as serving community harmony and representing local norms, non-state orders can also be perceived as biased, violating basic human rights, reflecting patriarchal values and lacking due process. Such issues can generate conflict and exacerbate the need for justice and state-building, particularly within poorly governed societies.[323] For this reason, empirical research on legal pluralism is vital to understand both negative and positive applications of legally pluralistic environments.

[319] Swenson (n 57).
[320] Bobseine (n 58).
[321] Tamanaha (n 291).
[322] Swenson (n 57).
[323] Ibid.

Swenson offers an interesting typological framework for examining the range of relationships between state and non-state systems, through four distinct archetypes and five strategies that can influence legal pluralism.[324] These offer a valuable approach for this thesis and other socio-legal studies to understand the legal pluralism archetype and consider appropriate strategies that can lead to constructive pluralistic environments. For this reason, it is hypothesised in this thesis – as outlined in Chapter One - that constructive engagement between state legal systems and customary law would further enhance the maintenance of stability, security and support for the state. This engagement would also represent a culturally intelligible approach to mitigating the challenges of keeping the peace in Jordan and would collectively advance legal pluralism. The fluidity and complexity of relationships between state and non-state legal systems illustrate the distinct archetypes of these relationships and provide an insight into the margin of transformation in such relationships. In legally pluralistic societies, these archetypes are not static as they are evolving in nature, which can have either positive or negative consequences.[325] There are numerous studies reporting on a range of archetypes that are in constant progression or regression.

Combative legal pluralism, the first archetype identified by Swenson, refers to a hostile relationship between state and non-state legal systems. The two institutions do not recognise or trust each other and may have a history of conflict and destabilisation. Combative legal pluralism often stems from ideological differences and failed government systems. Swenson cites the apartheid state in South Africa as an example of a formal legal system functioning with no moral legitimacy or public acceptance, while customary law was a governing system of self-determination. It is for this reason that combative legal pluralism tends to be associated with active insurgencies or separatist movements, with the appeal of non-state justice being that it is fundamentally different from the state system.[326] Khalil cites the similar example of tribal customary law in the occupied Palestinian Territories during the First Intifada as a collective expression for self-determination and rejection of the Israeli occupation. During this period, the Palestinian conciliation practice (*Sulha*) flourished due to the community rejecting Israeli military orders and relying on tribal law to keep local peace. In this sense, tribal customary law was a form of combative legal pluralism, standing as a symbol for the Palestinian struggle against occupation and asserting the Palestinian peoples' identity and self-governance.[327] This archetype is mostly associated with colonial conditions where the two systems are inherently incompatible.

Competitive legal pluralism, the second defined archetype, describes legal authority as being contested between state and non-state systems. Swenson argues that competitive legal

[324] Ibid.
[325] Tamanaha (n 291).
[326] Swenson (n 57).
[327] Khalil (n 184).

pluralism is present in many developing countries, particularly in post-conflict conditions. The non-state justice sector endeavours to maintain its autonomy in keeping local peace and security, beyond the reach of the state's authority. The central government, meanwhile, makes concerted efforts to reaffirm control over the legal system and assert its authority to maintain order. However, the two systems recognise each other's legitimacy and the need to work together.[328] Tamanaha suggests that state and non-state legal systems have competing and overlapping norms, which create conflicting versions of the law and generate uncertainty for legal pluralism. These systems also make competing claims over legal authority and clash over differences between legal norms and state procedures. However, competitive legal pluralism presents opportunities for society by prompting the legal systems to provide alternative and accessible orders.[329] Afghanistan and Timor-Leste experienced competitive legal pluralism through their post-conflict and state-building process. For Afghanistan, this process has been unsuccessful in mitigating the challenges of competitive legal pluralism and the country appears to have slipped into a combative legal pluralism environment. Timor-Leste, in contrast, seems to have been building on the opportunities of state-building by enhancing the capacity of and cooperation between state and non-state legal systems.[330]

Cooperative legal pluralism is the third distinct archetype and reflects a status of mutual respect and recognition between state and non-state legal systems. The two systems are engaged through a collaborative approach to reinforce their legitimacy and address any issues that arise from legal pluralism. Swenson argues that non-state legal orders maintain a high level of autonomy and authority in cooperative legal pluralism. It is common in a relatively stable state-building environment that the central government expands its legal authority and capacity to enforce the rule of law. The non-state system consolidates the state efforts in keeping the peace and filling the gap. Zimbabwe and many other postcolonial African countries feature cooperative legal pluralism, which involves alliances and shared visions between formal systems and customary law.[331] Cooperative legal pluralism is not free of challenges, however, as it does not necessarily reflect democratic process or protect all aspects of human rights. The relationship can also still be at risk of potential conflict if the two systems have no genuine intention to coexist through a participatory approach. Cooperation can instead be intended to absorb, neutralise or influence the activities of the competing system.[332]

Complementary legal pluralism is the fourth archetype articulated by Swenson. It is common in countries with high-capacity legal systems that actively devise alternative dispute resolution schemes by contracting non-state agencies. In this setting, the central government

[328] Swenson (n 57).
[329] Tamanaha (n 291).
[330] Swenson (n 57).
[331] Ibid.
[332] Tamanaha (n 291).

claims both legitimacy and capacity to ensure the acceptance and implementation of the state legal orders. The non-state legal system becomes highly regulated by, and ceases to be autonomous from, the state.[333] Swenson argues that the features of complementary legal pluralism are very similar to the cooperative model, except that it is mandated by the state's authority and is designed to complement formal orders. It is an integrative approach to legal pluralism, which is regarded as a valuable goal. Although it is a constructive approach, complementary legal pluralism is not immune from challenges as state and non-state systems tend to clash over different interpretations of legal orders, or become synonymous, which eliminates opportunity for choice and growth. However, complementary legal pluralism interprets the relationship between state and non-state legal systems as functioning in a harmonious way.[334] This archetype appears to place strong emphasis on integration and coexistence. Koori Court in Australia is an example of complementary legal pluralism; under this framework, the Children's Court of New South Wales provides a diversionary option for Aboriginal youth to bridge the gap between Indigenous people and the judicial system. It is a state-led initiative that seeks cooperation with Indigenous elders in addressing youth disengagement and over-representation of Aboriginal people in the criminal justice system.[335]

These theoretical archetypes – combative, competitive, cooperative and complementary - illustrate the fluid relationship between state and non-state legal systems. The importance of these descriptive models is that they offer an insight into legal pluralist relationships. The intersection of state and non-state legal orders also highlights the competing priorities and multifaceted factors that influence legal pluralist relationships. Swenson outlines five key strategies that are often utilised to modify the interactions between state and non-state legal systems. These strategies demonstrate how legal pluralism archetypes can shift over time and potentially lead to a significant change. However, these are designed to conceptualise the function of legal pluralism in a range of settings, rather than offer a restricted or rigid framework.[336] Tamanaha notes that there are a range of strategies that state systems have used to either prohibit or tolerate non-state legal systems. The most common strategies were used during colonial times and sought to incorporate and codify customary or religious law for the purpose of expanding the reach of the state's authority. Some strategies endeavoured to absorb, neutralise, exploit or ignore competing normative systems, whereas other states made strategic choices to endorse, integrate or partner with these systems in pursuit of a collective goal.[337]

[333] Swenson (n 57).
[334] Ibid.
[335] Sue Duncombe, 'Expansion of the NSW Youth Koori Court Program' (2018) 30(5) *Judicial Officers Bulletin* 48.
[336] Swenson (n 57).
[337] Tamanaha (n 291).

Firstly, *bridging strategies* are designed to enhance access to justice and provide viable choices to the public. The state and non-state legal systems engage through a collaborative approach to meet an increasing demand for justice. Each system has a defined jurisdiction, and they coordinate the distribution of legal matters based on a range of factors, which are often in line with the state's priorities. Diversionary schemes and alternative dispute resolution options are an example, where the state system dictates the legal matters that can be referred to non-state legal orders. The non-state sector accepts being regulated and having its autonomy reduced; thus, it is obliged to only deal with matters under its jurisdiction. Swenson asserts that bridging strategies are a plausible approach to competitive and cooperative legal pluralism, where the legal systems are committed to cooperate and work on a shared vision. However, such strategies are not compatible with the archetype of combative legal pluralism.[338] The existing interactions between state system and tribal law in Jordan have similar features to bridging strategies. The state police, regional governors, local courts and other government bodies are engaged with and make referrals to sheikhs to secure tribal resolution settlements in conjunction with the statutory law proceedings. Sheikhs also liaise with state officials to contain the implications of blood feud crimes.[339]

Secondly, *harmonisation strategies* seek to incorporate the non-state system and ensure that it is consistent with the modern legal system. The central government, non-government organisations and international stakeholders advocate for the non-state legal system to make necessary changes in line with basic human rights and the state's values. Swenson argues that the non-state legal system continues to maintain its legitimacy and autonomy, while accepting codification and regulation. The state system, in turn, makes concessions to retain some normative aspects of non-state legal orders that are inconsistent with statutory law but are highly entrenched within society. The state system seeks to bridge the gap with the non-state system rather than absorbing or assimilating it into statutory law. This model depends on the state's capacity to engage successfully with the non-state system.[340] Such strategies are evident in Jordan, where, over the past 45 years, the state system has made some steps to incorporate tribal law by using incentives rather than coercions. There have been a number of modifications introduced to tribal law and the central government has also authorised tribal law practices in matters – such as those involving blood feuds, honour crimes and breaching the 'face' of tribal guarantors – which have implications for security and keeping the peace within Jordanian society.[341]

Thirdly, *incorporation strategies* occur when the state's relationship with the non-state system strengthens and the state seeks to assert its legal authority. The non-state legal system is

[338] Swenson (n 57).
[339] Watkins (n 24).
[340] Swenson (n 57).
[341] Watkins (n 24).

officially recognised as a separate entity within the state. In this sense, the non-state system operates autonomously and maintains its core features, while the state oversees and reviews all legal orders. Incorporation strategies are reflected through the creation of customary courts that are endorsed and regulated by the state system. Customary courts mean that state and non-state orders are effectively part of one system, with all the safeguards of the appeals and ratification process. Swenson argues that such strategies are likely to further expand non-state legal practices, while the state gains some control over non-state orders and ultimately increases its legitimacy across the whole legal system. This approach depends on the ability and willingness of the non-state system to be incorporated into the state system and accept reduced autonomy.[342] The evidence suggests that tribal law in Jordan experienced a similar process in 1924 when the tribal court law was established following the emergence of the modern state system. It was the first known attempt by a formal state authority to regulate the social norms of the nomads in the region. The law sought to consolidate the state's legal authority and limit the autonomy of tribal law. It also modified tribal evacuations and limited the collective responsibility in blood feuds.[343]

Fourthly, *subsidisation strategies* are a familiar approach to enhancing the state system's capacity and appeal relative to the non-state system. State legal orders seek to strengthen their resources and networks by pursuing legislative reforms, capacity-building, symbolic representation and public engagement. Subsidisation strategies revolve around state-building efforts and occur in a variety of settings, particularly in post-conflict conditions. This approach is distinct from the previous strategies as it does not require active engagement with non-state legal orders, since they are not the intended target. Swenson asserts that these strategies are not straightforward due to the complexity of state-building efforts. Such efforts involve investing in human resources, judicial infrastructure and other legal reforms, which can be a prolonged process and does not necessarily lead to a successful outcome. It is for this reason that the success or failure of these strategies is likely to have an impact on the relationship between state and non-state legal systems.[344] The relevance of subsidisation strategies to Jordan is evident in the way that its modern state institutions have been built over the past century. Jordan has invested heavily on building a robust legal system through human resources and physical infrastructure, particularly when compared to other Arab countries.[345]

Finally, *repression strategies* are focused on undermining and trying to eliminate non-state legal orders. The state system regards non-state legal orders as a rival and threat to its legitimacy and legal authority. Non-state legal orders are also seen as incompatible with the

[342] Swenson (n 57).
[343] Al-Abbadi (n 5).
[344] Swenson (n 57).
[345] Jain (n 26).

state's values or undermine its standing within the international community. In these circumstances, the state system is strong enough to pursue such strategies without engaging with or trying to influence the non-state actors to work with state officials. For this reason, the state system does not resort to persuasion or incentives. The aim instead is to neutralise and prohibit non-state legal orders, while enforcing the state's mandate, which inevitably triggers resistance from both systems. Swenson argues that repression strategies are sometimes deemed necessary when the existence of the state system is in danger from insurgent attacks linked to non-state justice actors. However, state repression efforts are often unsuccessful in eliminating all practices of non-state legal orders and consolidating the state monopoly on legal authority.[346] It has been argued that tribal law in Jordan experienced some repression during the Ottoman Empire. Tribal nomads at the time were isolated and neglected, and hence were heavily reliant on customary law. The regime attempted to exert control over tribal nomads and dismantle the Bedouin justice system, which led to a wave of clashes and violence, particularly in the last decades of Ottoman rule.[347]

These five strategies have been deployed in Jordan at different times in the legal pluralistic relationships between the customary law and the state legal system. The strategies of bridging, harmonisation and incorporation are present today, reflecting the legal pluralism archetypes currently active in Jordan, articulated in Chapter Seven.[348] This offers a deeper understanding of how the legal pluralistic relationships have evolved over the years within Jordanian society. There are various other models that describe the level of engagement that formal legal systems have with non-state legal orders, notably the categorisation of negative and positive interactions. The negative approach refers to the prohibition, rejection or disregard of the validity of non-state legal orders. The positive approach refers to the acceptance, incorporation and recognition of the non-state legal system. However, the latter approach is not a straightforward process as it is often prolonged, complex and prone to a number of risks.[349] For this reason, these strategies require a careful process of constructive engagement between the state system and non-state legal systems. They also entail a multifaceted approach of legal reform, state-building and rule of law efforts.[350] As the above discussion shows, legal pluralism is a dynamic and inherently fluid process that requires constant investment.

3.4 Cases of legal pluralism

Despite the theoretical challenges, legal pluralism offers a useful framework for conceptualising the range of relationships between state and non-state systems. Many socio-

[346] Swenson (n 57).
[347] Abu-Hassan (n 16).
[348] Jain (n 26).
[349] Woodman (n 306).
[350] Swenson (n 57).

legal studies have observed that legal pluralism exists in most parts of the world and describe those legal pluralistic relationships within specific countries. It is useful to examine some of these cases, which have been discussed in the preceding chapter, and identify the way in which the abovementioned archetypes and strategies can be used to gain insight into how these relationships are shifting in various directions. Swenson shares the examples of Timor-Leste and Afghanistan to explain his model of legal pluralism, showing how different approaches influenced legal pluralistic relationships in these countries. Understanding the fluidity and complexity of legal pluralism archetypes and devising sound strategies for engagement between multiple legal systems, is likely to have direct implications for legal pluralistic relationships. Swenson argues that approaches which use substantial force are unsustainable and will eventually fail. The most promising approaches are those that are culturally appropriate, built on constructive engagement between state and non-state legal systems, and tap into local customary values to enhance the legitimacy and collective capacity of existing legal systems.[351] Thus, approaches to legal pluralism can either mitigate or aggravate the challenges of legal pluralistic relationships.

Afghanistan has a pluralistic legal system within which Sharia, statutory law and customary norms overlap and sometimes contradict each other. This legally pluralistic reality is entrenched in Afghanistan and reflected in the national constitution. However, most disputes continue to be resolved through customary law, using traditional justice such as local *Jirga*. Sharia and statutory law often resort to customary norms when seeking to settle disputes outside the state system.[352] These legal pluralistic relationships are deeply intertwined and have been increasingly challenged over the years by rising tensions and the devastation of conflict. The state legal system is perceived to be inadequate, dysfunctional and corrupt compared to customary law, which is seen to fill a gap by providing accessible community-based justice. However, customary law is also perceived to contradict civil law, violate basic human rights and undermine state-building efforts. Furthermore, Taliban militants appear to side with customary law practices in asserting that they fight for traditional Afghan values. There are claims that international donors contributed to the marginalisation of customary law by their exclusive support of the state system.[353] These challenges show that there were no incentives to strengthen legal pluralism in Afghanistan.

Afghanistan had an opportunity to invest in legal pluralism and state-building after the fall of the Taliban regime in December 2001. There was a period of stability under a new regime, which was heavily supported by the international community. Swenson argues that the legal pluralistic environment in Afghanistan at the time was competitive, with the majority of

[351] Ibid.
[352] Khan (n 105).
[353] Braithwaite and Wardak (n 104).

disputes settled outside state courts. The reliance of the Afghan people on customary law practices was inevitable given the nation's long history of very limited state capacity and weak central government. Under the then post-Taliban regime, there were no tangible steps to engage with customary law constructively or utilise the opportunity to regulate its function, particularly within rural and remote communities.[354] Braithwaite and Wardak argue that there was no emphasis from the post-Taliban regime or international community on empowering and reforming rural justice in Afghanistan. This represents a failure to recognise that the Afghan people have learned to depend on their local community and traditional system for security and justice. The newly formed legal system was also fragmented and built on the notion that reliance on heavily armed police would support the rule of law, which instead exacerbated legal pluralistic relationships in Afghanistan. The police and judicial system became notoriously corrupt and were too weak to compete with the Taliban's armed rule of law. The Taliban courts became more acceptable to Afghan people than the justice supplied by the state system.[355] The collapse of the new regime and recent return to power of the Taliban highlights the deterioration of legal pluralism and state-building in Afghanistan.

Swenson claims that these circumstances have caused the legal pluralistic relationships to move from a competitive to combative model. Although there have always been tensions and clashes between previous state systems and local customary law, there was a level of recognition and coexistence between the two systems. Customary law also maintained its autonomy, while not contesting the state's legal authority. However, the post-Taliban regime renounced the traditional values that underpin local customary law, particularly with regard to the deep-rooted legitimacy of village elders and tribal leaders. The regime also drafted laws on dispute resolution, which moved to restrict customary law to minor disputes and impose criminal liability for people who did not observe the new law's provisions. Interestingly, the draft law was never enacted because of objections from the Ministry of Women's Affairs and the Human Rights Commission over concerns about legitimising customary practices that violate human rights standards.[356] The rise of Taliban and its use of customary law seems to have further reinforced combative legally pluralistic relationships in recent years.

Timor-Leste, on the other hand, appears to have shifted legal pluralistic relationships towards a cooperative approach over the 20 years since its independence. Despite the challenges of state-building during those years, legal pluralism has experienced some positive developments in the newly formed state. First, customary practices were featured in the Commission for Reception, Truth and Reconciliation hearings that took place in villages between 2002 and 2005 to enquire into human rights abuses under Indonesian occupation.

[354] Swenson (n 57).
[355] Braithwaite and Wardak (n 104).
[356] Swenson (n 57).

Utilising local customs for dispute resolution and community reconciliation was a significant recognition of customary law. It enabled village chiefs to engage in this process and establish trust with the new state system.[357] Local customs were also acknowledged in the constitution and revived as traditional governance mechanisms for Timor-Leste. The government took a further step with the Traditional Justice Act – in draft as of December 2020 and apparently unfinalised as of the time of writing – designed to promote reconciliation and reparation within villages. The Act seeks to regulate Timorese traditional judicial processes of arbitration and mediation within the village community. It stipulates that village chiefs are the facilitators of this process and authorises them to resolve disputes involving property ownership, family affairs, inheritance and incidents causing violence and damage. Thus, this Act creates a functional link between village justice and the state system, which is envisaged to strengthen the legitimacy and enforceability of legal proceedings of both systems.[358]

Although the Traditional Justice Act is still a draft and comes 20 years after the state was established, it still offers evidence that legal pluralism is gaining momentum in Timor-Leste under a model that is becoming more cooperative, rather than combative as it was under Indonesian rule. However, Grenfell argues that legal pluralism poses some risks to the Timorese state system, particularly with regard to enforcing the rule of law and ensuring basic human rights. The concern is that local pluralism lacks the systems of checks required for preserving accountability and constitutional values. The function of local customs that are unwritten and unregulated increases the potential of risks that are likely to weaken legal pluralism.[359] For this reason, the Traditional Justice Act will be a significant milestone for legal pluralism in Timor-Leste. The draft Act deals with the main issues relating to local customary law by stipulating that traditional settlements be written down and registered, ensuring that women are able to participate in the process, and facilitating links between village chiefs and state legal officials.[360]

Swenson argues that Timor-Leste has made significant progress in strengthening both legal pluralism and the rule of law. The new state regime was able to build on the legacy of the struggle for independence and harnessed the Timorese desire for self-governance by utilising local customary practices. The state system established its cultural legitimacy and legal authority, which is critical in any state-building environment. Although it has been a slow process, state officials have taken strategic steps to work collaboratively with local non-state

[357] Tim Allen and Anna Macdonald, 'Post-conflict Traditional Justice: A Critical Overview' (2013) 3 *Justice and Security Research Programme* 1.
[358] Satoru Miyazawa and Naori Miyazawa, 'Harnessing Lisan in Peacebuilding: Development of the Legal Framework Related to Traditional Governance Mechanism in Timor-Leste' (2021) 9(1) *Asian Journal of Peacebuilding* 163.
[359] Grenfell (n 113).
[360] Miyazawa and Miyazawa (n 358).

authorities and engage with their processes for resolving community disputes. This provided an incentive for change, with village chiefs receptive to working with the state legal system while retaining the autonomy that they fought for under Indonesian rule.[361] The customary system's relationship with the formal legal system, under Indonesian occupation, was perceived as combative; since independence, that relationship has shifted to a competitive and, more recently, cooperative setting. Swenson further points out that Timor-Leste has suffered some setbacks, including renewed violence in 2006, which cast some doubt on the traction gained by state-building and legal pluralism efforts. Nevertheless, it is evident that state and non-state authorities are increasingly favouring collaboration and adopting a partnership approach. It is for this reason that legal pluralism in Timor-Leste offers a transformative insight into the fluid nature of these relationships.[362]

The comparison between Afghanistan and Timor-Leste illustrates how critical the approach to legal pluralism can be, especially for post-conflict societies. Both countries had similar circumstances, with a new state system installed on the basis of competitive legal pluralistic relationships. The two state systems had substantial support and a period of stability to invest in state-building and public legitimacy. They were confronted with civil unrest and the need to rebuild a largely destroyed country.[363] Customary law is widely recognised as a dominant feature within both societies, which is perceived as reflective of local community values and facilitating legitimacy and public participation. However, Timor-Leste took deliberate measures to recognise customary law and adopted strategies for constructive engagement between the state and non-state legal systems.[364] Timorese legal pluralism was further enhanced as the state developed its legal capacity and was able to engage with the non-state legal sector through a partnership approach. In contrast, the Afghan state system appeared ideologically different from the local customary system, and hence was unable to construct its legitimacy and build culturally intelligible institutions.[365]

The lessons learned from the experiences of Afghanistan and Timor-Leste suggest that regulating non-state legal rules would enhance legal pluralism. The Albanian customary law (*Kanun*) presents a contradictory insight into this argument. Multiple studies have suggested that regulating customary law in written form would provide legal pluralism with certainty and better enable it to be recognised by the state system.[366] As discussed in the previous chapter, however, the transcription of the Albanian *Kanun* did not bring legal certainty to

[361] Swenson (n 57).
[362] Ibid.
[363] Ibid.
[364] Allen and Macdonald (n 357).
[365] Swenson (n 57).
[366] Joireman (n 83).

customary law, nor did it improve legal pluralistic relationships. Despite the Albanian Kanun being available in written form and forming part of its legal statutes, it remained unpredictable, inconsistent and poorly aligned with public law. The written text has been subject to conflicting interpretations and did not succeed in addressing harmful aspects of some social norms, particularly with regard to the practice of blood feuds. The state system also remained weak and reliant on the Albanian *Kanun* to resolve and contain community conflicts, especially in rural areas.[367] Thus, transcription and codification did not produce legal uniformity and collaborative legal pluralistic relationships within the state.

Despite efforts to eradicate the Albanian *Kanun* during the communist era, it continued to be the dominant means of resolving disputes within local communities in Albania, Kosovo and Macedonia. The existing literature suggests that the *Kanun* has further revived in the post-socialist environment as it addresses a wide variety of civil and criminal law issues. It is viewed as a flexible and accessible source of law for the local communities. It is also aligned with their cultural values and reflective of their group identity. For this reason, some scholars argue that legal pluralism offers a useful framework for analysing the persistence of the Albanian Kanun and understanding the implications for the state system of its existence as a semi-autonomous social field. The *Kanun* represents a condition of coexistence, competing with the state legal system. The challenge for legal pluralism relates to the public perception that the state laws are authoritarian and incompatible with local values.[368] The code of honour underlying the *Kanun* and its consequence of revenge killings is also a critical challenge to legal pluralism and the rule of law within the modern state system. It is therefore argued that state and non-state legal systems need to utilise local legal pluralism and enhance their legal capacity through mutual recognition and constructive engagement.[369]

Although transcription is only one aspect of regulating non-state legal orders, it is fair to assert that the regulation process on its own does not determine the function of legal pluralism. There are a number of scholars who believe that community recognition and voluntary acceptance of non-state legal rules are more important to legal pluralism than the state's regulation of those rules. Some scholars suggest that the recognition of non-state legal orders by the state system is not necessarily an indication of strong legal pluralism. Griffiths takes this notion further by labelling this as weak legal pluralism because it reflects the ideology of legal centralism. Griffiths argues that weak legal pluralism is not 'real' pluralism, as the state seeks to incorporate customary law and other normative orders into

[367] Ibid.
[368] Bardoshi (n 101).
[369] Joireman (n 83).

the formal legal system in the service of its own interests.[370] Woodman, however, argues that although the state's control of non-state legal orders may not be deep legal pluralism, it provides a form of legal pluralism nonetheless. In this sense, deep legal pluralism reflects the coexistence of legal orders that stem from various sources of authority, where the state law represents one aspect of the normative orders. For this reason, legal pluralism in most African countries offers an insight into the prevalence and community recognition of customary law, which appears to be the driving force for legal pluralistic relationships.[371]

Somali customary law (*Xeer*) is an example of the empirical reality of legal pluralism in Africa. This traditional dispute resolution mechanism is legitimate in the eyes of local people because they rely on it to restore peace and security. It functions independently in the absence of a central government while maintaining a level of engagement with the remaining features of the state legal system. Through years of civil war, *Xeer* became the dominant system governing societal relations and serious crime, taking precedence over Sharia and statutory law. *Xeer* has never been regulated by the state system and remains an oral law transmitted through clan elders. *Xeer*'s core feature is the elders' role in resolving local disputes and providing figures of trust and respect in a volatile environment.[372] Clan elders provide the community with an interactional approach to conflict resolution as they are empowered through their traditional authority to engage with all parties, including state officials and rebel groups. Kulow argues that *Xeer* offers some parts of the country, such as Somaliland and Puntland, with a framework for deep legal pluralism, with local authorities working collaboratively with clan elders and creating noticeable improvements to local security. However, the communities of Somalia's southern regions remain largely fragmented.[373]

Legal pluralism in Somalia's case appears to operate on the basis of rejecting legal centralism and assigning customary law with complete autonomy. The function of *Xeer* illustrates the concept of the 'self-regulation of a semi-autonomous social field', which Griffiths calls real legal pluralism since it is not determined by the state system.[374] This raises the question of whether there is a fundamental divide between state and non-state legal rules. Tamanaha argues that failing to recognise the empirical distinction between state law and social orders inhibits the ability to regulate their pluralistic relationships. Tamanaha recognises that this distinction is blurred, which presents a challenge to legal pluralism.[375] Woodman claims that such a distinction is merely a categorisation rather than a fundamental

[370] Griffiths (n 290).
[371] Woodman (n 306).
[372] Hart and Saed (n 109).
[373] Kulow (n 108).
[374] Griffiths (n 290).
[375] Tamanaha (n 291).

divide between legal orders.[376] Tribal law in Yemen is an example where the divide between state and non-state legal systems is often fluid and carries different meanings. Adra notes that the differences between tribal law and the state system have local connotations, including the urban–rural and regional divide, which underpins the sources of many hostilities and tensions between tribal and state legal systems. It also deals with the question of what the legitimate sources of legal authority are. However, the divide has also been a mechanism for sharing and coordinating the burden of restoring peace and security.[377]

Tribal law and a state legal system have always coexisted in Yemen, where tribal leaders usually maintain security in the rural areas and state officials focus on urban regions. The two systems function in parallel with each other and intersect at different levels. Yemeni people are accustomed to legal proceedings and rulings that are a mixture of these systems.[378] It is the norm for police, judiciary and other state authorities to observe tribal law practices and seek to accommodate their rulings within the state legal system. State officials often attend tribal conciliation gatherings, especially when they involve serious crimes or conflicts. Official judges tend to refer most disputes to tribal sheikhs and incorporate tribal settlements as part of the court sentence. State police also usually work with tribal sheikhs and exert pressure on the disputing tribes to resolve their conflict through customary settlements.[379] Although sheikhs have a distinct role in reconnecting the community and preserving social solidarity, some are reported to have abandoned this traditional role and begun to associate with the state system for political and financial gain.[380]

State officials and international agencies based in Yemen have also been suspected of paying ransoms to tribal leaders to resolve tribal standoffs and secure settlement concessions that relate to their area of work.[381] This appears to undermine the legal authority of both systems in the eyes of Yemeni people. Legal pluralism in Yemen is a reflection of a weak state system, which is perceived to lack the authority and capacity to enforce the rule of law within local communities,[382] with tribal law therefore regarded as a substitute. Yemeni people are drawn to tribal law out of necessity for a basic level of security, stability and certainty. Although it is imperfect, tribal law is a second-best alternative in the absence of a credible state law. Corstange argues that the weaker the state legal system, the more people prefer and rely on tribal law. For this reason, Corstange suggests that the study of legal

[376] Woodman (n 306).
[377] Adra, 'Tribal Mediation in Yemen' (n 206).
[378] Dupret, 'Legal Traditions and State-centered Law' (n 132).
[379] Ibid.
[380] Corstange (n 126).
[381] Ibid.
[382] Dupret, 'Legal Traditions and State-centered Law' (n 132).

pluralistic relationships should focus on their influence on social order rather than their composition.[383] Most disputes in Yemen are now resolved without any intervention from the state legal system, with tribal law filling the gap in state-sponsored justice. However, these systems continue to interconnect and depend on each other to collectively enforce the local peace.[384]

The reality of legal pluralism in Yemen has been driven by the community's need for a system for de-escalation of conflict and reconciliation. Although tribal law is autonomous, its competitive relationship with the state system stems from the demand for social order. The community pressure on sheikhs to provide basic rule of law tests their legitimacy and prompts them to work with state officials and local stakeholders. While asserting their authority, they do not seem to deny the existence of the state system.[385] The state system has also recognised the validity of tribal law, enacting the Arbitration Law in 1976, which stipulates that arbitration is an alternative procedural option within state law. In 1981, the law was amended to allocate a separate jurisdiction for tribal law in cases of blood feuds.[386] The Arbitration Law was further revised in 1992 to integrate tribal conciliation and conflict management processes within the court system. This was supported by tribal leaders and state officials at the time, and represents a significant attempt to incorporate tribal law into the state legal system.[387]

Arguably, these measures might have strengthened legal pluralistic relationships in Yemen and steered them towards a partnership had it not been for the civil war. This suggests that the weakness of the state system and lack of stability can derail the growth of legal pluralism and lead to full reliance on customary law. In the case of Iraq, however, while the fall of Saddam led to great instability, it has also produced some opportunities for new legal pluralistic relationships. Iraq has been in a state of chaos for almost 20 years, experiencing rapid changes including the rise and defeat of the Islamic State. These changes left ordinary Iraqi people in desperate need of security in the absence of an effective state legal system. There is growing evidence that tribal law is reviving and adapting to these changing times in Iraq and has been playing a significant role in filling the gaps in justice.[388] Although there are inevitably challenges attached to the rise of tribal law in a country that was accustomed to legal centralism, new relationships are being forged between tribal sheikhs and state officials. This is consistent with the trouble case method of the Cheyenne Way, which

[383] Corstange (n 126).
[384] Dupret, 'Legal Traditions and State-centered Law ' (n 132).
[385] Al-Dawsari (n 205).
[386] Dupret, 'Legal Traditions and State-centered Law ' (n 132).
[387] Al-Dawsari (n 205).
[388] Bobseine (n 58).

suggests that the process of settling disputes helps in establishing new relationships and prompts new learnings.[389] It shows that an increased demand for justice can bring the state and non-state legal systems closer.

The current coexistence of tribal law and the post-Saddam regime is not necessarily founded upon constructive cooperation. Tribal law is still not officially recognised by state law, but it is becoming more visible through the function of the state legal system. Tribal sheikhs are being extensively utilised by state officials and community groups to resolve local disputes. Despite a lack of trust and consistency between the two systems, the limited capacity of the state legal system has prompted state officials and tribal sheikhs to work together through tribal settlements. Tribal leaders and state officials such as security forces and court judges are wary of each other due to the perceived contradictions between the two systems; thus, their cooperation appears to be motivated by the need for social order.[390] Swenson describes the current legal pluralistic relationships in Iraq as combative, meaning that the state and non-state systems do not recognise, and seek to undermine, each other. Their relationship appears to be marked by hostility and limited cooperation.[391] However, Tamanaha argues that inconsistencies between legal orders does not necessarily mean that there is a clash, as cooperation between these systems is the exception under any circumstances.[392]

No state system in Iraq has ever been able to fully replace tribal law and monopolise justice. Although the weakness of the state system is a direct result of the revitalisation of tribal law, the strong sense of tribal identity among Iraqi people has also given this traditional system the public authority that enables it to survive change. Some argue that the identity, culture and solidarity of the tribes will always influence legal pluralistic relationships and state-building efforts in Iraq.[393] Since the time of the Ottoman regime, state systems have adopted a range of strategic approaches, seeking to suppress, empower or incorporate the tribal system. The Ottomans indirectly ruled the tribes as they adopted a strategy of containment and self-governance for local tribes. The British regime, however, sought to utilise tribes as a strong base to establish control over the country, allowing tribal leaders to retain their authority and control in return for their loyalty and support. The Saddam regime followed different strategies, initially outlawing the tribal system under the banner of building a secular state system, then seeking to build an elite security force based on tribalism and, in the final years of the regime, attempting to incorporate tribal law as part of the state legal system.[394]

[389] Hoebel and Llewellyn (n 76).
[390] Hamoudi, Al-Sharaa and Al-Dahhan (n 198).
[391] Swenson (n 57).
[392] Tamanaha (n 291).
[393] Asfura-Heim (n 118).
[394] Ibid.

The post-Saddam regime appears to be heavily engaged with tribal law, with some local sheikhs reporting that they have been unfairly burdened by the demands and challenges of providing social order. The state's current engagement with tribal settlements has not necessarily translated into proper support or constructive cooperation between these systems. Local residents also report that some sheikhs appear to be taking advantage of the state's reliance on their services by advancing their own financial and political interests. State officials are also seen to undermine the public legitimacy of tribal law by supporting 'new' sheikhs, who are perceived as corrupt.[395] Asfure-Heim argues that there is a level of cooperation between the current state legal system and tribal law in Iraq, with state judges and police officials recognising the value of tribal settlements in state legal proceedings. However, it is still unclear whether the current engagement will continue once the country's security improves or whether the state will take the path of incorporating tribal law as part of a pluralistic legal system.[396] It is evident that the current usage of tribal law in resolving disputes and state officials' engagements with tribal sheikhs are already influencing the way Iraqi people utilise these systems to improve their access to local justice.

The final case of legal pluralism examined here relates to Palestinian customary law in the occupied territories and Israel. Unlike Yemen and Iraq, the prevalence of Palestinian customary law is not a consequence of a weak state system. The existing studies suggest that legal pluralism with respect to local customary law has other dimensions that are relevant to Palestinian circumstances. Legal pluralistic relationships occur in different legal cultures, including the West Bank, Gaza Strip, East Jerusalem and Israel. Palestinian customary law operates in various ways within these settings and engages in an intensely plural normative space with multiple legal systems. Palestinian customary law has notably operated as a tool of empowerment and a means of asserting group identity. Local community groups tend to resort to their customary practices to distinguish themselves and realise their desire for self-governance.[397] It has been argued that the prevalence of Palestinian customary law represents an expression of the society in the face of an alien state system. For this reason, the revival of customary practices has been linked to resistance to the Israeli occupation, particularly during the First Intifada, when Palestinian factions strategically supported the role of these practices in keeping local peace. Customary law has also been utilised by the Palestinian Authority in promoting conciliation and asserting its legal authority. It is also a recognition of the role of tribalism in contemporary Palestinian communities.[398]

[395] Bobseine (n 58).
[396] Asfura-Heim (n 118).
[397] Kyriaki Topidi, 'Customary Law, Religion and Legal Pluralism in Israel: Islamic Law and Shari'a Courts in Constant Motion' (2019) 13(26) *Revista General de Derecho Público Comparado* 70.
[398] Khalil (n 184).

Palestinian customary law shares some similarities with customary law in Jordan, as both historically belong to the same tribal system and experienced the same circumstances under the Ottoman and British regimes. The system, at the time, coexisted with the state and was gradually contained within tribal areas. Sheikhs were allowed to locally govern their tribes and resolve disputes with limited intervention from the state system. However, there was some resistance by the tribes to the state's attempts to regulate customary practices, which enabled customary law to preserve its semi-autonomy under these regimes.[399] Under Israeli rule, Palestinian customary law became subject to different strategies and was divided into several jurisdictions. It has been argued that in the occupied territories, customary law was largely repressed through countless military rules in response to Palestinians boycotting the Israeli legal system. This led to the further legitimisation of and reliance on customary law within local communities.[400] Palestinian resentment and mistrust of the Israeli state system turned customary law into a nationalist instrument for resisting the occupation and asserting the Palestinian cause of self-determination.[401]

Legal pluralistic relationships within the state of Israel were somewhat different to those in the occupied territories. Topidi argues that Israel has adopted a compartmentalised arrangement for customary law, with the Palestinian Arab minority subject to multiple laws within the state legal system. At the outset, Israel recognises Arab customary law, as state courts sometimes take customary conciliations into consideration. However, it is perceived that the state's endorsement of customary law is a means of keeping control over the Palestinian Arab minority rather than a meaningful practice of legal pluralism.[402] Customary law became an instrument for the Arab minority to retain their identity and heritage within court proceedings. The engagement of the Arab minority with customary law and the formal legal system also stems from the need for the state and local communities to work together in resolving their disputes.[403] Tsafrir articulates the complexity of this relationship between Arab customary law and the Israeli legal system, which entails a mixture of recognition, rejection and a power struggle over legal authority. Conciliation settlements under customary law are often regarded as a mitigating circumstance in state court proceedings and reflected in sentencing; nevertheless, some judges tend to regard these conciliations as admissions of guilt, thus incriminating the accused in the eyes of the state court and undermining customary law efforts to contain the dispute.[404] This shows the fluid nature of this type of legal pluralism, which seems to be shaped by various factors.

[399] Terris and Inoue-Terris (n 140).
[400] Khalil (n 184).
[401] Terris and Inoue-Terris (n 140).
[402] Topidi (n 397).
[403] Ibid.
[404] Nurit Tsafrir, 'Arab Customary Law in Israel: Sulha Agreements and Israeli Courts' (2006) 13(1) *Islamic Law and Society* 76.

Legal pluralistic relationships under the Palestinian Authority are blurred and challenged by a different set of circumstances. From its inception, the Palestinian Authority appeared to encourage tribal law to operate with the support of the state system. It also facilitated the creation of local conciliation committees through legal recognition and financial support. The late president Yasser Arafat issued a degree in 1994 to establish a Department of Tribal Affairs as part of the President's Office. Arafat was personally involved in a number of high-profile tribal disputes and approved payment of the financial compensation in these settlements by the Palestinian Authority.[405] This level of recognition was reflected in the work of state police and courts as they worked collaboratively with conciliation committees in resolving local disputes. The Palestinian Authority utilised customary law as a means of reinforcing the legitimacy and legal authority of its system, especially in areas under Israeli control such as East Jerusalem.[406] Although customary law works in a cooperative space with the Palestinian Authority, it has lately been challenged by the division between the West Bank and Gaza Strip, further straining the function of legal pluralism.

3.5 Local framework of legal pluralism

As exemplified above, it is clear that legal pluralism is a model for analysing socio-legal activities rather than a single theory that offers answers to each specific case. Such a model would be useful for studying legal pluralistic relationships in Jordan, especially through the lessons learned from previous cases. However, such a study would need to take into consideration the local environment and its influence on legal pluralism before exploring any potential modifications.[407] The complexity and fluidity of social fields require a multifaceted approach to gain insights into legal pluralism in Jordan. This entails applying legal principles other than current Western categories and assumptions. Local customary practices should be assessed through multiple lenses, including legal principles that have ancient standing in the region – for example, those embodied in Hammurabi's Code and other legal sources shared by Middle Eastern traditions, such as the Hebrew Bible. The variety of legal principles highlight that there are no absolute standards of justice; hence, Western legal principles present a specific framework to understand non-Western legal systems. Therefore, this thesis follows the approach of those socio-legal studies in which legal pluralism is assessed through what it offers rather than focusing solely on the form of legal orders.[408]

The lessons drawn from the previous cases highlight both the potential and challenges of legal pluralism. They also demonstrate that applying Western legal principles to traditional practices of other cultures can inhibit an understanding of these complex systems. For

[405] Khalil (n 184).
[406] Zilberman (n 189).
[407] Dupret, 'Legal Pluralism' (n 294).
[408] Corstange (n 126).

example, the focus on regulating customary practices within state systems and in line with Western human right standards can be perceived as an attempt by the state to control customary law and monopolise legal authority.[409] Legal pluralistic relationships also thrive on constructive and structured engagements, which are localised and culturally appropriate. The role of tribal leaders or village elders was integral in all of these cases, as they provide a strategic linkage between local dispute settlements and state legal institutions. Their traditional authority enables community groups to access state and customary legal systems through a coordinated approach.[410] Other issues relate to state and international institutions' role in removing the semi-autonomous status of customary law by modifying its practices and incorporating traditional leaders into the state system, which may undermine the integrity of legal pluralism. Table 2 illustrates the key aspects of these cases of legal pluralism.

The key features and challenges of these cases of legal pluralism provide a useful framework for analysing legal pluralistic relationships in Jordan. The coexistence of tribal law and the state system suggests that there is a distinct local context associated with Jordan's case of legal pluralism. Applying an additional cultural lens specific to the Jordanian experience with tribal customary law adds further relevance to the analysis in this thesis. The survival of tribal law through the Ottoman and British regimes, and under the Hashemite Kingdom, shows its adaptability and resilience under a variety of legal pluralistic relationships. Tribal law is not uniquely specific to Jordanian society, other than its local way of utilising this ancient system.

The construction of tribal law in Jordan and surrounding countries has also been influenced by other legal traditions. There is strong evidence that tribal law shares some patterns with the Code of Hammurabi, Assyrian law, Rabbinic law, Greek law, Roman law, Byzantine law and obviously Sharia law. Tribal Arabs have reconciled their lives with these laws and continue to navigate multiple legal systems. There are elements of the Roman legal regime that have been incorporated into tribal law.[411] This can be detected through the role of collective responsibility and social hierarchy in resolving disputes, which are familiar concepts in both laws. Such concepts are seen as important for keeping the peace and preserving the solidarity and identity of community groups.[412]

[409] Griffiths (n 290).
[410] Carol J Greenhouse, 'Mediation: A Comparative Approach' (1985) 20(1) *Man* 90.
[411] Ayman Daher, 'The Shari'a: Roman Law Wearing An Islamic Veil?' (2005) 3 *Hirundo, The McGill Journal of Classical Studies* 110.
[412] GJ Van Niekerk, 'A common law for Southern Africa: Roman law or indigenous African law?' (1998) 31(2) *Comparative and International Law Journal of Southern Africa* 158.

Table 2: Customary law's engagement with legal pluralism

Cases	Features	Challenges
Afghanistan	• Recognised in the constitution • Coexisted with all state systems • Functions due to a weak state system • Law drafted to regulate it	• Dysfunctional state system • Lack of constructive engagements • Deterioration of conflict • Lack of state's legitimacy
Timor-Leste	• Recognised in the Constitution and featured in the Commission for Reception, Truth and Reconciliation • Utilised as a means for building trust with the new state system • Used as a link between the state legal system and villages	• Stagnant progress - Traditional Justice Act has been drafted 20 years after independence • Perceived as incompatible with the state legal system • Concerns over human rights standards and the rule of law
Albania	• Recognised in practice as it works alongside the state legal system • Revived due to the state's inability or lack of capacity to provide justice	• Lack of certainty and consistency • Inability to resolve revenge killings • Lack of collaborative engagement • Conflicting legal values
Somalia	• Recognition stems from public support • Relied on by the state and local communities to restore peace • Clan elders provide linkages between state officials and community	• It has never been regulated and remains dictated by tribal elders • Lack of resources and support • Implications on fairness and vulnerable groups such as women
Yemen	• Officially recognised and regulated through the Arbitration Law 1976 • Sharing the burden of restoring peace • Functions in parallel with the state system • Incorporated through legal proceedings of state courts and police procedures	• Collapse of the central government • Overreliance on customary law • Concerns over some sheikhs using these relationships for self-interest
Iraq	• Revived due to the increased demands • Collaborate with the new state system • Recognised by state courts and police	• Lack of trust and proper support from the state legal system • Implications of the rise of tribalism on state-building process • Lack of clear engagement strategy
Palestine	• Tool of empowerment and asserting national identity and self-governance • Recognition stems from public support and its heritage roots	• Restricted into different jurisdictions • Sense of resentment and mistrust • Treated through compartmentalised arrangements to limit its use

Collective responsibility and punishment are also evident in the Hebrew Bible, where they are seen as necessary for promoting unity and repentance. Collective responsibility is

embedded in the Hebrew Bible as it intersects with community values and interactions. It enables people to reach a conciliatory settlement, while saving face and retaining social harmony.[413] The use of oaths is part of this process, as people are encouraged to prove their innocence without having to display direct evidence. The emphasis here is on allowing people to preserve their honour, which reinforces collective solidarity. The status of particular groups of people, such as women and sheikhs, is prioritised because of the relevance of their status to the community code of honour.[414] Prior to the Biblical rules, the Hammurabic Code of Babylon was a significant feature of the tribal system in the region, including what is regarded as one of the earliest examples of the doctrine of retribution, such as those featured in the Old Testament.[415] Although it was perceived to sanction harsh punishments, it highlights the presumption of innocence, provides measures for people to prove their innocence and details standards for financial restitution.[416]

Tribal customary law in Jordan and surrounding countries features an extensive process of negotiating the compensation to be awarded to the victim in blood feud cases. It is argued that the Twelve Tables of the Roman law (a set of laws inscribed in ancient Rome that outline people's rights and duties)[417] included similar penalties based on the circumstances of each case. Almost all ancient legal systems dealt with the notion of victim's compensation as a means of deterrence and settling disputes. Interestingly, the threat of retaliation was also evident in these laws as a way of pressuring people to reconcile.[418] These mechanisms are still in use by tribal customary law in Jordan due to the belief that they contribute to preventing revenge killings and restoring social order. It has, however, been argued that such measures are excessive and retributive. Retributive justice stems from ancient laws and still can be found in contemporary legal systems. Such justice is seen to deter people from seeking revenge and resorting to blood feuds. It also intends to achieve social solidarity and public conformity, which are directly linked to keeping the peace.[419] These concepts are visible in tribal law, particularly through the practice of tribal evacuation which is perceived as a necessary measure to prevent revenge killings. Retaliation was prominent in ancient laws, which originated from the notion of *lex talionis*, 'an eye for an eye', meaning that the

[413] Ze'ev W Falk, 'Hebrew law in biblical times: an introduction' (2001) 41(1) *Maxwell Institute Publications* 6.
[414] Al-Abbadi (n 5).
[415] The Code of Hammurabi was a Babylonian legal text dating to the eighteenth century BCE and included an early statement of the principle of 'an eye for an eye' – the intention being to impose a limit of proportionality on vengeance. Kathryn E Slanski, 'The Law of Hammurabi and its Audience' (2012) 24(1) *Yale Journal of Law and the Humanities* 97.
[416] Ibid.
[417] The Law of the Twelve Tables was a Roman legal compendium from the fifth century BCE.
[418] Francesco Parisi, 'The Genesis of Liability in Ancient Law' (2001) 3(1) *American Law and Economics Review* 82.
[419] Albert W Alschuler, 'The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next' (2003) 70(1) *The University of Chicago Law Review* 1.

response should be aligned with the degree of loss or injury.[420] This gave rise to the notion of proportionality and the interaction between public law and private law.

Legal pluralism was a reality in the medieval era, when a range of laws and legal institutions intersected. This was evident in the existence of Germanic customary law, feudal law, commercial law and canon law. There were three forms of legal pluralism at the time, based on coexisting, overlapping, or conflicting legal norms. For example, commercial law in Europe coexisted with Germanic customary law in various social fields. Customary law was also divided into codes, which differed from one location to another and often overlapped or contradicted each other. The rise of the state legal system triggered a competing relationship with existing customary law, with a further distinction also emerging between the public and private domains.[421] This shows that the conditions for legal pluralism have always existed. The change mostly relates to the nature and purpose of legal pluralistic relationships in the society. For this reason, legal orientalism is relevant to this debate, in terms of cementing a localised and more culturally appropriate strategy with regards to legal pluralism within Jordan. Legal orientalism offers an additional lens to broaden the horizon of analysis within this thesis' framework by encouraging the conceptualisation of tribal customary law within its local environment.

Legal orientalism originated in the theory of orientalism, which evolved from the work of Edward Said, a Palestinian-American scholar and a founder of the academic field of postcolonial studies. Orientalism is a style of thought about the representation of Eastern cultures in the Western world. Said argues that this representation is based on a system of 'power-knowledge' that leads to a sense of supremacy within the West and an inaccurate image of the East. Said describes a system of inequality and prejudice perpetuated by some Western scholars who emphasise the differences of Arab people in comparison to Western cultures. Said defines orientalism through three dimensions: an academic description of Eastern societies, a thinking style for distinguishing between the East and the West, and a method of categorising and dominating other cultures.[422] The manifestation of this intellectual representation can be argued through the paradigm of legal orientalism. Tan claims that little attention has been given to how orientalist representations of non-western laws have been part of orientalism's narrative of other cultures. It is argued that oriental law was a manifestation of a Western style of thinking or a colonial mindset, which influenced how non-Western people were depicted by the law.[423] Studying oriental laws, initially part of a desire

[420] Ibid.
[421] Tamanaha (n 291).
[422] Edward W Said, 'Orientalism Reconsidered' (1985) 27(2) *Race & Class* 1.
[423] Carol GS Tan, 'On Law and Orientalism' (2012) 7(5) *Journal of Comparative Law* 5.

to learn about others, later produced biased knowledge based on power and unequal relationships. Said refers to this form of knowledge as a discourse of the powerful about the powerless, as it lacks self-representation.[424]

Ruskola argues that legal orientalism is 'a set of interlocking narratives about what is and is not law, and who are and are not its proper subjects'. It reflects a condition of Western knowledge that constitutes an obstacle to understanding law within its local context. Ruskola argues that studying legal orientalism helps overcome the limitations and prejudiced interpretations of comparative law. He suggests that it is not sufficient to study non-Western law without taking into account orientalist discourses and the implications of not relying on various historical contexts.[425] Such a framework would raise the question of who determines the recognition and existence of law, why there is a common association of law with the West and lawlessness with the East, and how to challenge these connotations by examining Eastern laws beyond being collectivist, despotic, traditional or stagnant.[426] It is not uncommon for legal norms within non-Western cultures to be stereotyped as the laws of 'others' – redundant, barbaric or primitive. Legal orientalism draws attention to this narrative that assumes Western law is superior.[427]

While legal orientalism is a manifestation of a thought structure associated with colonial history, it is not necessarily a conscious interpretation of Eastern laws. Hallaq asserts that legal orientalism does not mean scholars consciously seek to include or exclude a representation of legal practices. It often reflects cultural assumptions about the law of others that became part of academic knowledge built on an orientalist discourse. However, legal studies need to challenge this thought structure by considering other perspectives that emphasise ethical and scholarly principles.[428] Ruskola also emphasises that legal orientalism is not about defending Eastern laws, or attacking Western laws. Rather, engaging in scholarly examination of non-Western laws should conducted ethically by enabling a self-representation of the subject, while confronting human rights violations and considering all relevant contexts. Ruskola argues that understanding legal orientalism enables scholars to be mindful of the influence of colonial history, while constructively advocating for appropriate reform that should emerge indigenously, rather than seeking to impose such reform.[429] This argument was found useful in theorising Australian native title law; Golder argues that native title law reinforces the domination of Indigenous Australians through representational

[424] Said (n 422).
[425] Ruskola (n 15).
[426] Ibid.
[427] Tan (n 423).
[428] Wael B Hallaq, 'On Orientalism, Self-consciousness and History' (2011) 18(3-4) *Islamic Law and Society* 387.
[429] Ruskola (n 15).

practices that regarded them as inferior, barbaric and traditional rather than allowing them self-representation.[430]

The perceived function of Australian native title law as an orientalist discourse emerged because of a process of recognition that was built within a colonial framework, under which Indigenous people were seen as an object of knowledge and represented by others. Golder argues that this approach prevented Indigenous Australians from being adequately recognised as a subject that deserved to narrate itself, with a sense of sovereignty and self-determination. The legal requirements of tradition and connection that have been used as the proof of native title underpin a style of thought about Indigenous culture.[431] This brings the discussion on legal orientalism to an almost ideal conclusion, since the last theme correlates with this thesis' argument for using case studies as a way of enabling tribal law to be a subject of self-representation. It is argued that examining the function of tribal law in Jordan through the eyes of the people who have used it provides a first-hand narrative of customary systems. The empirical focus of this thesis provides new insight into legal pluralistic relationships within Jordan, as none of the mentioned scholars such as Dupret[432], Watkins[433] and Jain[434] have offered a recent and in-depth analysis with rich data and case studies. The self-representation of these data and case studies outlined in Chapter Four and Five offers local insight into how tribal settlements occur in blood feuds and other crimes. Table 3 identifies the key intersections between tribal law and state systems in Jordan.

3.6 Conclusion

The debate over legal pluralism emphasises that the recognition of customary practices as a source of law remains a contested theoretical issue. Examining the concept of legal pluralism revives the discussion in the previous chapter around the definition of law and recognition of legal rules. The underlying issues of legal pluralism relate to how to draw a line between state and non-state legal rules, and whether law can exist independently of the state legal system. It was established that the legal pluralism can be best described as involving a semi-autonomous social field in which multiple legal orders operate within one geographic area, in which none have absolute autonomy, and all are prone to influencing each other.

The question that remains unanswered relates to the degree of distinction between the state and non-state legal systems; hence, the conception of weak and deep legal pluralism was

[430] Ben Golder, 'Law, History, Colonialism: An Orientalist Reading of Australian Native Title Law' (2004) 9(1) *Deakin Law Review* 1.
[431] Ibid.
[432] Dupret (294).
[433] Watkins (24).
[434] Jain (26).

most useful for this discussion. The weak conception of legal pluralism refers to situations where other norms in society exist under the regulation of the state. The strong conception of legal pluralism refers to situations where other norms operate alongside the state law. Legal pluralistic relationships occur in a range of settings, and it was shown through the theory of the trouble case that more can be learned from situations of conflicting legal systems. These relationships were examined through a specific typological framework involving four distinct archetypes and five strategies that can influence legal pluralism.

Table 3: Intersections between tribal customary law and state system in Jordan

Features of tribal law	Institutions of state system	Function
Sheikh – tribal leader Jaha – tribal delegation Kafeel – tribal guarantor	Regional governor Police chief District administrator Court judge	Avenues of liaison for instant intervention and security cooperation to de-escalate disputes, manage settlement processes and finalise conciliation agreements.
Jalwa – tribal evacuation	Regional governorate Public Security Directorate	Coordinate the evacuation of the offender's direct relatives out of their homes to prevent revenge attacks in cases of blood feuds, in pursuant of the Crime Prevention Law.
Atwa – tribal truce	Regional governorate Public Security Directorate	Visit the disputing tribes and negotiate a period of truce for a minimum of 3 days in order to contain the conflict. Prepare for a condition of mediation and ensure that both parties comply with their obligations during the conciliation process.
Sulha – tribal conciliation	Regional governorate Public Security Directorate Local district Court system	Participate in the public ceremonies of conciliation settlements, sign the resolution agreements, declare their support of the peace-making outcome. Detainees are released or receive reduce sentence.
Suk Al Sulh – conciliation agreement	Regional governorate Public Security Directorate Local district	Documents of the conciliation agreements are archived within these institutions to ensure compliance in case there is a breach

		of any conditions.

The lessons drawn from the selected cases highlight both the potential and challenges of legal pluralism and provided the basis for an informed analysis of socio-legal activities in Jordan. The next two empirical chapters present a number of cases and key findings from the interviews conducted during the fieldwork for this thesis. Table 3 above provides the reader with a visual guide for reference when reading through these case studies. The next two chapters provide a combination of diverse cases, interviewees' perceptions of tribal customary law, and selected photos that illustrate the operation of this system in Jordan.

Chapter Four – Customary Law in Practice: Blood Feuds

This chapter describes the application of customary law to examples of the most serious crimes and conflicts in Jordan, along with two comparative cases from Gaza. These cases are divided into three major categories: blood feuds, honour crimes and tribal violence. The chapter focuses on these categories as they are considered to be among the most significant threats to social order and community harmony where customary law is involved. For this reason, exerted efforts were made to locate cases of such nature that occurred within Jordan and Gaza through direct contacts and media sources. The endeavour was to present a range of cases related to blood feuds that shed light into how they are resolved in various scenarios and within a relatively recent timeframe. While efforts were exerted to find cases that present different perspectives of customary practices, these cases were mainly selected due to their ready availability and coverage of a variety of disputes. As a result, it was not possible to examine cases that have not proceeded through customary adjudication due to not trusting the interference of tribal sheikhs in resolving community conflicts. These cases are extrapolated upon in greater detail in Chapter Six and Seven. The examination of these cases is further supported by the responses of the interviewees, particularly with regard to the following elements: the process and features of customary law; the interaction of customary law with statutory state system; and the influence of customary law on the outcomes of these selected cases.

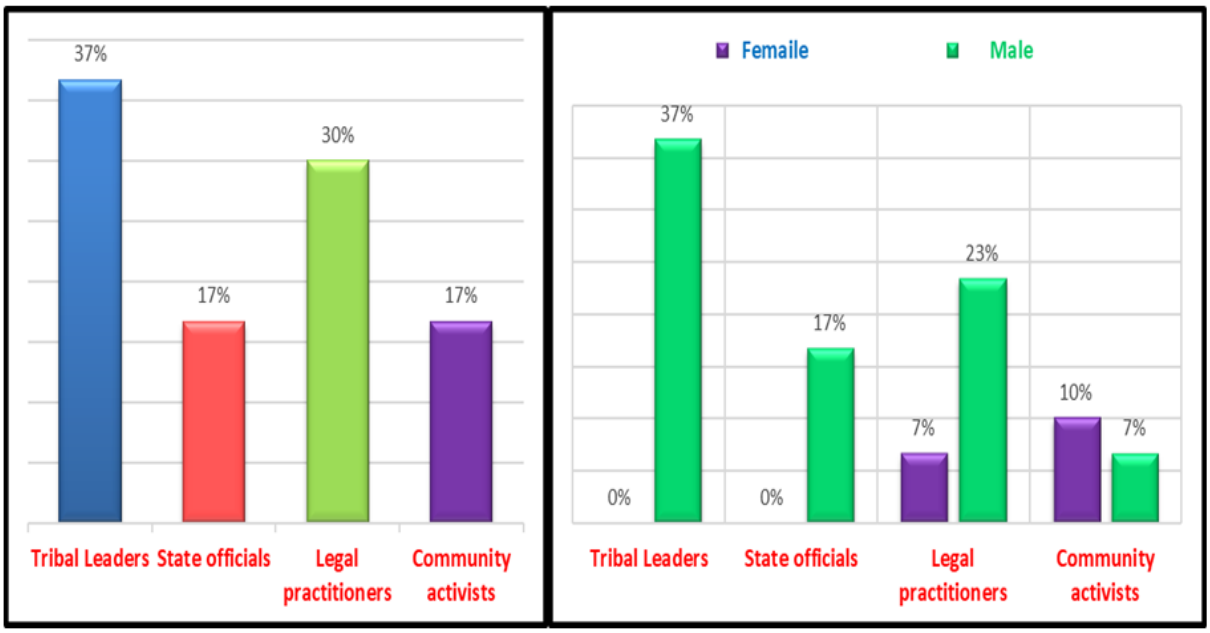

Figure 3: Interviewees by groups and gender.

Thirty people were interviewed during the fieldwork research in Jordan. As shown in Figure 3, 11 (37%) of these participants were tribal leaders, nine (30%) were legal practitioners, and state officials and community activists were represented by five (17%) participants each. It is also important to note that five (17%) of these interviewees were female, three of whom were community activists and two legal practitioners. As outlined in the methodology sections, these interviewees came from different areas within Jordan and represented a diverse cross-section of Jordanian society. The participating state officials represented the police department, local districts and regional governates. Legal practitioners were actively sought as participants to ensure all perspectives were considered; hence, they were the second largest group after tribal leaders. Nevertheless, it was challenging to recruit more community activists or state officials.

The following cases examine the role of tribal customary law in the management of these types of crimes and conflicts between individuals and community groups in the region. The cases illustrate how customary dispute settlements focus on keeping the peace or restoring social order through the public participation, social solidarity and legitimacy attached to the tribal system. The cases also show that tribal customary law in Jordan has limitations, particularly with regards to the rule of law, individual rights and the protection of women. Interestingly, the interaction of customary law with statutory law in these cases highlights the degree of legal pluralism and level of coexistence between the two systems.

4.1 Revenge killing – The story of the town of Alsareh

This case, dealing with revenge attacks through the lens of tribal society in Jordan, was triggered by a minor altercation within a local community and led to 11 documented violent incidents, including assaults, arson and two fatalities. Following these clashes, the state deployed security forces to the area and liaised with high-profile tribal leaders (sheikhs) to contain the blood feud between the two tribes involved. Notably, tribal exile (*Jalwa*) was a significant tool in the management of this conflict.

The town of Alsareh in northern Jordan has witnessed a wave of violence and social unrest as a result of a dispute between the Alathamnah and Alsheab tribes. The dispute began over a car-parking space. On 6 May 2017, the dispute escalated to a fight between the families, which led to a number of people from both sides being injured. The news spread within the town and relatives the two families either attended the scene or visited the hospital to check on their injured relatives. Within hours, one of the injured people saw a relative of the other party and began chasing him inside the hospital. This led to another violent confrontation between a crowd of people, where further people were injured by firearm shots and a

number of the hospital staff suffered accidental injuries and shock. One of the injured was pronounced dead shortly after the incident. The deceased was Dr Qatebah Alsheab, who was attending the hospital to check on his injured relatives from the Alsheab tribe.

In retaliation, a number of shops, houses and cars belonging to members of the Alathamnah tribe were set on fire. The Governor of Irbid region, Radwan Alatoum, intervened to obtain a truce and prevent further bloodshed. The truce was arranged with the cooperation of tribal leaders in the region, who sought assurances from the disputing parties that they would not retaliate further and would commit to the tribal conciliation process once the situation in the town calmed down. Security forces were deployed and imposed an evening curfew through the town to prevent further revenge attacks and to facilitate the tribal evacuation of the remaining extended families of those accused of being behind the killing of Dr Alsheab.

The next day, security forces announced that they had detained 12 people who were charged either with the murder or being an accessory to the crime. The Department of Education decided to shut down local schools to prevent further confrontation between members of the two tribes. The Department of Health also decided to shut down the Founder King Abdallah Hospital temporarily to protect staff and protest against further attacks on health institutional premises. There was a widespread condemnation of and concern over the events throughout the kingdom, particularly as the two disputing families come from respected tribes who have a strong influence on Jordanian society.

A number of attempts were made by influential community leaders to contain the conflict between the two tribes, but the atmosphere remained too tense to commence the conciliation process. The representatives of the Alsheab tribe initially refused to accept the corpse of Dr Qatebah and delayed his funeral until justice was served. The authorities recognised the volatility of the situation and the likelihood of a revenge killing occurring in the absence of tribal agreement. Governor Alatoum pressured the Alsheab tribe to accept a long-term tribal truce until the conflict could be resolved through a tribal conciliation agreement. On 9 May 2017, a tribal delegation visited the family of Dr Alsheab and met with tribal representatives in order to express their condolences and prevent further escalation of the conflict. A large number of senior tribal leaders were involved in this process, including former ministers who had strong tribal bases and connections with the disputing tribe through tribal blood ties.

On 11 May 2017, Governor Alatoum declared a tribal truce after the two parties agreed to engage in a conciliation process. However, the victim’s tribe requested that the state judicial system should first take its course before any conciliation. The governor’s office took direct responsibility for coordinating the tribal conciliation gathering and liaising with the state legal

system. The emergency situation in Alsareh was eventually resolved, with shops and schools reopened and the evening curfew lifted. However, the tribal evacuation was extended until a tribal conciliation was reached. The governor's office further announced that two of the detainees had formally admitted to killing Dr Alsheab, and the families of both the victim and accused were provided with their recorded admission. In response, the victim's family agreed to receive the body of their son and proceed with his funeral. The family expressed their gratitude to the governor and security forces for their swiftness in prosecuting the perpetrators and managing the security truce.

The calm in Alsareh town was short-lived. On 3 June 2017, a significant breach of the tribal truce occurred when a vehicle carrying a family from the Alathamnah tribe was ambushed and shot at by unknown gunmen. This caused one fatality and injured five people, including a mother and a one-year-old child who were left in a critical condition. The deceased was Ali Alathamnah, 50 years of age and a father of a young family. It quickly became clear that this was a revenge attack, which triggered another tribal blood feud within the town. For many residents, that night was a sad time for the community, raising fears of full-scale tribal strife. However, attacks against private and public properties in the town were largely contained through the intervention of security forces, reinforced by the central authorities in the capital Amman. The contained response may also have been due to shock over the attack, as Bedouin tribal custom prohibits revenge against children and women, who are traditionally given special protection in times of tribal strife. The security forces once again imposed an evening curfew and made a number of administrative detentions in order to prevent further escalation of violence. As a protective measure, the authorities also facilitated the tribal evacuation of a number of families who may have been subject to revenge killings.

The efforts to defuse the crisis escalated dramatically with the former prime minister, Abed AL Raouf Alroaydh, taking the initiative of leading a large delegation to mediate between the Alsheab and Alathamnah tribes. The delegation consisted of former ministers, senior tribal leaders, religious clerics and state officials. On 6 June 2017, the delegation convened a meeting with representatives from the Alsheab and Alathamnah tribes for the purpose of seeking their agreement to conciliate between the two parties. The delegation also involved other local tribes, particularly the tribes of Alesah and Bani Hani, in order to utilise their influence over the two disputing tribes. On 8 June 2017, the delegation was successful in obtaining a tribal admission truce from the two tribes in which they admitted their guilt in the conflict and publicly pledged their commitment to the conciliation process. In return, the Alsheab tribe accepted the admission of Alathamnah tribe of their tribal responsibility for killing Dr Alsheab. The Alathamnah tribe also accepted the admission of Alsheab tribe of

their tribal responsibility for killing Ali Alathamnah. The exchange of admissions paved the way for state authorities to proceed with legal action against those individuals who committed criminal offences. It also allowed the people in the town to resume their normal life while the delegation negotiated the final details of resolving the conflict between the two tribes.

On 30 June 2017, a tribal conciliation gathering was organised between the Alsheab and Alathamnah tribes. On that day, Irbid was the centre of attention in Jordan because of the extensive focus on this tribal gathering and its significance for the peace and social solidarity of the Jordanian people. The forum was attended by a number of tribal leaders, state officials and media outlets from around the country. Former prime minister Alroaydh, former senior minister Abed Al Rahim Alakour and other senior sheikhs, state officials and religious officials spoke at the public gathering, emphasising Jordanian tribal values of forgiveness, conciliation and social solidarity. For the representatives of the two disputing tribes, this was an opportunity to demonstrate their distinguished tribal status by showing mercy and forgiveness to each other. This was met with relief by the crowd after months of tribal strife. The evacuated families from both tribes were allowed to return to their homes, schools and businesses in the town. Detainees not involved in any crimes related to the conflict were also released and cleared of any wrongdoing. The state authorities kept approximately 20 people in prison on various charges, and many of them had already been given custodial sentences.

The conciliation agreement was prepared in advance by the delegation and typed on a one-page document with space for the signatures of all parties, including representatives of the two disputing tribes, their guarantors and the delegation members. The agreement listed the following demands as a prerequisite for the tribal conciliation. First, both parties were to drop their allegations and demands against each other. Secondly, that the conciliation covered all events in the conflict and all individuals except those charged with murder. Additionally, the tribal exile was waived immediately and the judicial system was informed that both parties had no objection against the exiled families returning to the town. Both parties also pledged not to take any civil legal proceedings against each other with regard to any individual allegations. Finally, anyone who breached the conciliation, regardless of their tribe, was to be condemned and not given any tribal protection since they would be subject to the prosecution under both state and tribal customary law. The agreement was signed publicly in the presence of a large community gathering and covered by various national media outlets. It was also distributed by the delegation to all tribal leaders involved in the conciliation process as well as to relevant state authorities including the police force, judicial system and Interior Ministry.

It is also important to note that there were a number of speeches delivered at the conciliation gathering which included senior tribal, religious and political figures. The most distinguished speaker was the former prime minister who took the initiative of becoming the head of the tribal delegation and was publicly praised for resolving this conflict. A former health minister also delivered a notable speech in which he called on women to play an active role in cementing this conciliation and keeping the peace in Jordanian society. However, there were some criticisms of the state's lack of decisive action in preventing the serious escalation of this conflict. A number of community activists accused the state government of being ineffective in resolving the conflict because of its overreliance on customary law and its lack of willingness to confront tribal violence, particularly in remote areas.

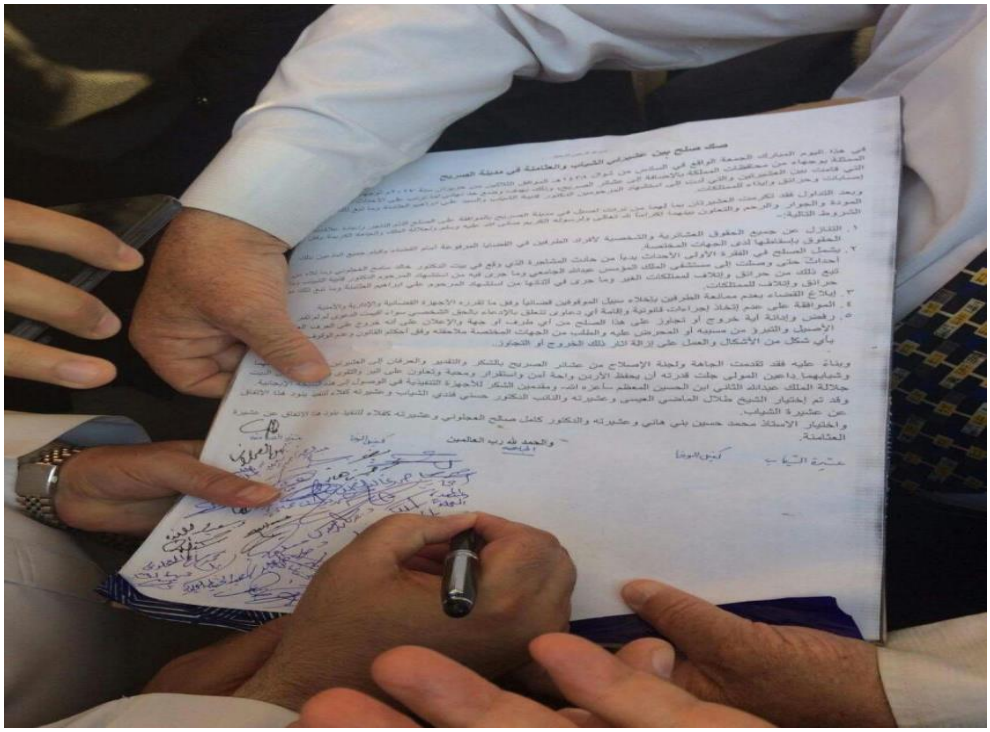

Figure 4: The signing of the conciliation agreement in the Alsareh case. This illustrates the ritual of publicly validating the settlement by the representatives of the disputing tribes along with the dignitaries who participated in the conciliation. The photograph was taken by Ammon News.[435]

[435] Ammon News, 'Reconciliation Between Alathamnah and Alsheab Tribes', *Ammon News* (30 June 2017), <https://www.ammonnews.net/article/320848>.

Figure 5: Conciliation meeting in the Alsareh case. The banner on the tent in the top photo carries the name of the Alathamnah tribe, which indicates the gathering of the tribe's members. The bottom photo depicts the tent of the opposing tribe with a senior policeman saluting at the commencement of the conciliation process, which began with the national anthem.[436]

4.2 Deliberate killing – The tragedy of an international student

As outlined in the previous case, deliberate killing is regarded as one of the most serious crimes in the eyes of tribal people as it risks a wave of revenge attacks, thus disturbing public order and unity. For this reason, deliberate killing requires a swift and whole-of-community response in these tribal settings. The following case has a number of interesting dimensions

[436] Sawaleif, 'A Reconciliation Between the Sheyab and Athamna Clans', *Sawaleif News* < صلح بين عشيرتي الشياب والعثامنة ينهي أزمة الصريح .. صور - سواليف (sawaleif.com)>.

as it involves the function of customary law across state borders and the engagement of multinational parties in the process and settlement of the case. The escalation of violence in this case not only disturbed the peace of the local community but also raised tensions between the two countries involved.

In 1994, a homicide case sparked interstate tribal tension between Jordan and Iraq, which forced the Saddam regime to agree to resolve the matter through tribal customary law. Fareed was 25 years old when he was killed in Baghdad by Saddam's presidential guard. Fareed was in his last year at Baghdad University, studying agricultural engineering. He was an international student from Jordan and belonged to a strong tribe in the Ajloun governorate. The respect and influence that Fareed's tribe has earned saw a number of its members elected as mayors of the city during local elections.

The researcher learned of this case through Fareed's relative, Ali, whom he met in November 2015 during fieldwork in Amman. Ali shared his recollection of what happened over 20 years ago. Ali noted that he could still recall what the atmosphere was like in his town when Fareed was killed, stating that the loss of Fareed and the escalation of violence had become part of the local people's history.[437]

According to police reports and eyewitnesses accounts, Fareed had a personal altercation outside the university with Nayef, a member of Saddam's presidential guard. The dispute quickly escalated to a physical flight, with some eyewitnesses intervening to separate the two parties. Nayef, however, did not feel vindicated, or perhaps felt that he had lost face, and he drew his gun and shot Fareed a number of times. Fareed was rushed to the hospital and pronounced dead shortly after.

When the news broke in Jordan, a tribal 'blood boil' (*Foura Adam*) was triggered in Ajloun, the hometown of Fareed's tribe. A number of revenge attacks were perpetrated against Iraqi people living in Ajloun. The violent rampage also involved physical assaults and malicious damage against Iraqi expatriates. The most serious incident reported at the time was an attempted attack on the Iraqi ambassador in Amman. Baghdad University in Iraq was also disrupted by this incident as a large number of Jordanian students study at the university. Tensions between some students and the local community surrounding the university campus were high. The university became concerned that counter-attacks might occur within the campus, particularly against Jordanian students from Ajloun.

[437] Ali Athman, 'The Tragedy of an International Student' (Personal interview, 2015).

This prompted state officials in Jordan to intervene by facilitating a tribal conciliation committee (*Jaha*) from distinguished tribal leaders in the country. The committee immediately sought a tribal truce (*Atwa*) to put an end to the anger in Ajloun, where most of the revenge attacks occurred. Following high-level interactions between the two countries, a tribal truce was reached with Fareed's tribe. The agreement for the tribal truce acknowledged the guilt of Nayef and the responsibility of both the Iraqi state and Nayef's tribe for this crime. Iraq vowed to conduct a full investigation into what happened and take legal action against Nayef. The agreement also sought a pledge from Fareed's tribe to not commit any revenge attacks and to respect the truce until a conciliation agreement was reached.

Nayef was charged with Fareed's murder and eventually sentenced to five years in a military prison, which was considered as an unsatisfactory punishment by Fareed's tribe. During that time, the Iraqi government disclosed Nayef's full identity, which was a requirement of Fareed's tribe. It was then discovered that Nayef's tribe originated from Tikrit, the hometown of Saddam Hussein, and was closely associated with his regime. From Fareed's family's perspective, this revelation was critical because it identified the tribal responsibility for their relative's murder, particularly with regard to blood money and revenge killing.

After three years of the tribal truce being in place, the conciliation gathering, or *Sulha*, was held in Ajloun and attended by government officials and influential tribal leaders from both Jordan and Iraq. It was reported that the Iraqi ministers of the interior and foreign affairs, as well as their ambassador in Jordan, were among the participants in this high-profile tribal conciliation forum. It was agreed that Nayef's tribe would pay blood money, *Dia*, of 150,000 Jordanian dinar to Fareed's family in return for forgiveness and full conciliation between the two parties. It was reported that Saddam Hussein exerted pressure on Nayef's tribe to pay the *Dia*. This resolved the community friction between Iraqi and Jordanian people, particularly in Ajloun, where Iraqis had not been allowed to enter during the truce period. Nayef was eventually released from military imprisonment shortly after the agreement.

The conciliation committee involved senior figures from both Jordanian and Iraqi tribes, who were instrumental in negotiating a truce and reaching a conciliation agreement. During this process, it was reported that an influential member of this committee, Barjas Al Hadid, a well-known tribal judge in Jordan, had a direct meeting with Saddam Hussein. It was also noted that the conciliation committee attended Baghdad University during their travels between Iraq and Jordan in order to restore peace and solidarity between the affected community groups.

This case highlights a number of significant factors in contemporary applications of the tribal customary system. It shows how a politicised case can be handled through tribal justice.

State law was regarded as offering limited scope for resolving tribal conflicts since it focuses on punitive measures, while customary law has scope to provide restitution and defuse hostility. The involvement of Saddam's regime in this case shows the relative impotence of state law in resolving such matters, and the acceptance by people at the centre of the state system that tribal law would be more effective than other methods in this case. This case demonstrates how customary law can focus on reclaiming people's dignity and honour while having due regard to the wrongdoer/s.

The involvement of the university administration indicates that it also finds tribal customs relevant to their contemporary issues. The role of the Jordanian police, which included signing the agreement, illustrates how tribal law is becoming an element of the state legal system. Furthermore, the international dimension of the case suggests that customary law has the potential to deal with transnational legal disputes, offering an alternative, not just to state law, but also to international dispute mechanisms.

Figure 6: A conciliation gathering in Amman on 21 November 2015. The photo depicts rows of attendees, representatives of the disputing tribes (placed in opposing rows), a speaker addressing the crowd, and a designated photographer in the corner of the tent. Photo taken by Munther Emad.

When interviewees were asked how they would describe the role of tribal law in Jordan, the majority (37%) stated that it de-escalates conflict and keeps the peace. 33% regarded tribal law as a means of preventing revenge killings and disputes, and 30% saw tribal law as a way of preserving cultural values of honour and solidarity. A majority of interviewees perceived tribal law as serving a pragmatic purpose, namely avoiding future violence.

Figure 7: Role of tribal customary law in Jordan.

It is useful to note that the majority of tribal leaders (55%) reported that the role of tribal law is to de-escalate conflict and keep the peace. Among legal practitioners, 44 per cent believed that the role of tribal law revolves around preventing revenge killings and preserving cultural values, while among state officials 40% described the role of tribal law as de-escalating conflict, keeping the peace and preserving cultural values of honour and solidarity. Interestingly, only 20% of state officials thought that the role of tribal law is to prevent revenge killings and other crimes, while a minority of community activists believe that the role of tribal law is to preserve cultural values of honour and solidarity. Perhaps this indicates that state officials regard dealing with revenge killings as the responsibility of the state system. Additionally, community activists harbour reservations over the role of tribal law in the way that some people interpret the code of honour within the society.

4.3 Honour crime – The dilemma of a sister

The following case revolves around the concept of the reputation of women and its connection with the honour of the family and the whole tribe. In customary law, this type of honour (*Ird*) is viewed as integral to families' dignity as it impacts on their status within the tribal society. This case also refers to violating the sanctity of a family's household, which is a serious crime for tribal Arab people. These are complex matters for both tribal customary law and the statutory system as they are often difficult to define and detect before they escalate to honour killings. This emotional and conceptual notion of honour and shame within tribal people is one of the most significant challenges that confront societies such as Jordan. This case reflects this dilemma, illustrating the limitations of tribal customary law and the

underlying cultural challenges. Due to the sensitivity of the issues surrounding cases of such nature, all identifying details have been altered to protect the privacy of the family involved.[438]

In 2015, this case was brought before a tribal judge in rural Jordan by a male who was beaten by a group of young men and sustained serious injuries. The male lodged a complaint to seek his rights through customary law. He also made a report to the police authorities seeking charges against the accused. The tribal judge listened to his version of events, which stated that he was walking at night nearby a house when a group of men dragged him inside their home and started beating him, leading to him being taken to hospital by the neighbours and requiring a medical operation. The judge responded by saying that, as per legal customs, he is obliged to listen to the other side and mediate between the two parties for the purpose of seeking conciliation and making amends. The judge, however, warned the male that, as per tribal customs, he would be representing and pursing the rights of whoever was in the right. He added, 'If it turns out that you are on the wrong side, I won't be able to protect you. As a tribal judge, I will be obliged to force you to make amends for any wrongdoing if proven.' Customary law focuses on restoring balance by determining who is in the right and who is in the wrong on the basis of its traditional customs.

The tribal judge then approached the other party and met with the young men who allegedly assaulted the plaintiff. Their version stated that they found the person late at night with their sister in an isolated area in the family's backyard. Upon further investigation, the tribal judge established that the sister had married outside the village and was visiting her family at the time. The allegation was that the sister was in a relationship with the plaintiff before she married another man and moved out of the village. The brother suspected that the plaintiff was making contact with his sister during her visit and followed the sister until the two met that night. There was no suggestion that they were in an intimate position; they were only talking when the brothers found them at the back of the house, where they attacked the plaintiff and the neighbours intervened and transported him to hospital.

The tribal judge concluded that the brothers' version of events was true, on the basis that there was no motive for them to make false allegations and bring shame to their family by dishonouring their sister. The judge then informed the plaintiff of his conclusion and asked that he make amends and reconcile with the other family; however, the plaintiff refused and maintained his innocence. The tribal judge then went to the local state governor and informed him of his conclusion and of the male person's refusal to reconcile. In accordance with the Crime Prevention Law of 1954, the state can administratively detain someone for the purpose of preventing tribal feuds and forcing people to accept the settlement of tribal

[438] Talal Almady, 'The Dilemma of a Sister' (Personal interview, 2021).

customary law. Consequently, the plaintiff was placed in administrative detention, pending the procedure of tribal conciliation. The tribal judge indicated that he would have been able to contain and solve the situation without resorting to the state system had the male person agreed to conciliation, which in turn would have meant an admission of guilt and loss of honour. The refusal to go through legal customs and reconcile with the other family risked a reprisal attack against the plaintiff and his family, as the woman's family would deem this as a form of disrespect and dishonouring their name within the community. In these situations, State officials believe that they are obliged to enforce this law and detain the male person out of fear for his safety and to avoid triggering a blood feud within the neighbourhood.

The family of the plaintiff eventually intervened and pleaded for the tribal judge to resolve the conflict. It was then suggested that a tribal arbitration committee be formed to revisit the case and make an independent judgment that might satisfy all parties involved. The tribal arbitration committee consisted of three prominent tribal judges. The first was chosen by the male person's family, the second by the woman's family and the third by the state local governor. Customarily, these judges do not defend or represent the party that chose them, as their purpose is to establish where justice lies in this sensitive case. It is also important to note that the husband of the woman found out about this incident and became a third party. The woman stressed her innocence and denied making contact or having a relationship with the male. Following their examination of the available information and meeting with each party separately, the committee suggested that the male make an oath in front of the committee that he did not have an intimate relationship with the woman.

The verdict of the committee consisted of three elements: clearing the woman's honour and stressing her innocence of any wrongdoing; requiring financial compensation of 10,000 dinar from the male person for being in the woman's vicinity and trespassing her family's house late at night; and requesting that the male person's family convene a tribal community delegation (*Jaha*) to the woman's family and seek a tribal conciliation. The delegation then went to the woman's family for the purpose of redeeming their honour and offered them the agreed financial compensation as an apology from the male person's family. The woman's family then waived 5,000 dinar out of generosity and respect for the tribal delegation. It was stressed by the family and other attendees at the conciliation gathering that the financial compensation served as a deterrent for the male person and for other young people in the future.

The conciliation settlement was signed by all parties and witnessed by the police authority. The settlement document was also entered into the record of the Interior Ministry so the case could be formally closed in the state system. The person was released from detention on the condition of not being in the vicinity of the woman's family. The woman returned to live with

her husband. The woman's family expressed their satisfaction and gratitude for the role of both state and tribal systems in resolving this situation. The family of the male person felt that they had no choice but to accept the process. They recognised the risk, however, of the situation escalating to a blood feud between the two families.

Figure 8: A sheikh on the left showing a conciliation agreement to a district administrator. This was one of their regular contacts. Photo taken by Munther Emad on 23 November 2015.

4.4 Accidental killing – The legacy of Rania

The following case further illustrates the notion of collective liability and tribalism when dealing with blood feuds and serious conflicts. Customary law seems to recognise this notion as it largely operates to involve the wider community and appeal to people's customs when addressing their grievances. This case relates to a traffic accident which caused the tragic death of a child and disturbed the harmony of a close-knit community. The case is narrated by the deceased's father Ahmad, who provided insight into the attitudes of ordinary tribal people towards customary law and statutory system when seeking retaliation and justice.[439]

At about 4pm on 6 July 2011, a traffic accident occurred in one of Amman's suburbs, resulting in the death of Ahmad's six-year-old daughter Rania, who was playing with her siblings outside their home. At the time, 17-year-old Khalid was driving his father's vehicle and lost control of the vehicle. The vehicle swerved onto the footpath and hit Rania, who was pronounced dead at the scene. Khalid was seen to abandon the vehicle and run away, claiming that he was in fear of his safety. Khalid handed himself in to local police on the same day and was later charged with a number of offences including negligent driving causing death.

[439] Ali Tameem, 'The Legacy of Rania' (Personal interview, 2015).

It was reported that Khalid was unlicensed to drive, and the vehicle came into his possession without the knowledge of his father. Also, Khalid had been warned about his manner of driving by Rania's father and other residents. It appears that Khalid had earned a reputation for anti-social behaviour and disobeying his family, which may explain why he was in fear for his safety after the accident. Rania's father, Ahmad, and other relatives who attended the scene destroyed and burned the vehicle involved in the accident. At the time, Rania's family made threats against Khalid's family, a custom known as 'blood boil' (*Foura Adam*). Rumours began to spread that a group of young people from Rania's tribe was planning to attack houses and businesses belonging to Khalid's tribe in the area. This created concern among state officials, who began liaising with the disputing families and local community groups to prevent violent retaliation in the neighbourhood.

Immediately, a number of tribal leaders came together and formed a conciliation committee. The group intervened to keep the peace and, within hours, managed to reach a tribal truce between the two families. The truce was for three days, during which Rania's family was to refrain from retaliating against Khalid's family or their properties. The truce also sought assurance from Khalid's family that they would take responsibility for their son's actions.

On the evening of the accident, Khalid's family was escorted under police protection out of the neighbourhood and provided with temporary shelter by an influential tribe outside the suburb. This tribal exile was a precondition set by Rania's tribe for accepting the truce and putting an end to the 'blood boil'. Khalid's family accepted the exile because they were aware that they would not be safe residing in close proximity to Rania's family while the conciliation committee was mediating between the families. Local police provided the family with assurances that they would protect their properties, and state officials and community groups also stepped in to meet the needs of the evacuated family with regard to the reallocation of school and work while sheltering in the new location.

The conciliation committee was unable to secure a conciliation from Rania's family because the father, Ahmad, was grieving and wanted revenge. Ahmad was angry at Khalid's family and felt that they should have disciplined Khalid to avoid what happened. For this reason, Ahmad sought that Khalid be punished as a way of disciplining him. The committee sought to extend the truce period for a month, fearing that a revenge attack may occur. During that time, two guarantors were appointed; one provided assurance on behalf of Khalid's tribe and the second provided assurance on behalf of Rania's tribe, a custom known as *Kafeel*. The guarantors were known and respected community leaders from powerful tribes and of high status. The guarantors were chosen by the disputing parties; however, they were also neutral

in this conflict. Their role was to ensure that their respective parties would abide by and respect the truce agreement while the conciliation committee was attempting to make peace.

Rania's father was adamant in not reconciling with Khalid's family to keep the accused incarcerated. Civil law in Jordan often allows customary law to take its course before making a ruling on pending matters awaiting state courts. State courts have the discretion to either delay or expedite sentencing as a strategy to support customary law in reconciling the community groups affected by these cases. State courts also view successful tribal conciliation as a mitigating factor when considering their sentences. Lack of tribal conciliation may even be considered as an aggravating factor when sentencing individuals before state courts. For this reason, tribal leaders and state officials pressured Rania's father to accept customary conciliation was mounting so the matter could be finalised in the civil system.

The tribal truce periodically extended every month since the conciliation committee was unable to convince Rania's father to forgive and reconcile with Khalid's family. The conciliation committee attempted to convince the family by way of highlighting the spiritual value of conciliation and how this would enhance their status in the community. However, such approaches do not always succeed, especially when emotions are high. In this case, the conciliation committee focused on containing the situation through the tribal truce, a longstanding tradition that continues to be respected by the tribes. At the same time, the patience of state officials was running out because they were under pressure from Khalid's tribe and other stakeholders, such as human right groups, to release the accused in accordance with the state civil law. In a case of this nature, the state court system would not have been able to sentence Khalid to imprisonment because he was under-age. After three months, the state court judge presiding over the matter ordered Khalid's release. The judge was frustrated by the perceived interference of tribal law in this case. The legal practitioner representing Khalid, along with local civil rights advocacy groups, regarded customary law in this case as undermining the state legal system.

The news of Khalid's release angered Rania's father, causing him to look for Khalid in the streets in order to take revenge. The conciliation committee and other tribal leaders became concerned that this would resume the 'blood boil'. Within a week of his release, Khalid was sent back to prison by order of the Attorney General of Amman. This was permitted under the state's Crime Prevention Law, which legalises administrative detention for the purpose of preventing public disorder and revenge killings. The detention was also justified as a protection measure for the accused because his life was threatened as long as there was no customary conciliation in place. For this reason, the conditions for Khalid's release were

dictated by Rania's family's forgiveness. It appears, as outlined later, that this was a determining factor in resolving this matter.

The conciliation committee, however, was unable to reconcile the two parties and thus the truce continued to be extended on a monthly basis. Rania's father noted that during that time many people close to his social network urged him to reconcile and let go of his own grief. People at the mosque, local café or even in the market would display a sense of sympathy and express their desire for conciliation. It reached a stage where Rania's mother announced her forgiveness to Khalid's family and made a remark to her husband, Ahmad, that their daughter was a bird in heaven. Rania's father was eventually able to overcome his own grief and began to consider Khalid and his family. Eventually, more than a year after the accident, Rania's father agreed to reconcile with Khalid's family.

The conciliation committee immediately engaged in separate discussion with both families to determine the details of the conciliation agreement. The conciliation committee first met with Rania's family to hear their demands and address any unreasonable expectations, particularly with regards to the ability of Khalid's family to pay a large amount of compensation. The conciliation committee then met with Khalid's family to hear their wishes and prepare them for any expected outcome of the agreement. The conciliation committee also met with key tribal leaders and state officials to ensure their support and input to the conciliation agreement. The guarantors were consulted about the details of the expected agreement and whether they would continue to provide their protection.

The conciliation committee convened a conciliation gathering, which was attended by representatives from various tribes including the two tribes of Rania's and Khalid's families. The conciliation gathering was also attended by senior police and other state officials. The meeting was a public gathering which took place in a tent specially erected for the occasion. The conciliation gathering featured a number of speeches from key tribal leaders, who emphasised the values of conciliation and forgiveness. They praised Rania's family for choosing to reconcile and rise above their grief. They also highlighted the humility of Khalid's family for taking responsibility and safeguarding the solidarity of the local community.

The gathering also announced the conciliation agreement, which was signed by the two families, tribal leaders and state officials. Khalid's family offered blood money to Rania's family, but Rania's family declined to accept the money and decided to forgive Khalid and his family. Rania's family was praised for showing mercy and compassion. The participants then marked the end of the conciliation gathering and, ultimately, the entire conflict by way of sharing Arabic coffee. The two families made a final gesture of peace by shaking hands with

each other before all the attendees. This was a declaration of their pledge to respect the conciliation agreement and keep the peace.

This tribal gathering was filmed by professional cameramen who were taking particular notice of the conciliation procedures such as keynote speeches, signatures of the agreement, offerings of blood money and handshakes. This reveals two elements of customary law. It first highlights that the tribal gathering is based on the notion of a public declaration, which is critical in achieving conciliation. Any serious conflict or crime is seen as a disturbance to the tribal social order, and public conciliation serves as a reinforcement of the balance between the tribes and subsequently keeps the peace. It also indicates the adaptability of customary law in responding to the changing environment of tribal society, which is becoming increasingly urbanised and expanding across Jordan. For this reason, it became necessary to film and document tribal gatherings as evidence for state officials and tribal leaders confirming the achievement of peace. It may also be used as proof in case of future violations of the conciliation agreement.

Subsequently, Khalid's family was allowed to return to their home and resume their lives among the local community. The next day, Rania's father also attended the court and requested that Khalid be released from prison. The father showed the court judge a copy of the tribal conciliation agreement to confirm that the matter had now been resolved through the customary system and that the family was no longer calling for retribution. Khalid was released after 13 months since the accident and returned to live in the same suburb.

Rania's father was interviewed for the purpose of this thesis on 19 November 2015, when he reflected on the whole dispute and how it was dealt with by the state and customary systems in Jordan. Rania's father indicated that, at the time, he was very angry and wanted revenge for his daughter. He felt that Khalid deserved severe punishment, and his family should also be held accountable for what happened. Rania's father did not feel that it was satisfactory for Khalid to be detained for a few months.

Rania's father indicated that he felt vindicated when the accident became a public issue with the intervention of tribal leaders and the eviction of Khalid's family from the area. He felt supported by the community and listened to by the authorities. He felt satisfied when Khalid was returned to prison. At that point, Ahmad felt that his grief began to fade since he was being listened to by state officials and tribal leaders. He indicated that tribal law enabled him to vent his anger and frustration. Ahmad stated that he was able to forgive and show mercy because he felt a sense of procedural justice and community solidarity. According to Ahmad, this was an empowering and transformative experience for him and his family.

Rania's father believed that the customary system enabled him to reclaim his family's rights and thus saved him from committing a revenge killing. He stated, 'if it was not for customary law, I would have now been stuck in a vicious cycle of revenge killings between the two families. He also expressed appreciation for the state civil system since it provided the space for customary law to take its course and mend social relations between the two families. Rania's father also reported that the conciliation agreement has since been respected by the two families because of the involvement of the whole community in the conciliation process. For this reason, any violation of their pledge to keep the peace would have severe consequences and trigger a resumption of the original conflict.

The following chart (Figure 9) complements the case of 'the legacy of Rania', as a majority of interviewees (50%) reported that tribal customary law works closely with the state legal system in Jordan. There are some elements in the case that indicate that state officials are extensively connected with the process of tribal dispute settlements. However, this does not mean that the state legal system's engagement with tribal customary law is wholly harmonious; the case illustrated some frustrations among the judiciary and legal practitioners over the necessity of keeping Khalid detained due to the process of tribal law. It appears that the two systems have different positions on the competing priorities of releasing detainees versus preventing revenge killings.

Additionally, 20 per cent of the interviewees reported that tribal customary law is becoming more involved in dealing with social conflicts and new crimes. This appears consistent with the involvement of tribal customary law in traffic-related disputes. Similarly, there other interviewees stated that it continues to be part of people's cultural values. Interestingly, only 10 per cent of the interviewees believed that tribal customary law nowadays is less involved in resolving Jordanian's disputes due to the expansion of the state legal system.

As Figure 9 indicates, most groups noted that tribal law works closely with the state system, particularly state officials (80%). A large proportion of tribal leaders (45%) reported that tribal law continues to be part of people's values, and 27 per cent of tribal leaders thought that tribal law is becoming more involved in social conflicts and new crimes. Interestingly, there were about 20 per cent of legal practitioners as well as state officials who pointed out that tribal law is less involved in resolving disputes due to the expansion of the state's system.

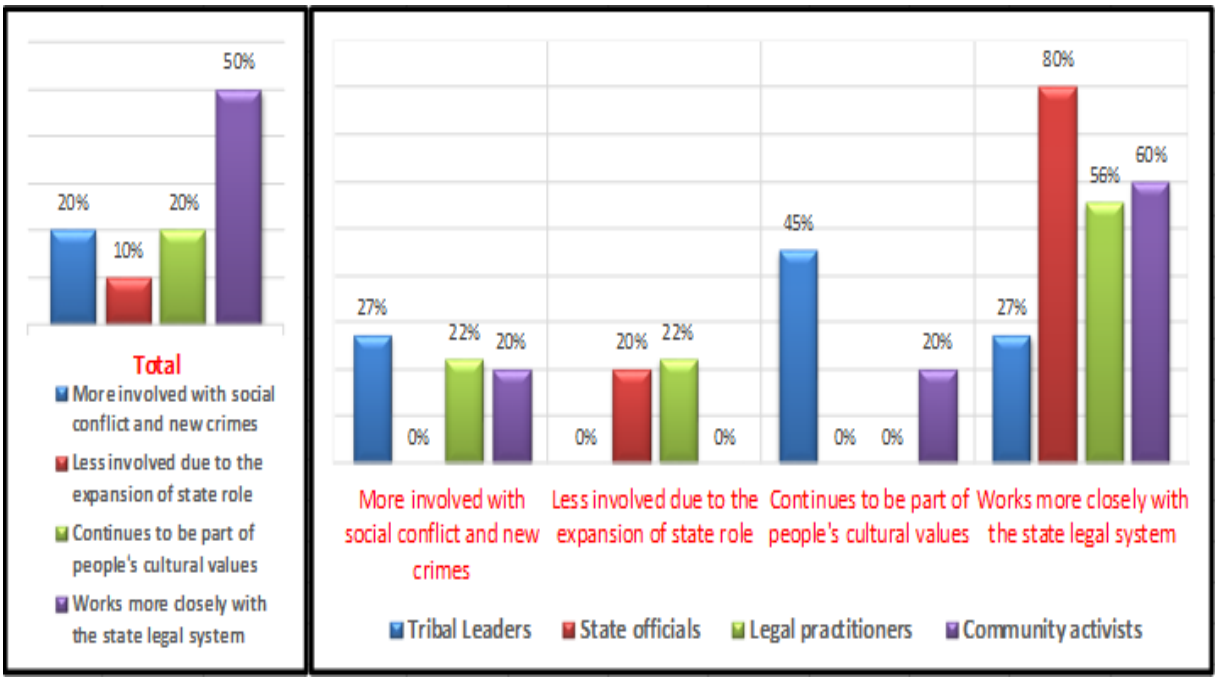

Figure 9: Changes in tribal customary law in Jordan.

4.5 University violence – The struggle of Jordanian youth

The following case draws attention to an emerging social threat in Jordan and the role of customary law in dealing with this situation. Over the past few years, there have been various incidents of violence within universities across Jordan, which have taken the character of 'violent folklore' and claimed the life of a number of people. The problem often begins with a minor incident in the form of friction between two male students, or over a suspicion of flirting with female students, and then quickly expands to a tribal dispute outside the university campus. 2013 was the deadliest year in the history of Jordanian's universities, with 96 brawls and five fatalities involving students from different tribes.[440] However, tribal violence in Jordanian university campuses appears to have been declining in the last few years as the country has launched a number of initiatives to tackle this threat, including the 'National Movement for Student Rights'. The administrations of Jordanian universities have also implemented a number of deterrence and security measures. Notably, the university community has been involved with tribal leaders along with formal state officials in the process of reaching a wider tribal settlement of these incidents.[441]

[440] Rana Sweis, 'Tribal Clashes at Universities Add to Tensions in Jordan', *New York Times* (25 April 2013), <https://www.nytimes.com/2013/04/25/world/middleeast/tribal-clashes-at-universities-add-to-tensions-in-jordan.html>

[441] Dana Al Emam, 'Students Involved in Campus Violence', *The Jordan Times* (Amman, 15 December 2006) <https://www.jordantimes.com/news/region/uj-punishes-18-students-involved-campus-violence>.

Figure 10. Students demonstrate against intertribal violence outside the University of Jordan.[442]

In March 2013, a conflict erupted between a group of students in Mutah University, Karak, which is about 120 kilometres south of Amman. It turned into a fight with Molotov cocktails after armed men from the students' tribes stormed the university. The clashes ended with the death of a student in the faculty of engineering, who suffocated from tear gas used by security forces to split up the fighting parties. Classes were suspended and a period of mourning was declared. The brawl was eventually resolved through a temporary tribal truce involving customary law. In this incident, local police charged one person for instigating the brawl; however, the student's identity was not revealed as law enforcement authorities were conscious of not taking sides in the tribal tension.

In April 2013, there was a similar incident in Al-Hussein Bin Talal University in Maan, which triggered a revenge killing between the Hawaytat and Ma'aniyya tribes. It began with a dispute between a number of students on the University Open Day and evolved into a significant conflict between the two tribes. Tribal relatives of students from both sides stormed the campus with weapons and closed the roads surrounding the area. This conflict claimed the life of four people, including a professor, and the university closed its gates for a month. The security forces arrested a number of people on both sides who were put in jail for murder and refused to release them because there had been no conciliation between the two tribes, although they were not found guilty during the investigation.

The efforts of tribal elders eventually succeeded in reaching conciliation between the Hawaytat and Ma'aniyya tribes. The efforts exerted by the King's Advisor for Tribal Affairs, Fawaz Zabin Al Abdullah, Minister of Interior Salama Hammad, and other senior tribal dignitaries from various governorates, contributed to the signing of a tribal conciliation

[442] Sweis (n 440).

instrument between the tribes, which took place at a large tribal gathering in southern Jordan. The healing process prompted the deceased's parents to relinquish all their tribal, legal and judicial rights on the condition that the perpetrators not be included in the conciliation and never be pardoned by the state judicial system.

On 19 November 2016, another fight occurred on the campus of the University of Jordan, Amman, between students from the city of Salt and Tafayleh district. The brawl left a number of students injured and caused some damage to university property. As a result, the university management decided to shut down the campus for three days to prevent further escalation of violence. It also appointed an investigation committee to review the security of the university and take action against students involved in the brawl.[443] The incident attracted significant attention from various local and regional media outlets, which prompted Jordanian officials to respond by ordering the security forces to prosecute individuals behind the attack and reinforce security at all universities in the country.

On 22 November 2016, a large group of tribal leaders gathered in Tafayleh district in response to this incident to prevent further escalation of tribal violence across Jordan. The tribal gathering involved a number of distinguished figures, including former Minister Dr Sabri Al-Rabihat, Deputy Yahya Al-Saud, retired Major General Salim Al-Rabihat and various tribal leaders from around the country, including the city of Salt. The tribal gathering stressed the unity and cohesion of the Jordanian people and demanded that attacks on educational institutions be stopped because they undermined the reputation of Jordanian universities as safe places. The residents of Tafayleh district welcomed the gesture of holding the tribal gathering in their neighbourhood and decided to waive their tribal rights while maintaining the judicial process and the rights of the injured persons.

It was noticeable that this tribal gathering included a number of young people, who were mostly university students. Therefore, the distinguished speakers directed most of their talk to the young people, urging them to safeguard their educational institutions from social violence and preserve the tribal solidarity of the Jordanian people. The tribal gathering concluded its efforts by obtaining a tribal conciliation agreement from tribal representatives of the city of Salt and Tafayleh district. Interestingly, University of Jordan President Azmi denied any university association with the tribal conciliation. 'The law, the regulations and the instructions will be applied to those who prove their involvement in the events, whether they are students or university employees, or those who have infiltrated from outside', he said, adding that investigation committees would continue their work regardless of the conciliation.

[443] Geoffrey Hughes, 'Cutting the Face: Kinship, State and Social Media Conflict in Networked Jordan' (2018) 2(1) *Journal of Legal Anthropology* 49.

This case triggered an intense debate, with Jordanians divided between those who blamed tribal law for youth violence and those who blamed the lack of rule of law within universities. Local media cited a large number of academics, legal practitioners and human rights activities stating that tribal customary law was behind the university violence as it supressed the formal law and restricted the state system. Those who blamed the universities viewed tribalism as the source of the country's strength, stability and national unity. In fact, some tribal leaders blamed youth violence on the weakening influence of tribal customary law, which left many young people feeling disconnected and fostered a gang mentality. Nevertheless, these incidents indicate that the intertribal hostilities among young people in Jordan are part of a wider societal problem that requires a nationwide effort to address. In fact, these incidents, and the subsequent debate on nationalism and rule of law, represent an opportunity to reinvigorate the cooperation between customary and civil laws in order to enhance Jordan's stability and collective unity.

4.6 Breach of tribal bail obligation (*Taqti Al-Wajah*) – The policing of customary law

The crime of dishonouring a guarantor by violating the conditions of a tribal truce or settlement agreement continues to be one of the major taboos within Jordanian tribes. It is also referred to as insulting the face of a tribal leader. Tribal people rely on guarantors to ensure that the conciliation process and agreement are respected and fulfilled. Therefore, such violations are regarded as serious acts that risk retaliation against the offending party to force them to fulfil their obligations. The following case illustrates how tribal law in Jordan has changed or been limited by the influence of the state system. In theory, tribal guarantors are no longer required for police customary settlements as the state enforces various aspects of tribal law agreements through the formal legal system. However, for tribal leaders, the honour of fulfilling their obligations is morally critical as it ensures that they are respected and earn the status of contributing to the tribal conciliation.[444]

This case relates to a tribal leader (sheikh) who was part of tribal truce in a murder case as a guarantor to ensure the security and protection (*Kafeel Aldafa*) of the perpetrator. In 2016, during the truce period, one of the families breached the truce by taking revenge against the other party and killing a family member. This was deemed an assault on the honour of the sheikh (*Taqti al-Wajah*) under tribal customary law. The offending family then turned to a prominent tribal judge not involved in the case to seek a conciliation between them and the sheikh who was their guarantor. The family also provided the judge with the name of an independent tribal leader who agreed to be their guarantor of surety (*Kafeel Alwafa*) to ensure that they fulfilled their financial commitments if a tribal compensation was required

[444] Talal Almady, 'Breach of Tribal Bail Obligation' (Personal interview, 2021).

during the conciliation process. According to tribal law, this demonstrates that the offending party is, first, admitting their wrongdoing and, secondly, prepared to accept the judge's ruling in order to redeem their honour and compensate the tribal leader whom they offended. It is also important to note that this process is separate from the original crime of committing a revenge killing, which requires an additional tribal truce and, eventually, a conciliation between the two families. It is common for these two processes to run concurrently, although reaching a conciliation settlement for a case involving revenge killings may take much longer than for the crime of dishonouring a guarantor.

The tribal judge then facilitated a community delegation of about 100 dignitaries including tribal leaders, state officials and non-government organisations, and attended the house of the guarantor. The delegation brought a white camel and a white flag which was later tied to the house as a gesture of redeeming the honour of the guarantor. The process started when a cup of Arabic coffee was placed in front of the chief of the community delegation. This is regarded as a traditional welcome and the key to opening dialogue. It also invites the chief to put forward his argument. The chief began by praising the guarantor for his generosity and standing in keeping the peace within the community. He also stressed that the community delegation had come to satisfy the guarantor as the offending party had pledged to do anything to meet the guarantor's demands. The guarantor then requested one million dinar as a compensation that would serve to punish the offending party and deter future insults to tribal guarantors. The community delegation responded by stating that this compensation amount was not of equal value to the guarantor's honour, further reinforcing the status of the guarantor. This approach was designed to satisfy the guarantor and ease tensions.

The community delegation initiated the process of pleading for the guarantor to reduce the compensation amount for the sake of Allah, the Prophet and the King. The guarantor eventually waived his right for the entire amount and insisted on the return of the camel. It is important to note, however, that the million dinar in compensation was confirmed before the public, as was the guarantor's right. This allowed the guarantor, in waiving that right, to redeem his honour within the tribes. The settlement agreement was signed and witnessed by key tribal dignitaries along with police officials as a public declaration. The white flag was left tied at the house as a further declaration of the restored honour of the guarantor and a public apology by the offending party. This assisted in re-establishing the balance within the tribal community and consequently created the atmosphere for further dialogue and, eventually, conciliation with regards to the original offence of the revenge killing.

The guarantor withdrew his complaint before the state governor in order to close the case under civil law, which was officially entered into the Interior Ministry record. It is important to

note that this type of offence, along with blood feuds and honour crimes, is the only remaining category of crimes that the Jordanian state system recognises as falling under the jurisdiction of tribal law mechanisms, as per the Crime Prevention Law of 1954. Interestingly, this law is currently the subject of public debate over whether legal customs should be further regulated and whether dishonouring the guarantor should be accepted as a crime.

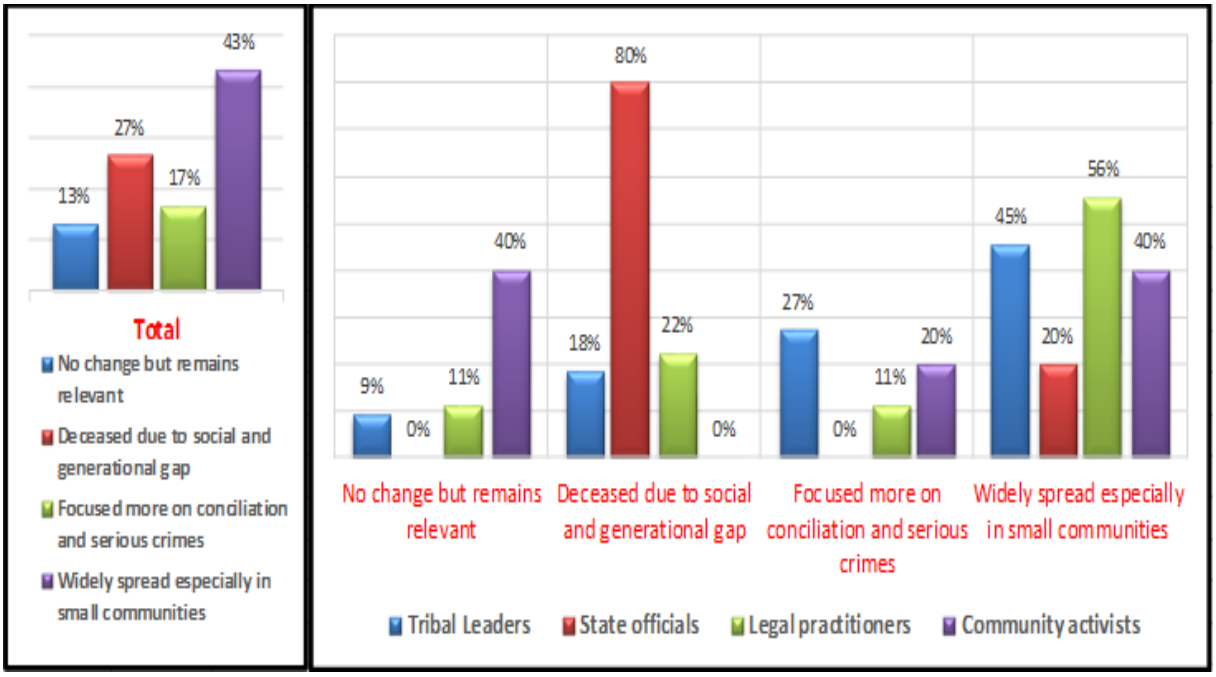

Figure 11: The prevalence of tribal customary law in Jordan

The interviewees were asked to evaluate the prevalence of tribal law in Jordan, with 43% responding that it is widespread, especially in small communities. The implication is that demand for tribal law is increasing. However, 27% of interviewees believed that the prevalence of tribal law has decreased due to the social and generational changes in Jordanian society. The belief is that the more the younger generation adopt urbanised lifestyles, the less inclined they are to use tribal law. Seventeen per cent of interviewees thought that tribal law was becoming more focused on conciliations and serious crimes, indicating that it is dedicated to dealing with the implications of disputes on social order, while 13 per cent stated that there has been no significant change in the usage of tribal law.

Legal practitioners (56%), tribal leaders (45%) and community activists (40%) represent the majority of interviewees who believe that Jordanians, especially in small communities, are more reliant on tribal law. The majority of state officials (80%) believed that tribal law has decreased in usage due to social changes. Community activists (40%) mostly believed that although there had been no significant changes in tribal law, it remains relevant. Additionally, 27 per cent of tribal leaders stated that tribal law is focused more on conciliation and serious crimes. These snapshots, along with the case studies, provide an insight into the prevalence

of tribal law in Jordan. The following two cases are chosen to reassess this insight from a different social field to determine the uniqueness of tribal law in Jordan and its similarities to other customary practices in surrounding areas.

4.7 Comparative case – The blood feud in a refugee camp

The following case relates to a murder that occurred in a refugee camp in Gaza in 2014. It started as a result of a dispute between two neighbours over the run-off of sewage water into their street and escalated from a heated argument into a physical fight between the families. The scuffle between the two families got out of control and led to one individual from the Saleh family getting his firearm and shooting an individual from the Younes family. The victim was pronounced dead by the time paramedics arrived on the scene. This blood feud triggered full-scale violence, with a number of people from the Saleh family injured and their homes set alight. The police immediately intervened and facilitated the exile of the Saleh family from the camp to prevent further escalation of the violence. The police and neighbours also protected the homes and properties of the Saleh family during their exile.[445]

The sheikh who shared this incident with the researcher has a close connection with the Younes family, which enabled him to reach out to their elders in an attempt to persuade them to seek a satisfactory settlement to this dispute. Initially, the Younes family refused appeals from a number of community delegations to reach a customary truce and refrain from taking revenge against the Saleh family. Due to the sheikh's persistent efforts, including speaking directly to the deceased's father, he was able to convince the family to accept a customary truce. It is useful to note that the chief elder of the Younes family was taking a hard line against any customary resolution and insisting on the family's right to take revenge. Therefore, by obtaining an agreement from the victim's father, the sheikh was able to make a breakthrough and overcome the chief elder's refusal to compromise.

The sheikh then led a community delegation consisting of distinguished community leaders, state officials and representatives from various Palestinian factions. The delegation met with the Saleh family's elders and negotiated the terms of the proposed settlement, which the delegation saw as a way forward in convincing the Younes family to accept the settlement. The delegation then attended the Younes family's place of gathering, following the ritual of not accepting the offer of coffee until the delegation's wishes were met by the Younes family. Additionally, a number of the delegation members delivered public speeches in front of the large crowd, praising and honouring the generosity and courage of the Younes family in dealing with this tragic incident. The delegation eventually reached an agreement which was

[445] Walid Abu Arban, 'The Blood Feud in a Refugee Camp ' (Personal interview, 2021).

documented and signed by all representatives in attendance, including the police who took a copy of this agreement for the state records.

The customary settlement specified that the Saleh family would have to pay blood money of 100,000 dinar to the Younes family as compensation. In return, the Younes family pledged that none of their members would take revenge against the Saleh family. Finally, each family would provide the name of their guarantor. The Saleh family was given 60 days to provide the full compensation in order for the Younes family to officially waive their threat of revenge. Close to the 60th day, the Saleh family managed to collect 80,000 dinars from their members but was unable to provide the remaining amount.

Subsequently, the Saleh family reached out to the sheikh on behalf of the delegation and explained their inability to pay the whole amount within the prescribed time frame. The sheikh therefore appealed to the Younes family and explained the financial circumstances of the Saleh family. Following further negotiations between the two families via the sheikh, the Younes family agreed to accept 85,000 dinar and waive the remaining 15,000 in honour of the sheikh and the delegation. The final agreement was then signed off in front of police representatives, and the Younes family received the agreed amount and officially pledged to not take revenge against the Saleh family.

The customary settlement facilitated the return of all members of the Saleh family to their homes except the person who committed the murder, as he was sentenced to imprisonment. The ceremony of the public declaration of this agreement was organised at the school campus and involved around 3000 people from the local community including key elders, police officials and representatives of various Palestinian factions. At this assembly, a number of speeches and meal-offering rituals were undertaken by the attendees. The ceremony marked the conciliation of the two disputing families and the consequent restoration of public order and peace in the refugee camp.

4.8 Comparative case – The cycle of a neighbourhood dispute

The following case relates to a neighbourhood dispute between two families who lived next to each other for over 30 years in a refugee camp in Gaza. The children grew up together and became friends in a close-knit community, but their relationship was troubled by infighting when they married and their children became teenagers. This case provides an example of recent conflict within Palestinian society in Gaza and how legal customs work with the disputing parties and the formal system under Hamas rule.[446]

[446] Walid Abu Arban, 'The Cycle of a Neighbourhood Dispute ' (Personal interview, 2021).

The altercation began when individuals from the two families were playing soccer together and were involved in a fight as a result of an individual from Musa's family insulting another player from Shaker's family. The fight got out of control as they physically attacked each other, whereupon members from both families became involved. The elders of the two families contained the situation and restored the relationship through mutual agreement and visits. Three days later, however, a member from Musa's family attacked an individual from the other family by hitting him with a pole and fled the scene. This individual suffered some injuries and was admitted to hospital. Shaker's family made a report to the police and, as a result, two people from the other family were arrested.

Musa's family resorted to customary law by seeking the intervention of a community delegation to prevent a revenge attack by the other family and contain the conflict. Shaker's family accepted the delegation's appeal for conciliation in a demonstration of respect for the delegation's intervention and to preserve the solidarity of the neighbourhood. They withdrew their police complaint and rejected any offer of financial compensation. The conflict was then deemed resolved once the two members of Musa's family were released and the injured person had recovered. This was symbolically marked through the ritual conciliation (Sulha).

Two years later another altercation occurred, and it was alleged that a member of Musa's family provoked the other family and breached the conciliation agreement. This escalated to a violent conflict in which a number of people from both sides were injured. Local police contained the situation and arrested several people from the two families. Following a police appeal for calm, a community delegation intervened without being asked by either of the families, as the conflict was becoming a public concern and threat to community peace. Initially, Musa's family rejected the delegation's call for conciliation and the release of the individuals of Shaker's family from police custody. However, the delegation managed to reach a conciliation agreement after a week of mediation between the two families.

As per Musa's family's conditions, the conciliation settlement required that Shaker's family pay 6000 dinar as a bond in the event they breached the conciliation. It was also agreed that the final conciliation agreement be subject to the findings of the civil court.

Two months later, after a lengthy process, the formal court concluded its deliberation and decided that Shaker's family should pay 17000 dinar in compensation for the damages and injuries caused to Musa's family in order to enable the release of their family members. Shaker's family rejected the court's decision as they regarded it as unfair and disproportionate. Shaker's family accused the court of being biased, alleging that Musa's family had an influential member who worked in the formal government system. Shaker's

family appealed against the court decision and informed the delegation of their discontent. The delegation committee then reached out to Musa's family in an attempt to resolve the matter by accepting the 6000 dinar as compensation and disregarding the court's decision. Musa's family was adamant that they would not waive the court's decision.

During the mediation process, a member of Musa's family breached the truce agreement by assaulting an individual from the other family and causing serious injury. This prompted the community delegation and police to contain the situation by renewing the customary truce between the two families and arresting the individual who was behind the attack. This presented the delegation with an opportunity to pressure both sides into accepting its call for conciliation and avoiding a serious escalation of violence. There was also public dismay due to the repeated breaches and acts of violence by both families, which damaged their standing within the community. The two families agreed to reconcile and waive all their conditions, including any demands for compensation, and to withdraw their complaints before the court. The families signed the conciliation agreement and each provided a guarantor of commitment to refrain from causing any further breach of the peace between the two sides.

These comparative cases indicate that the features of tribal law are similar between Jordan and Gaza, highlighting that the commonalities of customary practices in the region trace back to Bedouin justice. However, the way tribal law operates in Jordan appears different from other models, in comparison with other countries. The previous two cases indicate that there are somewhat cooperative legal pluralistic relationships in Gaza, but are not as structured as that in Jordan. For example, it appears that the legal system in Gaza has no coordinated approach to customary law. In this sense, Figure 12 shows how the interviewees describe the extent of engagements between the state system and tribal customary law in Jordan. The majority of interviewees (50%) felt that tribal law works with the Jordanian state by containing conflict and providing quick settlements. Thirty per cent reported that tribal law collaborates with the state system by resolving the social implications of crimes, while 13 per cent believed that tribal law assists the state legal system by facilitating victims' compensation and paving the way for a reduction of the offender's sentence. Interestingly, state officials and legal practitioners were the only groups to support this assertion.

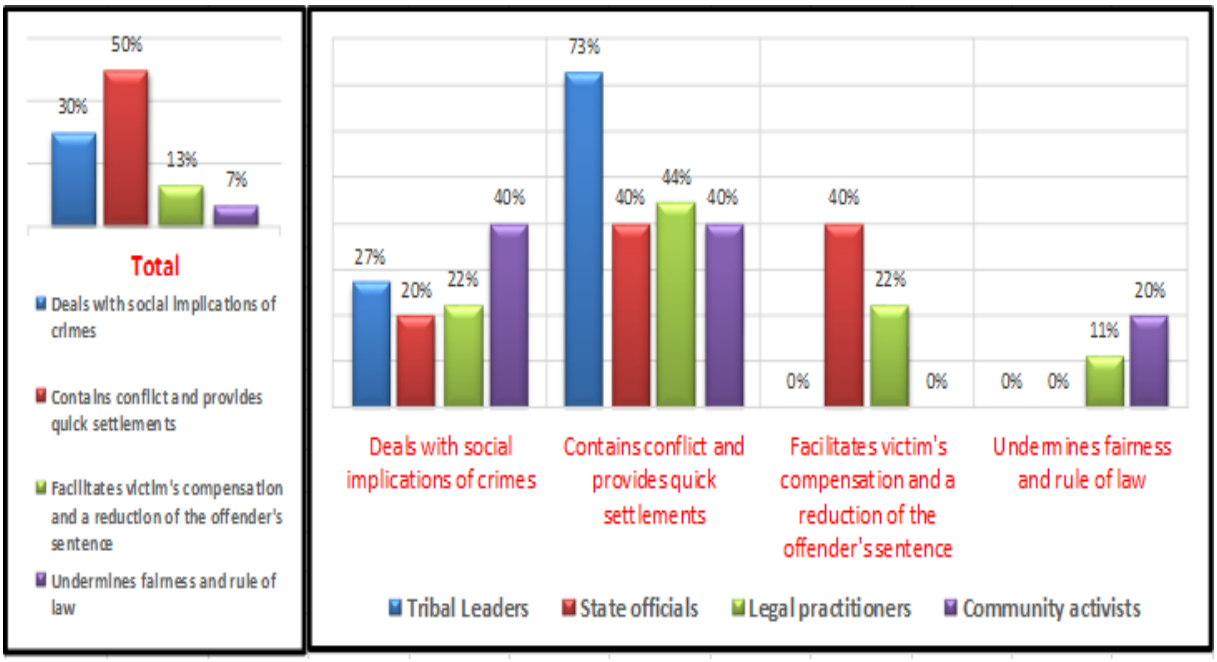

Figure 12: Tribal law's contribution to the state legal system.

Interestingly, 73% of tribal leaders reported that tribal law contains conflict and provides quick settlements, whereas 20% of legal practitioners and 11% of community activists stated that it undermines fairness and the rule of law. Most state officials (40%) thought that tribal law facilitates victims' compensation and leads to a reduction in an offender's sentence. Although there continues to be some concern over the function of tribal law and its influence on the state legal system, there is consistent support for its role in resolving disputes and preventing revenge attacks within the Jordanian community. Table 4 illustrates how these blood feud cases were resolved, and how tribal customary law and the state legal system appear to have worked together through the settlement process.

Table 4: Mapping of the blood feud and honour crime cases

Case	Key highlights	State's engagement	Outcome
4.1 Revenge killing – The story of the town of Alsareh	Murder in a hospital Revenge in 3 weeks Schools shut down Evening curfew State is accused of relying on tribal law	Regional governorate Security forces State exerting pressures Police/Court first Tribal gathering second Former prime minister	Jalwa (evacuation) Atwa (truce) – 3 weeks 20 people charged Families returned Sulha (conciliation)
4.2 Deliberate killing – The tragedy of an international student	Murder in Iraq Iraqi expatriates in Jordan attacked	Interstate cooperation Police involvement University involvement Sheikhs travelled to Iraq	Jaha (delegation) Atwa (truce) – 3 years Accused imprisoned Sulha (conciliation) Dia (Blood money)
4.3 Honour crime – The dilemma of a sister	Physical assault over family honour Sheikhs worked to preserve family honour	Regional governorate Police involvement State exerting pressures	Administrative detention Atwa (truce) Arbitration committee Sulha (conciliation) Dia (Blood money)
4.4 Accidental killing – The legacy of Rania	Traffic accident Under-age driver Threat of revenge Human right groups	Police involvement Court judge Accused released and administratively detained	Accused identified Atwa (truce) Jalwa (evacuation) Sulha (conciliation)
4.5 University violence – The struggle of Jordanian youth	Revenge killings Street violence Universities shut down State accused of not taking decisive actions	Security forces State exerting pressures Police/Court first Tribal gathering second Former minister Retired Major General	Atwa (truce) Few people charged Sulha (conciliation)
4.6 Breach of tribal bail obligation	Dishonour a guarantor over a revenge killing White camel/flag	State officials' attendance Public gathering	Jaha (delegation) Sulha (conciliation) Dia (Blood money)
4.7 Comparative case – blood feud in a refugee camp	Murder of a neighbour Refusal to compromise	Police involvement Conciliation organised at a school campus	Evacuation/truce Jaha (delegation) Sulha (conciliation) Dia (Blood money)
4.8 Comparative case – neighbours' dispute	Physical assaults Breaches of truce	Police calling for calm Court conflicting with tribal law decisions	Jaha (delegation) Sulha (conciliation) Dia (Blood money)

4.9 Conclusion

These cases demonstrate that there are common features of tribal customary law when resolving blood feuds and honour crimes. In addition to what has been argued in the literature review, the process of tribal customary law shows some consistency when responding to these types of disputes, where it is typically expected, to avoid revenge killings, that the offending parties will evacuate their home as the first step towards initiating a truce agreement. It is also shown that the majority of tribal dispute resolution processes start with a truce agreement as a way of containing and de-escalating the conflict. The intervention of tribal leaders and/or tribal delegations is almost expected and is often immediate, particularly in serious conflicts and when there is a risk of escalation of violence. The involvement of the state legal system in the tribal dispute resolution process is perceived to be the norm not only in Jordan but also in Gaza, as shown in the comparative cases. In light of the previous cases, the level of the state's engagement with tribal customary law in Jordan appears more sophisticated and structured than in most of the other countries discussed in this thesis.

The next chapter examines further cases in which other types of crimes were resolved through tribal customary law in Jordan. The purpose is to assess how local customary law intervenes in common disputes rather than blood feuds and honour crimes, such as family violence, assaults, defamation and civil disorder. These cases also feature disputes involving non-Jordanian citizens to examine the ability of local customary law to resolve these types of disputes in Jordan. Two more comparative cases from Gaza are also presented; these deal with domestic violence and are selected to test the level of similarities and differences with the cases from Jordan. Similar to the previous chapter, the following cases are narrated to self-represent the local people who resorted to tribal customary law, while paying special attention to how the state legal system was involved, as well as highlighting any key principles or contentious issues when these disputes were resolved.

Chapter Five – Customary Law in Practice: Other Crimes

This chapter focuses on the role of tribal law in responding to family violence, physical assault and other grievances in Jordan, with two comparative cases from Gaza. It provides narrative descriptions of how customary law deals with these matters in practice and explores the challenges of customary law in relation to its engagement with statutory systems and how it influences the rule of law and human rights. The focus will be on how the process of customary law endeavours to resolve a range of conflicts and works to maintain the peace and public order. These cases raise a number of questions with regard to the applicability of and challenges to tribal dispute resolution practices in dealing with different crimes or conflicts in Jordan. The cases were selected through direct contacts and media sources to examine how customary law resolves cases other than blood feuds, particularly those that involve modern and newly emerging disputes. Similarly, these cases were mainly selected due to their ready availability and coverage of a variety of disputes. As a result, it was not possible to examine cases that have not proceeded through customary adjudication. These cases are extrapolated upon in greater detail in Chapter Six and Seven.

5.1 Family violence – The father's predicament

The following case explores how customary law responds to family violence by working with state law and engaging with the affected families. It also highlights the challenges that family violence presents to customary law and the statutory system. There are a number of underlying issues when it comes to addressing family violence, including an assumption that it should be resolved internally and contained within the family in order to avoid further damage. The question is also whether customary law's focus on conciliation is an appropriate response for some cases of family violence.[447]

The father of a newly married woman in Amman reached out to a prominent sheikh to intervene in a dispute with the family of his son-in-law. The conflict emerged when his daughter returned to her parents' home after a year of marriage complaining that her husband assaulted her following an argument over their living arrangements. The couple were living with his parents, and she wanted them to have their own home, describing how her mother-in-law interfered in her life and dictated her husband's life as he was the only child in the family. Her father was concerned about potential escalation of tension between the two families, particularly as his five sons were

[447] Talal Almady, 'The Father's Predicament' (Personal interview, 2021).

angered and wanted to ‘teach the husband a lesson’ for assaulting their sister. It also emerged that the daughter was pregnant and about to give birth.

The sheikh stated that he regarded his role in this matter as a social mediator, not a tribal judge; his focus was on bringing the two families together through conciliation and compromise from both sides. However, the sheikh faced some resistance from both families, with the mother-in-law being uncooperative and the daughter’s brothers angry and wanting to report the matter to police or seek revenge. The sheikh was frustrated that his role was being challenged and reprimanded both parties for seeking to escalate the conflict. He warned that going to the police in such family affairs was against their customs and would only create further animosity between the families. He added that any potential escalation would be harmful to the girl’s honour and the reputation of both families.

A few weeks later, the wife contacted the sheikh without the knowledge of her family and asked if he could intervene again to facilitate a conciliation with her husband. She was concerned that the conflict was being escalated due to the role of the extended families. She insisted that she did not want her family or husband to know that she contacted the sheikh as she wanted to save face and not let her family down. The sheikh then approached the husband and offered to mediate again between the two families if he genuinely wanted a conciliation and to be reunited with his wife. The sheikh explained that to bring the two families together and resolve the conflict, a tangible conciliation had to occur with certain commitments in order to prevent future problems between the couples.

The sheikh sought the assistance of two other sheikhs who were related to the families in order to utilise their influence during the conciliation process. A conciliation agreement was eventually formulated with the following conditions: first, that the husband refrain from abusing his wife in any form, and any future disputes should be resolved respectfully. Secondly, that the husband should build a separate section within the family house so the couple could have their privacy while still living close to his parents. Thirdly, that a private conciliation gathering be convened at the house of the wife’s parents to restore their honour and peace, whereupon the wife could accompany her husband back to their home. The conciliation settlement was agreed upon by both families and witnessed by two other sheikhs, who were willing to be the surety for this agreement and hold the two sides accountable, while keeping the dispute within the two families.

This case highlights the primary focus of tribal customary dispute resolution practices on achieving conciliation and restoring harmony by exerting pressure to bring people together, without necessarily addressing the underlying reasons for the conflict. It also shows the sheikhs’ attitudes towards police involvement in family violence matters, which reflects the views of a large part of the community in Jordan, and in other Arab countries. This may

explain why, in this case of family violence, the role of the statutory system seems to be quite limited; it can be seen as a last resort when violence reaches a very serious level and has already become public knowledge.

5.2 Physical assault – The Egyptian waiter in Jordan

In October 2015, an Egyptian citizen was assaulted by a group of locals while working in the port city of Aqaba, Jordan. The attack was captured on surveillance video and went viral on social media, particularly since it involved a Jordanian Member of Parliament. Khaled Othman, a 36-year-old Egyptian citizen, was working as a waiter at a Lebanese restaurant when he was allegedly assaulted. The CCTV footage showed the Jordanian MP, Zaid El-Shawakbah, rebuking Khaled, who was then assaulted by the MP's escorts over a delay in their food order. It was established that two of the MP's escorts were his brothers, who appeared in the footage to be slapping Khaled repeatedly. It also showed that there was no action from the MP or interference from others to stop the attack. Khaled was admitted to Princess Haya Hospital in Aqaba and was discharged on the second day after the incident. He suffered minor injuries, including bruises to his face and upper body.

The video caused public outcry across the Arab world, prompting the authorities to condemn the incident and take legal action. The Aqaba Provincial Police publicly revealed information about the perpetrators to facilitate their arrest. The Jordanian Interior Ministry also issued a press release stressing that Jordan respected the rule of law and would take all necessary measures to amend the situation. The MP's brothers were detained within days and ordered to appear before the local court. However, due to the controversy over the case, the brothers' bail was revoked, and they were placed under administrative detention, pending a settlement with Khaled.

The role of social media, in this case, fuelled public tension and diplomatic strains between Egypt and Jordan. The widespread coverage of this alleged assault also drew attention to the status of Egyptian workers in Jordan and other countries. The footage angered many people in both Jordan and Egypt, triggering politicians and media commentators to voice condemnation of the Egyptian worker's mistreatment under the eyes of a lawmaker. The Egyptian Foreign Ministry issued a complaint to the relevant authorities in Jordan, particularly the House of Representatives given the involvement of one of its members in the case. The Egyptian embassy in Amman also condemned the assault and threatened to sue El-Shawakbah. The embassy stressed to the media that the rights of Egyptian citizens must be upheld. The Egyptian consulate in Aqaba filed a police report and hired a lawyer to ensure that the legal rights of the Egyptian worker, Khaled Othman, were upheld and the

perpetrators held accountable. The consulate vowed to ensure that Khaled's case received proper process and resulted in a fair outcome.

The Jordanian Minister for Media Affairs and Communications also intervened to manage the public reaction to the scandal. The minister, Mohammad Al-Moumni, appeared on various TV stations to emphasise that Jordan respected Arab guest workers, and that the law protected expatriates and guaranteed their right to consult the kingdom's legal system without fear of reprisal or discrimination, even if the matter related to a lawmaker. The minister noted that King Abdullah of Jordan was in contact with President Abdel-Fattah El-Sisi of Egypt over the case.

Khaled was interviewed by media outlets and his case was used by social media to advocate for social justice. This exposure led to rallies outside the Egyptian embassy in Amman in support of Khaled, while Egyptian expatriates in Jordan rallied outside their consulate in Aqaba to demand immediate legal action and better protection of their rights. Ibrahim Geneina, president of the Association for Egyptians in Jordan, said that the insult to Khaled was unacceptable, asking 'how could a person representing the people assault a defenceless employee'. There are approximately 650,000 Egyptians working in Jordan, mostly in construction and the service industry, which explains why this became a significant issue for Jordan and Egypt. The Egyptian ambassador, Tharwat Samir, pointed out that Egyptian workers contribute significantly to the Jordanian economy, adding that Egypt would not abandon its citizens working in the kingdom.

A significant number of individuals and organisations across the region became interested in this case, triggering a discussion about immigrant workers' rights in Jordan and other Arab countries. Social media activists created a number of hashtags such as *#immigrantrights* and *#Jordanian_MP_hits_Egyptian_worker*, in order to denounce the parliamentarian involved in this incident and demand an apology for the worker. Many reactions appeared on Twitter such as: 'this is what you get with a government that has successfully destroyed all values in society', while another viewer on YouTube suggested the MP and his brothers should be deported instead of the waiter. Overall, commentators on both social and conventional media demanded authorities achieve justice by reclaiming Khaled's dignity and provide some restitution[448].

The involvement of a public figure in the incident also explains the widespread condemnation. El-Shawakbah was quick to respond to these developments in an attempt to minimise the damage to his reputation. The MP issued a number of media releases and appeared on various television stations, including Egyptian channels, where he expressed

[448] Ismaeel Naar, 'Slap in the Face? Jordan and Egypt Wrangle after Lawmaker Attacks Waiter', *Alarabiya News* (2015, October 6), <https://english.alarabiya.net/features/2015/10/06/Slap-in-the-face-Jordan-and-Egypt-wrangle-after-lawmaker-attacks-waiter>.

regret for his brothers' actions. He also rejected claims that he condoned the assault because it involved an Egyptian worker, or that the attackers acted with a sense of impunity due to his status. El-Shawakbah claimed that the waiter instigated the fight; however, he reprimanded them for responding violently and stated that in doing so they had disrespected him and dishonoured his tribe. The MP also accused the media of bias and of 'playing a dirty game' that fuelled tensions between Egypt and Jordan, expressing his hurt that Egyptian television had used this incident to defame him and Jordan as a whole. The MP also promised to make amends and cooperate with all parties to reach a satisfactory solution.

Khaled, for his part, stated that he had been severely beaten, called a 'dog' and 'treated like an insect' by the MP's escorts. Khaled claimed that he was threatened with deportation to Egypt if he reported the attack, yet he insisted that he would not drop his court case. He stressed that the incident did not represent Jordanian people as a whole, noting that he had lived in Jordan for 11 years and had never previously been mistreated.

According to eyewitness accounts, El-Shawakbah did not assault Khaled himself; his brothers and the people accompanying him were the aggressors. CCTV footage also showed the MP outside the restaurant after the incident berating his brothers for resorting to violence. Nevertheless, criticism of the MP continued to increase throughout Jordan and across the region, with authorities calling for a revocation of his parliamentary immunity so he could be prosecuted.

Tribal leaders in Aqaba formed a conciliation committee and stepped in to resolve the standoff between the MP and his brothers on one hand, and the worker and local Egyptian officials on the other. The committee organised a number of meetings with the Aqaba governorate and the Egyptian consulate to devise a satisfactory solution. The conciliation committee then moved to defuse the situation through several measures as a way of de-escalating public tensions and reclaiming social balance. The first step was organising a public conference at the Egyptian consulate where local tribal leaders were able to meet with the Egyptian worker and consulate staff. The attendees appeared before the media shaking hands and holding both the Egyptian and Jordanian flags as a gesture of goodwill and social solidarity. The conciliation committee also offered an apology to the Egyptian worker and Egyptian expatriates in Jordan.

The conciliation committee facilitated a meeting at the Aqaba governorate office between El-Shawakbah and Khaled in the presence of Jordanian and Egyptian officials. The two parties agreed to conciliate and settle the matter through customary law rather than the state system. The tribal settlement occurred at the home of a distinguished tribal leader in Aqaba. The conciliation forum included representatives of tribal leaders, state officials and Egyptian

diplomats. It was announced that the MP and his brothers would issue a public apology to Khaled Othman in three Jordanian newspapers. An assurance was issued to Khaled that he would not be harassed and that his visa status would not be interfered with. In return, Khaled was asked to drop all claims against the MP and his brothers in the state legal system.

The next day, the MP's brothers released a statement through local newspapers outlining their gratitude to Khaled and Egyptian diplomats for their generosity in agreeing to the conciliation. The statement also outlined their appreciation of the role of tribal leaders and state officials in resolving the matter and preventing social friction. The Egyptian ambassador to Jordan, Khaled Tharwat, however, refused to accept the statement by the MP's brothers as a public apology. The ambassador said that part of the settlement stipulated that the brothers were to apologise to Khaled and the Egyptian community in Jordan in the local newspapers; instead, Tharwat said, 'they ran a statement only thanking the worker and embassy for dropping the charges… This was not what was agreed upon and we will not drop charges until what was agreed on is accomplished'. In response, the lawyer representing Khaled, Atef Mayah, told the *Jordan Times*: 'I will not drop charges until I receive a written consent from my client or the embassy.'[449] However, this escalation was quickly contained and the agreed upon settlement was soon carried out.

The involvement of customary law, in this case, offers insights into the applicability of this system to contemporary disputes. It demonstrates how quickly tribal law was able to respond to the incident and its international implications. The public reaction to this incident clearly indicated that many people disliked the idea of someone in a position of power bullying a more vulnerable person, especially when the victim is a foreign worker with no family support in Jordan. The incident was also interpreted as an insult to both Jordan's and Egypt's reputations. The unexpected involvement of tribal law, in this case, was motivated by the desire to preserve people's honour and social solidarity, which is the essence of this system.

The manner in which this incident was resolved, however, might suggest that tribal customary law was focused on mitigating the consequences for the parliamentarian who belonged to the tribal system, and representing its own interests within the state. This may have been the Egyptian ambassador's perspective, particularly when taking into account that the settlement only required the MP's brothers to issue a public apology, not the MP himself, and that the MP's brothers released a public statement of gratitude instead of apology. Egyptian officials and civil agencies were interested in individual punishment and procedural fairness.

[449] Rana Husseini, 'Egyptian Worker Will Not Drop Assault Charges Against MP's Brothers', *The Jordan Times* (2015, October 11), <https://www.jordantimes.com/news/local/egyptian-worker-will-not-drop-assault-charges-against-mp%E2%80%99s-brothers%E2%80%99>.

On the other hand, it can be argued that tribal law was representing a different cultural context from the Egyptian diplomats. Tribal law seems less focused in condemning and humiliating people in order to achieve justice. Instead, it appeals to all people, including those who commit wrongdoing, by giving them the incentive of preserving their honour and dignity. Its view is that people already suffer dishonour the moment they commit crime or face conflict. Therefore, crime and conflict disturb tribal social balance, and the response should therefore focus on restoration rather than punishment.

In the above case, the tribal settlement appeared to be carefully crafted to allow the MP and his brothers to take responsibility for what happened and yet save face. Equally, however, the settlement also focused on restoring respect for the Egyptian worker and the whole Egyptian community. It also aimed to preserve the reputation of Jordanian people in standing against internal injustice. At an individual level, the settlement provided a dignified way for the MP and his tribe to apologise in private to the Egyptian worker and local Egyptian representatives.

Figure 13: Tribal leaders and Egyptian diplomats at the conciliation settlement in Aqaba.[450]

These cases draw attention to the role of sheikhs in resolving disputes among tribal people. Figure 14 below provides an insight into how sheikhs' role is perceived in Jordan. 40% of the interviewees stated that sheikhs safeguard the process of tribal dispute resolution and facilitate compliance with the settlements. Thirty per cent stated that sheikhs are known for being competent, creditable and communicative when resolving disputes. Twenty per cent thought of sheikhs as respected and having moral status within the Jordanian community.

[450] Nasr Majali, 'Arrest of the Perpetrators of Beating the Egyptian Worker', *Elaph Newspaper* (2015, October 5), <https://elaph.com/Web/News/2015/10/1044879.html>.

Lastly, 10 per cent of the interviewees stated that sheikhs are seen as wise and fair and work to preserve people's honour during dispute settlements.

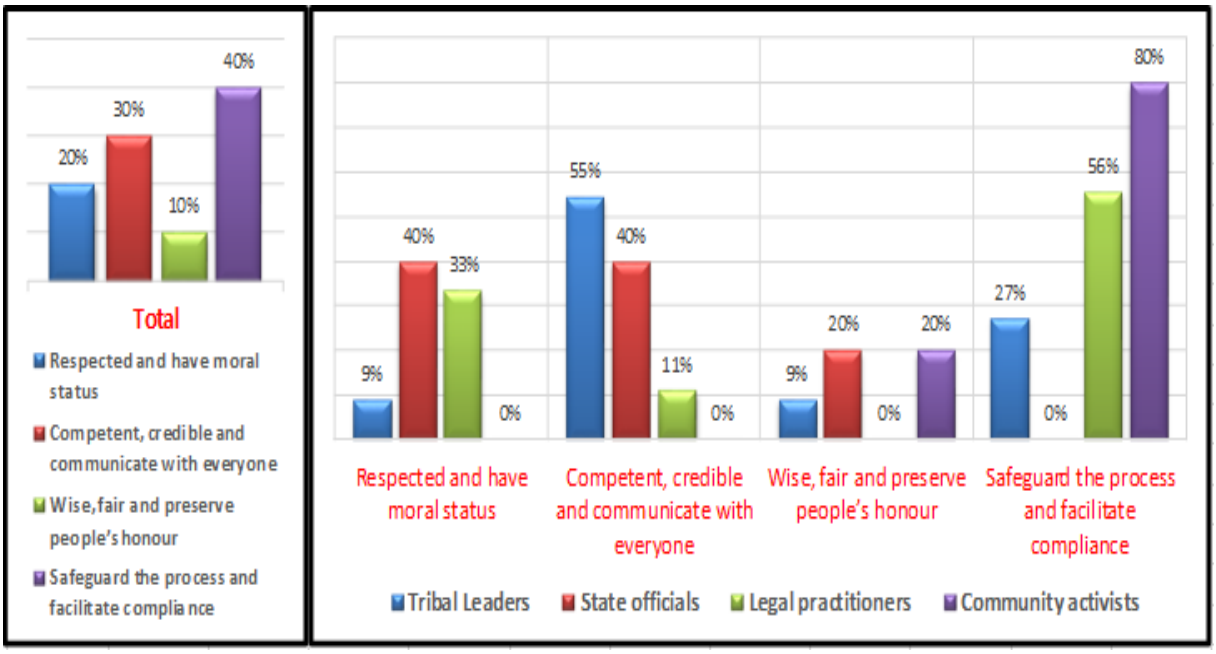

Figure 14: Status of tribal sheikhs.

The majority of interviewees who pointed out that sheikhs are competent, credible and communicative were tribal leaders (55%) and state officials (40%). The majority of community activists (80%) and legal practitioners (56%) regarded the sheikhs' role as a safeguard of the process and as facilitating compliance. A large number of state officials (40%) and legal practitioners (33%) stated that sheikhs are respected and have moral status within the community. These responses highlight the level of legitimacy and moral authority that sheikhs bring to resolving disputes in Jordan.

5.3 Verbal abuse – The insult of a female parliamentarian

The following shows the role of customary law in dealing with personal insults. Verbal insult is viewed very seriously by tribal people as it is often interpreted as an attack on their honour. This is particularly the case when insults are targeted towards women, or when they come from people in positions of power who are expected to have a high regard for tribal culture.

In 2014, during a televised Jordanian parliamentary sitting, a male MP insulted a female MP by shouting at her and demanding she shut up and sit down. He allegedly cursed 'whoever was behind allowing women to enter the parliament'. As a result, the female MP walked out of parliament in protest. This caused community tension as the male MP's actions were seen as an insult to women, particularly since the female member represented an influential tribe.

This case thus touches on a number of social issues in Jordan, including gender equality and the fragility of tribalism as the male member represented an opposing tribe.[451]

There were calls within the tribal sphere for containment of the situation through a tribal dispute resolution. The media also weighed into the debate, which raised fears about triggering tension and potential instability. A tribal delegation was convened by the parliamentary speaker and visited the female MP's tribe. The delegation was sent by the male member and his tribe to ask for forgiveness and conciliation. The delegation stressed the honourable status of the female member and her tribe. They also expressed regret on behalf of the male parliamentary member for causing offence and indignity. The tribe of the female politician accepted the delegation's appeal with the condition that the male MP make an apology in the parliament for his remarks. Following a month of truce, a tribal conciliation occurred in the territory of the female's tribe, witnessed by a large number of tribal and state officials. This tribal procedure illustrates the dynamic nature of tribalism and its influence on many aspects of Jordanian society, and how tribal customary law is used in these delicate relationships. The consensus and legitimacy surrounding this tribal dispute resolution procedure arises from the customs of respecting and protecting women as value of tribal honour. The question that must be raised is whether this unique notion can be utilised to deal with the specific issue of women's equality.

5.4 Defamation – The derogatory Facebook post

The following case shines light on a new phenomenon, that of social media being used as a platform for tribalism and airing community tensions, and how customary law is involved in these situations. A recent case that triggered the involvement of tribal customary law involved a male sending a derogatory message to a female of another tribe. This caused an outcry, as the male came from a well-known and respected tribe. His tribe swiftly reached out to the female's tribe and reconciled with them through customary law mechanisms. There have been a number of similar cases over the past few years involving social media offences, in which individuals resorted to customary law to seek resolution.[452]

This case below was chosen due to its unique dimensions, as it became public knowledge and caused controversy. In 2013, a social media activist made a derogatory post on Facebook, attacking a prominent tribal leader for normalising relations with the Israeli government. The tribal leader protested and sought the intervention of a well-known tribal judge. His argument was that he was being defamed and dishonoured by the activist. The tribal judge agreed and ordered the activist pay tribal compensation of 235,000 dinar to the

[451] Talal Almady, 'The Insult of a Female Parliamentarian' (Personal interview, 2021).
[452] Talal Almady, 'The Derogatory Facebook Post ' (Personal interview, 2021).

tribal leader for the injury caused. This caused an outcry in the media, with activists and tribal leaders expressed dismay and accusing the settlement of being unjust and disproportionate. Some suggested that as a result of the judgement and the ensuing controversy, the dispute ceased to be between two individuals and became a wider issue of the Israeli occupation.

As this became a public matter, tribal leaders – concerned for the reputation and integrity of their tribal customary law – intervened to find a solution. Consequently, they reached out to the tribal leader involved and were able to resolve the dispute through a tribal conciliation. The outcome involved the activist making an apology to the tribal leader through social media and the tribal leader subsequently forgiving the activist, waiving the compensation that was awarded to him.

These types of cases illustrate the new dynamic that customary law displays when interacting with issues involving social media. This raises a number of interesting questions on the applicability and fairness of customary law judgements in these situations. It must be noted that although social media is used to further tribalism and conflicts, tribal law is also increasingly being promoted through these platforms to highlight the practices of tribal dispute resolution.

Figure 15 presents the interviewees' responses on how tribal customary law differs from the state legal system.

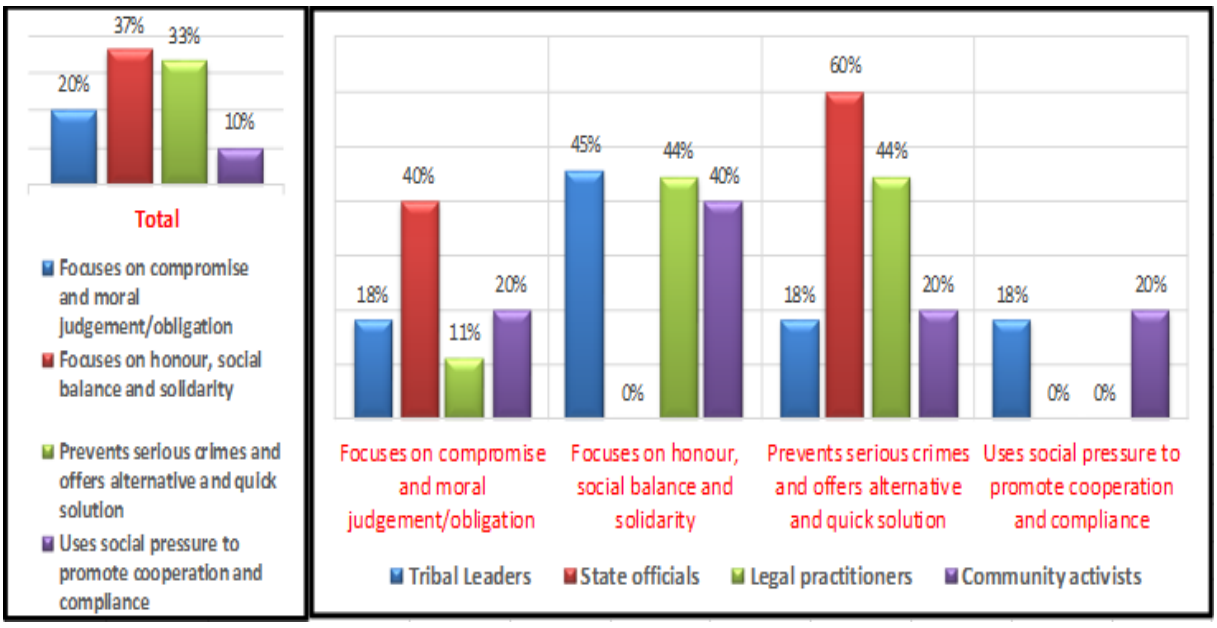

Figure 15: What differentiates tribal customary law.

The largest group (37%) of interviewees stated that tribal law focuses on honour, social balance and solidarity when seeking to resolve disputes between tribal people, while almost as many (33%) answered that tribal law prevents serious crimes like revenge killings and offers alternative and quick settlements. Twenty per cent of the interviewees believed that

tribal law focuses on compromise and moral judgement or shared obligation. Lastly, 10 per cent stated that tribal law uses social pressure to promote cooperation and compliance among disputing tribes. A majority of state officials (60%) and a large proportion of legal practitioners (44%) stated that tribal law prevents serious crimes and offers alternative and quick solutions, while 45 per cent of tribal leaders and 40 per cent of community activists stated that tribal law focuses on honour, social balance and solidarity when resolving disputes. Community activists (20%) and tribal leaders (18%) were the only interviewees who viewed tribal law as using social pressure when promoting cooperation and compliance. It is also noteworthy that all state officials thought that tribal law focuses on preventing serious crimes and offers quick settlements as well as focusing on compromise and moral obligation.

5.5 Brawl – The heated election

This case deals with a brawl which resulted in a rampage following a recent election in Jordan. During the election, two candidates representing neighbouring villages engaged in a heated competition which involved some personal attacks and minor incidents of tension. The election was won by a candidate perceived to be an unlikely winner due to the smaller size of his tribe. This caused a protest from the defeated party and the larger tribe, along with numerous violent incidents including damaging and burning of public property. These protests were quickly contained by law enforcement, but this did not stop the spread of allegations that the election results had been falsified and the state was taking part in a cover-up.[453]

A convoy of vehicles from the winning party celebrating their representative's win passed through the village of the defeated party, the residents of which saw this as a provocation and an insult to their community. The situation escalated as a driver in the convoy rammed through a group of youths who were protesting and hit one individual. The individual's injuries were not life-threatening; however, they were serious enough for him to be admitted into hospital. As per Jordanian law, this incident was deemed a traffic incident resulting in no fatalities; as a result, the driver could not be arrested, and the matter was referred to the civil jurisdiction so that insurance claims could be made for damage and medical costs.

However, the family of the driver, fearing a reprisal attack, sought the intervention of a tribal delegation to seek a truce and eventual conciliation with the other party. The tribal delegation, represented by a prominent tribal judge, visited the local governor to notify him of this process, and the governor issued an administrative detention order for the driver as per the Crime Prevention Law of 1954. The delegation then went to the family of the injured youth to seek a truce, to which they agreed on two conditions – first, that the driver be

[453] Talal Almady, 'The Heated Election' (Personal interview, 2021).

detained until the matter was resolved through a conciliation process, and that the family of the driver cover all additional medical costs above the insurance liability of 7,000 dinar.

A tribal truce was thus agreed for a period of two months, pending the full recovery of the injured person and the driver was subsequently released on bail following the governor's approval of the agreement. However, further tension quickly arose between the two parties as a result of the driver's family making provocative posts on social media celebrating the release of their son, which was perceived as disrespectful to the other family. The tribal delegation quickly intervened and requested that these posts be immediately removed, as this was perceived as a breach of the truce conditions. The conciliation process between the two families is currently in progress as the injured person continues to be treated.

Figure 16: A gathering taking place at the house of an influential tribal leader in Amman. A number of tribal leaders were invited for lunch after Friday prayers on 20 November 2015. Influential tribal leaders take turns organising such gatherings to maintain tribal connections and cement social solidarity. At this gathering, tribal leaders engaged in discussion on various issues within the community. The event was attended and photographed by Munther Emad.

5.6 Grievances across race and religious lines – The standoff of a Pakistani migrant

This case deals with the application of tribal customary law in conflicts between people from different cultural backgrounds. The customary system in Jordan is not exclusive to tribal or Jordanian people; it operates within a diverse society which has experienced many changes within its population. For example, the arrival of Palestinian, Iraqi and Syrian refugees exposed these traditional practices to various conflict scenarios. Additionally, ethnic minorities, including Chechens, Circassians and Armenians, have adapted to Arab culture and have utilised the local tribal dispute resolution practices. There are many renowned

Jordanian sheikhs who are Christians but who have resolved conflicts between Jordanian Muslims.

In 2001, an argument occurred between a husband and wife, with the extended family becoming aware of their dispute. The husband was from a Pakistani background and lived in Jordan, as he worked as a farmer and married a Palestinian-Jordanian woman. The dispute was exacerbated by the wife's brother, who was at their house during the conflict and engaged in a heated argument with the husband, threatening to have him deported. The husband became upset and ejected the brother from the house, causing the latter to become violent and punch the husband as he was leaving.[454]

The husband reported the incident to local police in northern Jordan but felt that the officer in charge did not take the matter seriously as he apparently only made a record in the system, and the husband did not receive any follow-up call from the police. The husband's father decided to resort to the tribal customary system and seek justice for his son, asking a local sheikh to intervene in the matter. The sheikh made contact with the police to urge them to take action as the matter was being dealt with through the tribal customary mechanism. The police then arrested the brother on the basis that there was a medical report available to confirm that the assault occurred. The brother was charged and brought before the court pending the outcome of the tribal conciliation process.

The sheikh was able to convene a conciliation process and reach a settlement with three conditions: first, that the brother and his family cover any medical expenses that may be required for the husband; secondly, that the brother and his family were not to prevent their daughter from returning to her husband; and, finally, that a tribal delegation be sent on behalf of the brother's family to the husband's family for the purpose of apologising, redeeming their honour and restoring harmony between the two families. Following the conciliation agreement, the brother was released by order of the court as the police dropped the charges after the husband withdrew his report. The couple decided to remain together and resolve their differences amicably, without the interference of their extended family.

This case indicates that the tribal dispute resolution process is not biased towards local inhabitants or against outsiders. The process focused on reaching a conciliation settlement and preserving the dignity and honour of all people involved. The process did not appear foreign to the Pakistani family, who seemed to have preferred it over the state system. The outcome was reached quickly and appealed to both parties, especially the husband's family who felt vindicated and satisfied by the conciliation's conditions. The symbolic nature of these conditions was designed to save face and satisfy people's honour.

[454] Talal Almady, 'The Standoff of a Pakistani Migrant' (Personal interview, 2021).

Figure 17: Representatives of tribal and other community leaders in attendance at a police station in Amman on 19 November 2015 as part of their involvement in the local safety committee. This committee meets regularly and is coordinated by the head of the police station. This particular committee includes a legal practitioner, businessmen, a female activist and local tribal leaders. These members come from various cultures and ethnicities; for example, the female activist is from a Chechen background and some members are from a Palestinian origin. This meeting was attended and photographed by Munther Emad.

The insights from the above cases were echoed in the interviewees' responses when asked about the accessibility of tribal customary law. Forty per cent of the interviewees stated that tribal law encourages anyone to seek justice because it is accessible, fast and fair, while 33 per cent stated that women and young people have no direct role in tribal law and 23 per cent thought that tribal law provides strong deterrence as it focuses on women's values and family honour. On the other hand, three per cent of the interviewees believed that women have less influence on the process of tribal customary law.

Figure 18 shows that almost all groups of interviewees, including 55 per cent of tribal leaders and 40 per cent of community activists supported the notion that tribal law encourages anyone to seek justice. Eighty per cent of state officials and 33 per cent of legal practitioners pointed out that women and young people have no direct role in tribal law. Interestingly, 40 per cent of community activists and 22 per cent of legal practitioners thought that tribal law provides a strong deterrence as it focuses on women's values and family honour. Legal practitioners (11%) were the only group to believe that women have less influence on the process of tribal law.

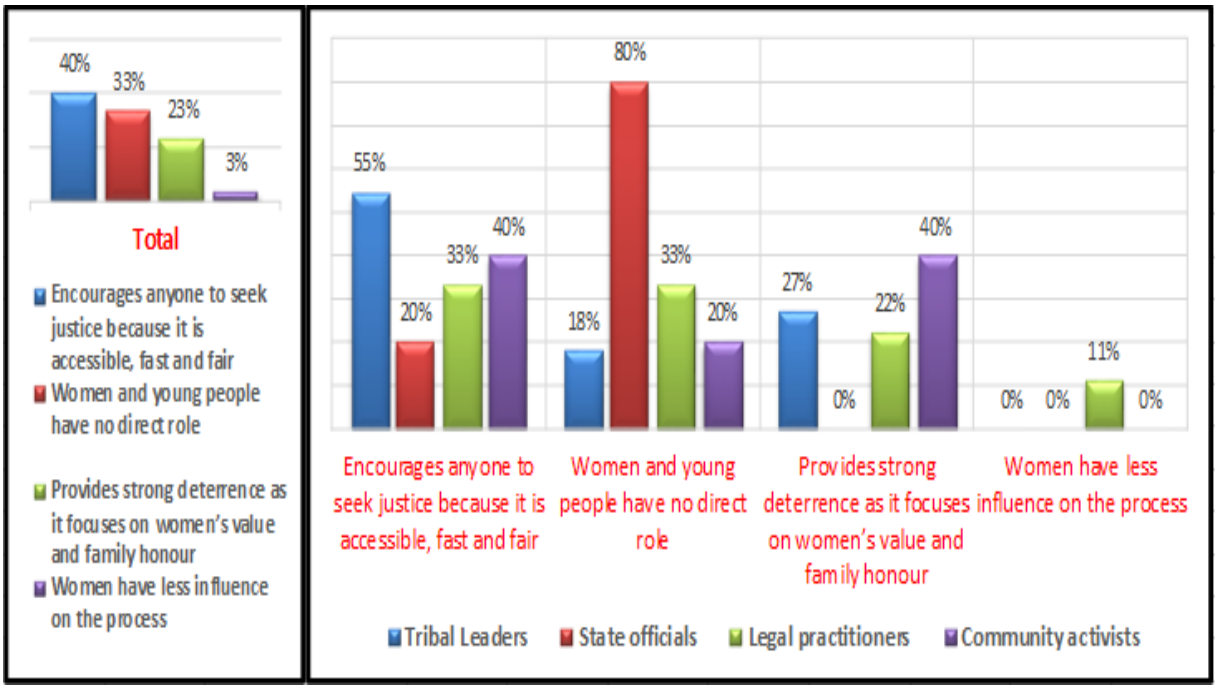

Figure 18: Accessibility of tribal customary law.

The following cases illustrate how customary law in Gaza resolves family violence and engages with the affected families and statutory law. These cases illustrate the challenges that family violence presents to customary law and the statutory system. They highlight the similarities and differences in customary dispute resolution practices between Jordan and Gaza. As the events of these cases occurred during 2017–2018, they depict contemporary challenges that face legal customs and the formal legal system.

5.7 Comparative case – The abuse of Zahra

Zahra is 30 years of age, married, with three children. She was married at an early age when she completed secondary school, in spite of passions such as writing that would have otherwise motivated her to continue schooling. However, her family circumstances did not allow her to pursue such aspirations, and Zahra married a man who worked in a trade. From an early stage, Zahra complained that her husband was controlling and often treated her unjustly. Her mother-in-law was reportedly unkind to her and often pressured her into doing domestic duties. Zahra endured these difficult circumstances and instances of humiliation and ill treatment from her husband and his family, remaining silent for the sake of her children and to avoid burdening her own family.[455]

It was further reported that the abuse escalated as her husband began to physically assault her, with Zahra once suffering an injury to her ear and eye as a result of him pushing her to

[455] Mohamad Aljamal, 'The Abuse of Zahra ' (Personal interview, 2021).

the ground. This issue was settled soon after through conciliations between the two families. However, further abuse occurred shortly thereafter, which resulted in Zahra leaving the house to reside with her family. At this point, a customary delegation intervened to reconcile the two families. The father complained to the delegation that Zahra had endured countless struggles and the family was hoping that these issues could be settled privately. The customary delegation visited the husband's family in an attempt to contain the conflict by bringing the two families together and resolving the issue of domestic abuse. However, the response was a complete denial of any abuse and a rejection of the delegation's involvement in this matter. The customary delegation informed Zahra's father of this response but stressed that they would soon send another delegation to the husband's family. Zahra eventually returned to live with her husband and his family after several failed attempts to resolve the issue of domestic abuse.

The husband continued to abuse Zahra, culminating in a serious incident in which the husband struck Zahra on the head with a metal tool. Zahra suffered serious injuries and was taken to hospital due to bleeding. Zahra's husband claimed that she obtained these injuries through a fall. It was also alleged that one of the doctors supported this claim in an attempt to keep the incident within the family. Without Zahra's family being notified, she was discharged from the hospital with a treatment plan. However, as her condition continued to deteriorate, Zahra's family was notified, and they readmitted her to hospital. It was determined that she was suffering from internal bleeding and her injuries were serious.

Zahra's father made a complaint to the police and notified the involved customary delegation of what had happened. As a result, the husband was arrested and detained pending further investigation. The delegation apologised to Zahra's father for not being able to help in this case as the husband's family was not cooperating with them. The challenge in this situation results from the husband and his family denying that they inflicted any abuse and insisting that Zahra's injury was due to a fall. Zahra's father felt that he was 'let down' by all authorities including health, police and customary representatives. A chief of the customary delegation spoke of his frustrations in this case; he felt that the delegation was limited when one side refused to cooperate, since their role is solely focused on conciliation and bringing opposing parties together. The case is currently proceeding through the judicial system with regards to both the assault and the marital separation process.

In this case, the role of customary law came to an end once the legal system intervened, and there continued to be a lack of cooperation from the other family. Customary practice, in this case, was limited once conciliation was no longer an option. This indicates the real challenge that customary practice faces in family violence cases due to the desire to keep family affairs

private, which raises the question of how vulnerable individuals like Zahra are able to navigate the available legal systems when there is insufficient support or inadequate mechanisms to provide them with safety and protection.

5.8 Comparative case – The abuse of Amal

Amal, who lives in one of the refugee camps in Gaza, left school before completing secondary level and was married with three children by the time she was 20 years old. Amal's husband is five years older, comes from a middle-class family and works in the public sector. Amal disclosed to her mother that she sold her dowry to support her husband with his family's financial difficulties. Amal also disclosed that her husband had been abusive, both verbally and physically. Amal ended up visiting the local police to report of her husband's violent behaviour. The police spoke with Amal's husband and sought an undertaking from him to not be violent with his wife. The police also referred the matter to customary law through their local sheikh for his attention in case of any potential escalation. The husband's abusive behaviour did not stop, and Amal consequently decided to seek a divorce and live with her children in her parents' home.[456]

Amal continued to live with her parents for three years, not expecting the family court procedure to be as lengthy and complicated as it was. During this time, a prominent sheikh known to the two families intervened by mediating between the sides. The sheikh is known within the community for dealing with family conflicts and assisting couples to overcome their problems. The sheikh asked his wife to speak with Amal to establish the extent of her marriage problems. This enabled the sheikh to be sensitive and respectful of cultural norms regarding a stranger speaking to a woman about her grievance against her husband. Once the sheikh discovered the extent of the husband's abusive behaviour, he was able to address this with the husband through a number of mechanisms. Firstly, the sheikh's wife spoke with Amal's mother-in-law, particularly as Amal used to reside with her before leaving her husband. Secondly, the couple were encouraged to talk face-to-face in the presence of the sheikh and his wife so they could determine whether they wished to work on their problems or continue with the divorce. Thirdly, Amal's father and her father-in-law were engaged as a source of support for the couple to live together peacefully.

The sheikh reached a conciliation agreement which satisfied the two families and brought Amal and her husband back together. The agreement stated that, first, the husband must make a commitment to repay Amal the value of her dowry in reasonable instalments. Secondly, the husband was to promise to treat Amal respectfully and not be abusive and was to pay 2,000 dinar if he breached this undertaking. Thirdly, he was to support Amal regularly

[456] Mohamad Aljamal, 'The Abuse of Amal' (Personal interview, 2021).

with family responsibilities and financial expenses. Finally, both Amal and her husband agreed to endeavour to resolve their problems without involving the police. The conciliation was agreed by both parties, who also brought their own guarantors to witness this agreement. Amal, in return, withdrew her application for the divorce.

This case provides insight into the sheikh's attitudes on women resorting to police when experiencing abuse and violence by their partners, which reflects the perception of a large part of the community. Nevertheless, the sheikh, as a representative of legal customs, showed how interactive this system is when dealing with social issues considered to be private and sensitive by Arab families. The formal system, in contrast, was perceived as rigid and lacking the ability to tackle family violence through a holistic approach.

Although the processes of legal customs look very similar between Jordan and Gaza, there are differences when it comes to the relationship between customary law and the formal legal system. While there is a level of cooperation between the two systems in Gaza, it lacks the degree of formal coordination and/or regulation observed in Jordan in managing disputes or crimes within the community.

The interviewees were asked to assess the influence of tribal law on Jordanian society. The majority (60%) thought that tribal law fosters social security and harmony in Jordan. In addition, 27 per cent stated that tribal law helps the state in keeping the peace, while 10 per cent thought that tribal law saves people's dignity and reputation. However, 10 per cent of the interviewees believed that tribal law undermines the state's authority.

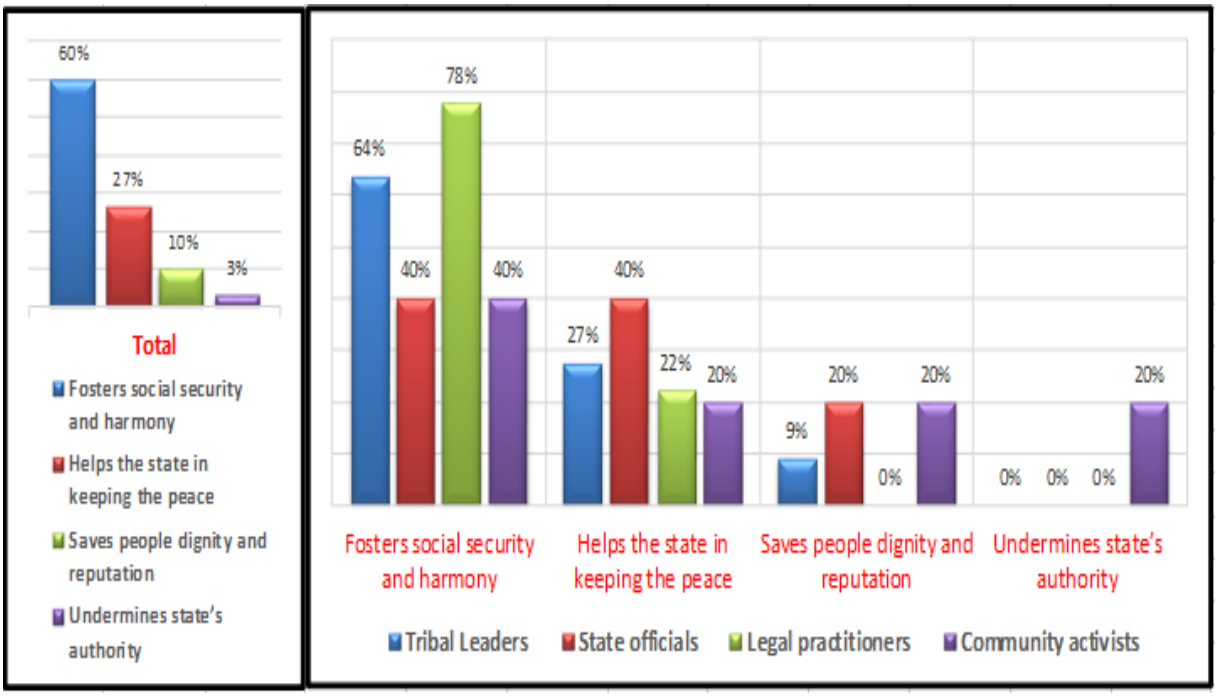

Figure 19: Influence of tribal law.

Additionally, 78 per cent of legal practitioners and 64 per cent of tribal leaders believed that tribal law fosters social security and harmony. A large group of state officials (40%) stated that tribal law helps the state in keeping the peace. Some community activists and state officials (20% each) were in agreement that tribal law saves people's dignity and reputation. On the other hand, community activists were the only group of interviewees who stated that tribal law undermines the state's authority.

5.9 Conclusion

The previous cases show that tribal customary law is used to deal with a range of crimes and disputes within the Jordanian community. As these cases illustrate, tribal law is not solely focused on blood feuds and honour crimes, but is also involved in domestic violence, civil disorder, defamation claims and verbal insults. It is argued that the usage of tribal law in resolving community disputes is greater than initially expected. The engagement of the state system with tribal law in Jordan appears far more significant than many have suggested. Jordanians are accustomed to seeing sheikhs and state officials working together in resolving disputes and containing the implications of crimes on social order. This was evident in the previous cases such as the dispute of the 'heated election' and the 'standoff of the Pakistani migrant', where the regional governate, local police and court system often aligned their procedures with the tribal dispute settlement process. Sheikhs were also seen in constant liaison with state officials, particularly regional governors when intervening to de-escalate tribal disputes, and ensuring the state system is involved in the conciliation settlements. The two comparative cases likewise indicate a level of engagement between the legal system and customary law in Gaza. However, it is argued that this type of engagement is less structured and systemic than the relationship that has been documented in Jordan.

The next chapter analyses all of the previous cases by identifying the main principles of tribal customary law. The details of these cases will be revisited to determine how tribal customary law has worked with the state system to resolve different types of disputes. The purpose of this analysis is to examine the key mechanisms that tribal law uses or relies on to de-escalate conflict and keep the peace.

Table 5: Mapping cases of other crimes

Case	Key highlights	State's engagement	Outcome
5.1 Family violence – The father's predicament	Spouse abuse Victim's father seeking Sheikh's intervention Concern over victim's brother taking revenge	Sheikh acting as a social mediator and refusing to involve police and keeping incident out of public knowledge	Sulha (conciliation) Appointing two sheikhs to ensure compliance with the conditions Focus on saving face, honour and reputation
5.2 Physical assault – The Egyptian waiter in Jordan	Egyptian waiter abused by a Jordanian MP's brothers	Two states were involved Brothers arrested and charged by police Regional governorate Court involvement Media's role	Jaha (delegation) Public conference at the Egyptian consulate Sulha (conciliation) Statement of apology Saving face
5.3 Verbal abuse – The insult of a parliamentarian	Female MP insulted by a male colleague Public debate Fear of tribal tension	Parliamentary speaker and other MPs	Jaha (delegation) Sulha (conciliation) Focus on forgiveness and honour
5.4 Defamation – The derogatory Facebook post	Sheikh insulted by a social media activist Sheikh sought tribal compensation	No state involvement Community leaders Media role	Jaha (delegation) Sulha (conciliation) Forgiveness Saving face
5.5 Brawl – The heated election	Protest election result Street violence Tribal tension Facebook posts	Security forces Regional governorate State exerting pressure Administrative detention	Atwa (truce) Administrative detention Sulha (conciliation) Medical expenses
5.6 The standoff of a Pakistani migrant	Pakistani migrant assault by a Jordanian brother-in-law Police inaction	Police intervened after sheikh's involvement Brother-in-law arrested	Jaha (delegation) Sulha (conciliation) Apology and honour Charges dropped
5.7 Comparative case – The abuse of Zahra	Domestic violence Lack of protection and cooperation	Cover-up of the abuse by the family and health Police intervened later on and charged the husband	Jaha (delegation) – failed after several attempts to intervene Court case pending
5.8 Comparative case – The abuse of Amal	Domestic violence Lengthy court process Living with parents and the children for 3 years	Police referred the matter to the local sheikh Court involvement	Sulha (conciliation) Guarantors to ensure compliance with the conciliation conditions

Chapter Six – Principles of Customary Law

The tribal dispute resolution process applied in the cases analysed in Chapters Four and Five suggests that customary law is a system of values which seems to be connected with all participants, regardless of their feelings about its impact on their lives. It represents a social code of conduct recognised by the majority of Arabs, including non-tribal people. It is an expression of moral values, honour and identity that connects people with their culture, tradition and network. It governs public affairs, protects common interests and extends protection and security to local communities,[457] and focuses on the restoration of balance and conciliation to ensure the sustainability of the society. This explains the focus of tribal customary law on honour, identity and security. The thesis has thus far identified these three features of legal customs, which revolve around social solidarity, public legitimacy and collective responsibility. In this sense, the thesis corroborates the arguments of other scholars, particularly Stewart, with regard to the value of honour within tribal Arabs. The thesis, however, goes beyond this established argument as it indicates that these three notions have a local significance to Jordan by being operationalised within a contemporary justice system and reinforcing engagement with customary practices. To investigate the potential and limitations of tribal customary law, the thesis has adopted an analytical framework based on a model comprising these three core principles through which customary law is operationalised in contemporary Jordan. The following discussion shows how these principles have operated through the preceding cases.

6.1 Honour

This section examines the three core notions of honour identified in the case studies and how they correlate with tribal dispute resolution practices. This is carried out by exploring all the relevant situations and behaviours associated with honour in these cases, and how the findings relate to the function of customary law. It is argued that honour, in this context, has several distinctive features, with each being applied differently at various levels. For example, the code of honour is manifested within the family institution, associated with the status of sheikh and echoed in tribal solidarity.

The narrative of almost all these cases indicates that honour is a major concern in Arabic culture. Honour is a hereditary quality, closely related to family reputation and social interdependence. It implies that failure to maintain a good reputation and personal purity can

[457] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

have consequences that can directly impact on social recognition, family honour and kinship ties. Honour is manifested at a personal and group level within Arabic society.[458] For example, the social bonding of a family or a tribe is a representation of collective honour. Individual honour is reflected in tribesmen, such as sheikhs, displaying hospitality, wisdom and courage in service of their community. Their wealth and, most importantly, their notable lineage and descent from tribal ancestors enable them to be recognised and revealed as honourable people.

In Arab tribal culture, failure to take revenge in response to insult or injury has the potential to bring shame and dishonour upon one's tribal roots and heritage. However, failing to respect and cooperate with customary law for example, not agreeing to tribal conciliation, also brings shame and dishonour to one's tribe.[459] For this reason, as illustrated in these cases, tribal people were more likely to agree to public conciliation than resorting to revenge, suggesting the latter option is perhaps a less-preferred form of preserving honour. In fact, it can be argued that, for tribesmen, real honour is asserted by restoring peace and showing generosity by way of forgiving the offending party, and in turn being praised by notable tribal figures.

Furthermore, many of these incidents featured public participation in tribal conciliation ceremonies which, in many cases, involved distinguished figures, such as former ministers, personally signing conciliation agreements. This indicates that honour is highly valued and integral to the whole process. Additionally, expressing shame and offering an apology on behalf of the offender are designed to redeem the honour of the injured party and thereby re-establish a balance between the tribes.[460] A number of these cases featured the offering of white cloths and a white camel when appealing for forgiveness and seeking conciliation. It appears that such ritual exercises of bringing shame and saving face revolve around the ultimate value of preserving and restoring honour.

The injured party is empowered by way of enabling them to decide the fate of the offending family, such as by determining that the whole extended family must be exiled following the commission of a member's crime. It is further illustrated through the injured party's power of waiving compensation payments, offering forgiveness and accepting the return of the exiled family to their homes. This demonstrates how important it is for the injured tribe to redeem its honour, and for tribal law to avoid them doing so by taking revenge. It explains why tribesmen favour their customary law; they have faith that their ancestors' system will

[458] Ibid.
[459] Pely (n 3).
[460] Abu-Hassan (n 16).

vindicate them, rather than merely punishing the offender as the state system does.[461] It also explains why, for example, the offence of breaching tribal bail conditions is deemed one of the most serious tribal offences, warranting a blood feud if the guarantor's honour is not restored.

The case studies demonstrate how tribal dispute resolution practices focus on reclaiming people's honour and dignity while saving face and having due regard to the wrongdoer/s. For Arab people, violating the social code of conduct brings shame and, subsequently, collective retribution, while upholding their traditions and customs enhances reputation and prestige for tribesmen within their community. This sense of honour was manifested in the above incidents, with the people involved boasting through public speeches, rituals and hospitality of their heritage and ancestors. The gestures of goodwill, forgiveness and creating peace are a public declaration of honour following the restoration of balance.[462] The following discussion seeks to identify how this concept of honour functions through a number of levels.

6.1.1. Family honour

A number of the highlighted cases demonstrated that honour is a family attribute which, in many situations, relates to women's reputation and the sanctity of the home. Family honour was a legal entity to most people involved, with the value and status of the family valuable assets in their eyes.[463] For this reason, the infringement of family honour in a number of these cases was regarded as very serious, as it risked leading to risked blood feuds and therefore triggered the intervention of local customary law. This constructed notion of family honour signifies the underlying attitudes towards domestic violence and women within the community, rather than being a categorisation of family violence unique to customary law.

Family honour was manifested in the case of 'the dilemma of a sister', when the brothers suspected that their married sister was having an affair. This prompted them to follow their sister's activities during her visits to their parents until they caught a man in the vicinity of the family home late at night. The act of interfering in the sister's life and assaulting the man on the suspicion of him having a relationship with their sister was driven by a perception of their family honour being under attack and resorting to violence in its defence. However, this act also risked further damaging the family's reputation; the assault ceased once the neighbours were alerted and the brothers allowed them to take the victim to hospital. The concern of the brothers that the details of this incident not be shared by the neighbour reflects a desire to prevent the matter becoming public knowledge within the village. While the brothers initially

[461] Al-Abbadi (n 5).
[462] Abu-Hassan (n 16).
[463] Al-Abbadi (n 5).

acted out of anger in defence of their family honour, the shame and fear of bringing their family name into disrepute led them to quickly de-escalate the conflict and not report the incident to the police as a trespass.

On the other hand, the victim's reporting of the incident to police and seeking the intervention of the sheikh may reveal that he was also trying to rebut any perceptions of him being in the vicinity of the other family's home, thereby maintaining his own family's honour. The incident illustrates not only the importance for the brothers of defending their sister's reputation, and their family honour, but also that for a man to be accused of having an affair with a married woman was a source of shame. The sheikh's approach indicates an appreciation of the sensitivity of the conflict, as demonstrated when he highlighted to the victim that he would only stand up for him if he were telling the truth. When the sheikh concluded that the brothers were acting in defence of their family honour and instructed that the man must seek a resolution and restore their honour, it appears the customary law was interested only in the sister's reputation. As the explanation of the sheikh for reaching his judgement was that no-one would risk their sister's reputation by claiming that she was having an extra-marital relationship; therefore the brothers had no motive to falsely accuse the man. Additionally, that the sheikh sought the state's intervention to have the man administratively detained until the matter was resolved highlights the complexity of family honour when it comes to a woman's reputation, as this could trigger blood feuds and full-scale violence between the two tribes.[464]

The complexity of family honour was further illustrated by the delicate procedure of tribal dispute resolution when the arbitration committee made an extraordinary ruling. The approach that the committee followed in requiring the man to take an oath in order to determine his innocence indicates their desire to find a satisfactory resolution while ensuring that the woman's reputation remained intact. Their verdict focused on redeeming the family's honour by declaring the girl's innocence while still indicting the man for being in the vicinity of the house late at night; this underlines the traditional wisdom around salvaging family honour in relation to a woman's reputation. The verdict also took into account the community's interest in not disrupting the relationship between the sister and her husband, as well as taking a strong stand against the man on the basis of public deterrence. Overall, this sequence of events illustrates that the notion of family honour is deeply rooted in Arab tribal society and is carefully catered for within local legal customs.[465] The cooperation of the state's legal system further reinforces the collective attitude and concerns of the whole community around cases of this nature.

[464] Furr and Al-Serhan (n 30).
[465] Pely (n 3).

In the case of 'the father's predicament', family honour was also manifested in a number of ways. The act of the father seeking the intervention of the local sheikh on the issue of his daughter leaving her husband indicates the father's wishes for the dispute to be handled and resolved internally. The father's worries over his sons being agitated and wanting to retaliate against their brother-in-law for striking their sister further explain his intention to reconcile and not damage his family's honour. This attitude was further reinforced by the sheikh wanting to keep the matter private and not involve the police. The sheikh's concerns were likely that involving the police would be an escalation of the conflict between the two families and would risk damaging their honour, subsequently putting the reputation of their daughter at risk. The process the sheikh followed by involving two other sheikhs, one connected to each family, and formulating a conciliation settlement agreed by both parties, illustrates how crucial saving face and redeeming honour were in this case. It is, however, recognised that customary legal practices may not necessarily be interested in directly addressing the underlying issues – namely, the husband assaulting his wife – by ensuring that he is held accountable for such violence. The conciliation settlement was carefully designed to restore the relations between the two families while preserving the reputation of everyone involved. The outcome involved an undertaking from the husband to not abuse his wife and to build a separate dwelling within the family home. This shows that customary law in these circumstances was more focused on restoring peace than on holding individuals accountable.[466]

Family honour is also strongly manifested in the case of 'the abuse of Zahra' at a number of levels. This tragic case involved a woman trapped between her husband's family and her parents' family as a result of the importance of family honour. Zahra was subjected to a history of abuse at the hands of her husband – and, allegedly, his family – and was unable to seek help and feared the consequences if others became aware of this marital violence. The inability of Zahra's family and the local sheikhs to put an end to the abuse may indicate the cultural stigma that some women experience when their suffering is attached to family honour or reputation.[467] The state system, including both the police and the health sector, was also part of the problem. As acknowledged by the chief sheikh, customary law was unable, in this case, to resolve the conflict and protect Zahra. This may shine light on how, in some circumstances, the importance attached to the privacy of family life raises a critical barrier to interventions, including by customary systems. In this context, the importance of domestic privacy appears to be attributable to the cultural value of reputation and family honour.

[466] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[467] Pely (n 3).

The case of 'the abuse of Amal' further shows how family honour underpins the approach to domestic violence cases. In Amal's case, the police sought a verbal undertaking from the husband to not perpetrate further violence. The police also made a referral to the local sheikh to contain the situation in case the family violence escalated. This suggests that the attitudes surrounding family violence outlined above are not exclusive to customary law; the statutory system also appears to prefer these situations be dealt with by the traditional justice process. It was evident that the sheikh had extensive experience in dealing with family violence-related cases. The sheikh followed a mediation process to bring the two parties together, with the sheikh's wife also involved in talking to Amal and reasoning with her mother-in-law. The sheikh was able to reach a conciliation and utilised two community leaders connected to the families as guarantors of the agreement, meaning the parties were obliged to comply since their reputations were at stake. This shows how the notion of honour is used here as a legal tool for enforcing settlements.

The concept of family honour was also at issue in the case of 'the insult of a female parliamentarian', as this case entered the public domain and caused controversy in Jordan. The male parliamentarian's verbal abuse of his female colleague was perceived as an attack on the honour of the entire tribe.[468] It thus triggered the intervention of customary legal procedures, including notable dignitaries, in an attempt to appeal to the injured tribe and restore their honour. This illustrates that women's reputations are perceived as integral to family honour, a perception recognised in the practices of tribal dispute resolution even when it involves political disputes.

Finally, this notion of family honour was applied in the case of 'the standoff of a Pakistani migrant'. The wife's brother, a Jordanian citizen, was agitated not only by the dispute between his sister and her husband, but also by the husband's act of ejecting him from the house, as this was perceived as an attack on his honour. However, resorting to violence by attacking his brother-in-law inside his house was regarded as a dishonourable act. The sheikh sought the intervention of the local governor who subsequently placed the brother under administrative detention. By this means the sheikh, with state collaboration, exerted pressure on the brother's family to denounce his behaviour, reconcile with the husband and thus restore his honour. This further illustrates the focus of the customary system on restoring family harmony by way of saving face for the people involved as well as reclaiming their honour, regardless of their cultural, religious or tribal backgrounds.

Thus, it is evident that the importance of reputation and preserving family honour is intertwined with customary dispute resolution practices, as it often influences the outcome

[468] Al-Abbadi (n 5).

and the way in which many societal conflicts are resolved. On one hand, the notion of family honour may be used to justify cover-ups or inaction in dealing with domestic violence in some Arab families. On the other hand, customary dispute resolution practices seem to recognise the importance of maintaining family honour by utilising it when mediating between the disputing parties and drafting settlements that leverage people's sense of honour to elicit a commitment to cease the abuse. The core feature of these cases is that the more a family's honour is threatened or at risk, the more justified the use or threat of violence will appear to them. However, the more that the family's honour is restored or maintained through the process of customary dispute resolution, the lower the risk of the parties resorting to violence, as both parties are able to reach a satisfactory outcome through the use of family honour as a legal tool.

Figure 20: Tribal leaders taking part in a rally against honour killing outside the Jordanian parliament on 14 February 2000. About 3,000 Jordanians joined the rally to demand the cancellation of a statutory law that gives lenient punishment to those who commit honour crimes.[469]

6.1.2. The honour of the sheikh

Sheikhs are regarded as the administrators of customary law; they facilitate legal customs to serve the interests and needs of the community and ensure that their judgements focus on keeping the peace and providing security for their people. A sheikh's status in the dispute resolution reflects the high levels of respect, wisdom and leadership ascribed to them by the

[469] Rana Husseini, 'Murdered Women: A History of Honour Crimes', *Aljazeera* (2021, August 1), <https://www.aljazeera.com/features/2021/8/1/murdered-women-a-history-of-honour-crimes>.

community. Although these people do not represent themselves as religious leaders, they nonetheless have a spiritual influence and enjoy symbolic power and authority over the conflicting parties. As a way of illustrating this special status, Elias Jabbour shared the following story of a sheikh.[470]

> *Upon his arrival with the community delegation at the house of a murder victim, the women of the house went up to the roof and poured ashes on their heads, with the delegation still outside of the house, ashes fell down to the extent that this good man's black beard turned grey because of the ashes. The Sheikh, however, did not get angry and rebuke them for this; rather he said to them, 'You have the right to do that. Go on, go on.' The women wondered to themselves: 'What kind of "angel" do we have here? Perhaps we should be ashamed.'*

The story shows the honourable status of sheikhs who act out of humility and as 'anger absorbers' so that the injured party can redeem its honour and feel vindicated. Wise sheikhs understand the importance of honour to their role and the tribal dispute resolution process, emphasising the restoration or preservation of the honour of those involved in order to restore balance and harmony in the community. The parties' expressions of hospitality and forgiveness in honour of the sheikh and his delegation are another element of honour during this process.[471]

Sheikhs are not always successful in keeping the peace, and legal customs then enable the use of coercion and punishment in order to restore public order. This was evident in some of the cases where tribal exile and compensation were enforced. Interestingly, the state itself utilises the Crime Prevention Law to undertake administrative detentions and provide sheikhs with an enforcement tool to restore the peace.[472] The ultimate goal of these practices is to restore public order and social harmony, with this end result earning the sheikh praise within the community. This in part explains why they make themselves accessible, as they, in return, enjoy a high level of legitimacy and authority.

The concept of the sheikh's honour was evident throughout the case studies, being integral during some of the tribal dispute resolution practices. The cases also illustrated the value of the sheikh's role in increasing the honour or mitigating the shame of all parties involved in a conflict. For example, the sheikhs' intervention was critical in efforts to contain blood feuds between the disputing parties and secure a conciliation settlement. The sheikh, in a number of cases, was instrumental in securing the cooperation and intervention of security forces

[470] Jabbour (n 190).
[471] Ibid.
[472] Saliha and Toubatb (n 247).

and other state officials during the process of separating the conflicted parties and putting an end to violence.[473] The sheikh's presence in the conflict zone, talking to all parties involved and guiding them through the customary dispute resolution process, was essential in restoring peace and public order. The sheikh's ability to command the cooperation and gathering together of all involved parties, as well as to negotiate conciliation settlements that were deemed acceptable by both parties, shows the level of legitimacy and authority associated with their role[474]. These attributes are attached to the sheikh's role and stem from the notion of the sheikh's honour commanding a high level of loyalty within their community.

The sheikh's role also revolves around a number of ritual and symbolic practices which were illustrated in a number of cases. For example, the sheikh may ensure that the conciliation process involves the offering of a white camel and the presentation of a white banner in order to elevate the honour of the injured parties. The sheikh's insistence on not drinking coffee offered by the host until their wish for a conciliatory agreement is achieved shows the high value of the sheikh accepting the host's gesture of hospitality. In Arabic tradition, not accepting hospitable offers can be regarded as an insult and as disrespectful to the host; thus, for a highly respected figure like a sheikh to not accept the offer of coffee would be deemed as causing shame to the host.[475] The mere presence of the sheikh at the place of gathering for each party involved and their praise of the host party is influential because of the notion that these sheikhs represent the customs and traditions of their ancestors. All of these ritual-based practices highlight that the sheikhs are regarded as having a high spiritual status due to their wisdom and connection to the tribe's heritage, which commands a high level of obedience and legitimacy within the community.

The procedures that the sheikh utilises in customary dispute resolution are another element of the functioning of honour associated with the sheikh's role. For example, it was notable that the sheikh's public speeches and use of storytelling are integral to the process. There are a number of aspects that are attached to the sheikh's speeches, starting with their intervention to calm the situation and call for a tribal truce. In these speeches, the sheikh stresses traditional values, calling for people to demonstrate their honour by being courageous in preventing the escalation of violence. The speeches also focus on negotiating a reconciliatory outcome and demanding people's cooperation. The sheikh resorts, at this stage, to a specific narrative that draws on historical stories about the tribe's ancestors to urge people to forgive each other and restore peace. This encourages both parties to cooperate and maintain their honour. The final aspect of the sheikh's speech revolves

[473] Watkins (n 24).
[474] Abu-Hassan (n 16).
[475] Al-Abbadi (n 5).

around praising the parties for coming together, minimising the shame that is attached to any group and reclaiming the balance by restoring the honour of everyone involved. The sheikh's public speech thus focuses on the pride and honour of the community in coming together, securing public order and maintaining their connection with their ancestors' stories and heritage.[476] All of these mechanisms demonstrate the honourable status of these sheikhs and their spiritual authority within their community.

The honour and unique status of sheikhs was manifested in the case of the Jordanian student murdered in Iraq, with the sheikh involved meeting with Saddam Hussein and the management of Baghdad University to resolve the tension between tribal people in the two countries. Similarly, in the case of the Egyptian waiter the status of the sheikhs was evident from their convening the customary conciliation gathering at the Egyptian embassy in the presence of the MP concerned, who apologised in person to the victim. The case of the Pakistani migrant further illustrates that the sheikh was trusted even by a foreign national seeking to assert his rights against a Jordanian citizen. These scenarios show the far-reaching influence of sheikhs, who seem to enjoy a special reputation and authority within the region.[477] They also illustrate that sheikhs provide a mechanism for access to justice and are trusted to protect people when they are most vulnerable. For example, the case of 'the father's dilemma' described how a father sought the intervention of the sheikh when he was trapped between his sons' desire to retaliate against their brother-in-law and his concern about his daughter's marital future. In the case of 'the legacy of Rania' the father was similarly grateful to the sheikh and the whole process of customary law, stating that had it not been for this system, he would have been compelled to resort to a revenge killing. This demonstrates the faith and trust placed in the role of sheikh, highlighting the honour that is attached to these community-based figures. The sheikhs also resolve their conflicts by drawing on their own connection to the community. For example, in the case of the blood feud in the refugee camp, the sheikh's personal relationship with the victim's father was the turning point in preventing a potential revenge killing, particularly as the chief elder of the family was taking a hard line against a conciliatory solution.[478]

The sheikh's status and honour stem not only from their role as an administrator of customary law, but also from their personality and integrity. It would not be possible to separate the status of sheikh from their individual identity. For this reason, any form of attack on the sheikh is considered a serious offence and threat to customary law as a system. The case of 'the breach of tribal bail obligation' illustrates this fact, with the incident deemed a

[476] Ibid.
[477] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[478] Jabbour (n 190).

serious affront requiring urgent amends. Violating the conditions of a tribal truce or conciliation settlement is not like a breach of bail in a Western legal sense; it is much more serious, as it warrants a blood feud by the sheikh who was the guarantor of the agreement. Such offences undermine the sheikh's authority and endanger the integrity of customary law. In this sense, the sheikh is regarded as policing legal customs. The offending party in this case quickly followed the customary process, restoring the honour of the sheikh by convening a tribal conciliation meeting and seeking forgiveness through the offer of a white camel and the display of a white banner at the house of the sheikh. This shows how the sheikh is regarded as a safeguard of customary dispute resolution practices, which are designed to keep the balance and public order within the community.[479] For this reason, it can be argued that the sheikh's honour is linked to the balance of the tribal society.

The case of the sheikh who accused an activist of making a derogatory post on social media is another example of the reputation of sheikh being regarded as integral to their status and heritage. Although the judgement of the tribal judge was seen as disproportionate and an attack on freedom of speech, it represents the view that the sheikh's status is embedded within the customary law and the tribal culture. The 'case of the sister's dilemma' highlights a further dimension of the sheikh's honour, which revolves around their judgment. The sheikh made a determination that the young man who sought his intervention after being assaulted was, in fact, at fault and instructed him to make amends to the other family, which meant an admission of guilt. The young man's refusal was perceived as a challenge to the sheikh's judgement and, therefore, an insult to his integrity. This illustrates that the sheikh was primarily interested in preserving the honour of the people involved in this situation, rather than the young man's guilt or innocence or his right to justice.[480]

The sheikh's role, however, is not free of limitations; as the prescribed cases have shown, sheikhs are sometimes unable to resolve grievances or address the underlying issues that trigger conflict, particularly with regard to family violence. As discussed earlier, the challenges surrounding family violence stem from general attitudes towards women and family honour. The sheikh's honour revolves around the importance of reputation, prestige and heritage as a means of achieving peace within the society.

6.1.3. Tribal honour

Tribalism and the strong loyalty felt to the tribe is often perceived as the source of blood feuds in Jordan and other Arab societies. It has also been seen as a threat to the role of law because, in some cases, it outweighs the structure of state civil law and affects the structure

[479] Abu-Hassan (n 16).
[480] Al-Abbadi (n 5).

Figure 21: A sheikh (left) being assessed by two nurses at a community health centre in Amman to encourage residents to have a blood test and to promote blood donations within the Jordanian community. This encounter was photographed by Munther Emad on 23 November 2015 as one of the sheikh's community engagements on that day. It reflects sheikhs' desire to be visible and active within the local community as well as highlighting people's attention to the importance of the sheikh's role in Jordan.

of tribal society. The code of tribal honour is a useful paradigm to examine how tribalism is motivated by strong passions and emotions while, on the other hand, it also ensures social solidarity and collective responsibility. Tribalism is a survival strategy in which households, clans and tribes alike can face external threat with commensurate strength. Tribal people depend on each other, particularly in case of blood feuds where they may resort to revenge in order to redeem their honour and, ultimately, restore balance within and between tribes.[481]

The case studies illustrate how legal customs were utilised as a conflict regulation and resolution mechanism for the purpose of maintaining moral values and tribal honour. The code of tribal honour was on display in various forms through these cases, which revolved around preserving reputation, respect, prestige, dignity and social recognition. Tribalism was clearly manifested in the case of the story of 'the Town of Alsareh', when two major tribes engaged in revenge killings in defence of their tribal honour. This case illustrates how revenge killings can be highly damaging to relations within the tribal community. The first killing triggered a wave of violence as the injured tribe perceived the killing of one member as an attack on the whole tribe and therefore as dishonouring their reputation. Despite the intervention of customary law through local sheikhs, some members of the injured tribe sought retaliation by killing a respected member of the other tribe and injuring five of his family members. This can be interpreted as an act by the injured tribe to shame the opposing

[481] Abu-Hassan (n 16).

tribe and restore its own honour. However, this act triggered outrage across the country, forcing both state and customary law leaders to quickly come together to prevent further escalation. The high-level intervention by prominent community leaders and quick concessions made by the retaliating tribe show the degree of shame and imbalance that occurred as a result of these revenge killings.[482]

The intervention of customary law was apparent in utilising the code of tribal honour as a means of promoting social solidarity and compliance in order to convince the two parties to reconcile. The intervention of the former prime minister and other senior ministers who joined the sheikhs at the tribal conciliation gathering also highlights the state's recognition of the importance of restoring the injured tribe's honour as a way of reclaiming tribal balance and putting an end to the blood feud. The mechanisms of tribal dispute resolution, such as forced evacuation and blood money, were other tools used in an effort to bring shame on the offending party and restore the honour of the injured tribe.[483]

The case of the Jordanian student killed in Iraq is another illustration of tribal honour. This case shows that the code of tribal honour is complex and not exclusive to a single tribe; it can extend to cover a group of tribes, or even a whole country.[484] The killing of a university student at the hands of an Iraqi security officer was deemed an attack on not only the victim's tribe but on all Jordanian tribes. This explains the retaliation attacks against Iraqi expatriates and even against the Iraqi ambassador's convoy in Jordan. In return, community tension in Iraq, particularly within the university community, was heightened as there were concerns that Jordanian expatriates might be subjected to retaliation attacks from Iraqi tribes. State and tribal leaders recognised the seriousness of this situation and were quick to facilitate tribal gatherings across the two countries which, at one stage, involved a meeting between Saddam Hussain and tribal delegates. These developments suggest that the code of honour is integral to both the reduction of tribal violence and in the conciliation process. The high level of community participation in the conciliation gathering, which involved key representatives across the two countries as well as a significant amount of blood money as compensation, highlights that the ultimate goal of these practices revolves around the restoration of tribal honour.[485]

The case of 'the struggle of Jordanian youth' is a further demonstration of how tribal honour can have negative and positive implications for community harmony. Jordanian universities have experienced a wave of serious violence in the recent years, which have resulted in a number of brawls and fatalities across the country. These incidents were blamed on the

[482] Al-Abbadi (n 5).
[483] Ibid.
[484] Ibid.
[485] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).

influence of tribalism in suppressing the state civil system and allowing influential tribes to act with impunity. Tribal leaders, however, blamed youth violence on the weakening influence of customary law, which left many young people feeling disconnected and developing a gang mentality.[486] What began as an altercation between two students led to full-scale confrontations and violence between two tribes which occurred in public on the university campus. The university violence was thus, to some extent, governed by tribal honour, as the perceived violations of honour against one tribe led to a cycle of revenge. As a result, tribal leaders and state officials sought to restore public order by emphasising the risks these incidents posed to the reputation of the tribes involved. The incidents also prompted a joint initiative by young people from opposing tribes calling for an end to youth violence by working together to address social issues and promote dialogue across their tribal society.[487]

Although tribal honour, as previously indicated, has been used to trigger various forms of violence and blood feuds, it also provides a mechanism for social solidarity and public order. In the case of 'the Legacy of Rania', a father who lost his daughter to a negligent driver was able to move, eventually, from seeking revenge to forgiving the young offender. The father attributed this to his trust in and deep respect for customary law, noting that were it not for this system, he would have been trapped in a cycle of revenge killing. This indicates how tribal honour can manifest in the lives of people like Rania's father through forgiveness and restoring peace with his neighbours. Similarly, in the case of 'the blood feud in a refugee camp' a father who lost his son as a result of the actions of his neighbour was able to agree to a truce and eventually reach conciliation through a sheikh's persuasion. The father's courage in resisting the pressure of family elders to seek revenge and bring shame to the offending family was sustained by his trust in the sheikh's judgement and being empowered by the customary law system to reconcile with the offender's family. This highlights how the reputation of and respect for customary law are integral in putting an end to blood feuds.[488]

Tribal honour was also at issue in the case of 'the Egyptian Waiter in Jordan'. As this case attracted wide attention in both Jordan and Egypt, the reputation of the tribe involved, along with the reputation of Jordanian society more generally, was at stake. The MP's tribe, through the customary law system, made amends with the Egyptian waiter by seeking conciliation at the Egyptian embassy; in doing so, the MP's tribe was also seeking to save face for a prominent member and subsequently preserve its own reputation. Similarly, in the case of 'the insult of a female MP', a heated argument between two parliamentarians generated tension between two tribes. As the argument involved a female MP, her tribe was outraged by the perceived insult directed by the tribe represented by the other MP. For this

[486] Kao (n 267).
[487] Talal Almady, 'Role of Tribal Law in Resolving Disputes' (Personal interview, 2021).
[488] Johnstone (n 9).

reason, a large gathering of distinguished tribal leaders and state officials headed by the Speaker of the Parliament attended the insulted tribe's place of gathering and sought to restore their honour and reputation.[489] In the case of 'the derogatory Facebook post', the tribal judge chose to support the sheikh's claim that he had been defamed and ruled that the activist should pay compensation of 235,000 dinar for dishonouring the sheikh. This ruling was, in effect, a condemnation for violating the tribal honour that the sheikh represents. Nevertheless, this unique case invites debate on the parameters of customary law and tribal honour in the face of freedom of speech, particularly within the environment of social media.[490] All these instances illustrate how the code of tribal honour can be instrumental in instigating conflict and yet also in bringing people together.

Finally, the case of the town of Alsareh demonstrates the repercussions when the code of tribal honour is violated. During the recent parliamentary elections, two villages were represented by two competing candidates, who were involved in heated disputes during the initial campaign. The defeat of the candidate representing a larger tribe was perceived as an attack on the name and reputation of this tribe, triggering allegations of vote-rigging and state collusion. The celebrations by the victorious party were deemed a further insult by the defeated village, which led to a brawl and clashes between the two opposing groups. The interventions of customary law, in this case, primarily focused on restoring peace and public order as well as saving the face and reputation of the injured party. One element of this settlement was of particular interest as it directed one party to remove their Facebook posts, which were interpreted as provocative and insulting to the other tribe.[491] This further illustrates the various dimensions and dynamic nature of tribal honour, which can involve not only two opposing tribes but extends to the state and between neighbouring countries.

These cases demonstrate that preserving tribal honour and community opinion is often at the forefront of people's minds, which can furnish opportunities when working together to resolve conflicts and prevent the escalation of violence. The importance of tribal honour stems from group feeling, the core of tribal life and kinship, which dictates social solidarity and collective responsibility. This feeling influences people to comply with legal customs and behave in accordance with social values to avoid drawing attention to themselves or risk doing something perceived to be dishonourable, particularly as their behaviour can often implicate their tribe or even the wider community.[492] As a result, tribal customary law often focuses on honour by providing disputing parties with the opportunity for conciliation and forgiveness, rather than seeking to inflict shame and vengeance. Violating the legal and social code of

[489] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[490] Hughes (n 443).
[491] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[492] Al-Abbadi (n 5).

conduct for tribal people brings shame and, subsequently, punishment, while upholding their traditions and customs results in good reputation and prestige for tribesmen within their community. While customary law focuses on redeeming or maintaining the honour of the injured party, in return it does not aim to disgrace the offending party. In fact, it seeks to save the face and honour of the offending side by praising them for choosing the path of conciliation.[493] For this reason, customary law sanctions conciliations through public participation, compensation and, eventually, forgiveness, rather than disgracing individuals through imprisonment or other forms of personal punishment.

Figure 22: A conciliation gathering in Amman on 21 November 2015. The photograph (by Munther Emad) depicts young people standing at the entrance of the tent watching the proceedings and listening to the tribal representatives deliver their speeches. The gesture of young people standing indicates their respect for tribal leaders and elders as they are given priority seating, while assisting in serving the attendees. Some young people are also seen to be agitated for their tribe having to concede to a conciliation, so they were being scolded by sheikhs.

6.2 Identity

This section critiques the three notions of identity which were identified in the case studies and explores how they are associated with tribal dispute resolution practices. All relevant situations and behaviours associated with identity have been examined to determine how they are connected with the function of customary law. It is argued that identity, in this context, has several distinctive features that are each applied differently. The role of customary law in these cases goes beyond resolving people's conflicts; it also defines or preserves the identity of the whole community. It influences people's strong sense of

[493] Ibid.

belonging with their tribe and protects their cultural heritage or traditional identity. Through these practices, people have an awareness of their rights and collective responsibilities within the society. They also have a strong sense of solidarity with their tribe or the wider community, particularly when conflict arises. This universal identity is evidenced in customary law being accessible to anyone who needs to resolve their grievances, thus enabling people to forge a sense of belonging with others outside their traditional identity.[494]

The prevalence of tribal dispute resolution practices as shown in the case studies indicates that Jordanian national identity is moving into different dimensions. Tribal identity continues to be an integral aspect of Jordanian society. A former prime minister once remarked during a meeting with other ministers: *'here we are discussing how to build a civil state system and yet if anyone of us was faced with a personal conflict they would settle the dispute through their tribe'.*[495] This implies that tribalism is the basis of Jordanian cultural identity, as it unites the country through the membership of tribes. It also implies that customary law is central to the social and personal identity of tribal Arabs as it connects people with their roots and lineage and thus strengthens their kinship ties. It enables people to be aware of their common history and tradition and provides them with a shared model of thinking and behaving when dealing with conflicts.[496] In effect, it preserves tribal identity and heritage.

Legal customs further reinforce a sense of mutually agreed justice and restore public order within the wider community, helping to keep a sense of identity and social integration in Jordan.[497] A number of these cases suggest that Jordanian national identity is evolving beyond tribal kinship barriers, with an integrated patriotic identity encompassing diverse Jordanians emerging. Although customary law is a representation of tribalism, it seems to inspire people's identification with their ancient history and the storytelling system of their ancestors, motivating them to stand up for justice and forge a sense of solidarity with those who seek protection regardless of cultural background.[498] The cycle of tribal honour is thus influencing the transformation process of Jordanian identity.

6.2.1. Rituals – tribal identity

The case studies featured a sequence of customary rituals involving a set of actions, gestures and symbols that are often used during the tribal dispute resolution process. These rituals reflect a number of values and cultural beliefs, including the expression of tribal connection and solidarity within the community. It is also argued that these customary rituals

[494] Abu-Hassan (n 16).
[495] Al-Abbadi (n 5).
[496] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[497] Al-Abbadi (n 5).
[498] Ibid.

reaffirm tribal identity and preserve a sense of belonging based on strong relations of proximity and kinship. The prevalence of rituals, in these cases, indicates that the tribe has a distinctive identity which is embodied in the Jordanian and wider Arab society. These customary rituals also show that the ancient tribal dispute resolution practices are widely recognised by both tribal and non-tribal Arabs, connecting people through their common tradition and heritage.[499]

Although it is not a ritual that is sanctioned by tribal customary law, it is important to highlight the practice of tribal 'hot blood' (*Foura Aldam*) as a critical dimension of blood feud-related cases, which often further escalate tribal conflict.[500] This was evident in the cases of 'the story of the town of Alsareh' and 'the struggle of Jordanian youth', where the revenge attacks became a serious threat to the safety and stability of the community. Tribal hot blood, in this sense, is a traditional practice that people anticipate when a murder or accidental killing occurs. In the case of 'Rania's legacy', the passing of Rania was considered an attack on the honour of her family and the whole tribe. It was regarded as a dishonour to not respond to Rania's death by taking revenge against the offending party. Therefore, this ritual reinforces tribal identity as a defensive or confrontational mechanism during a time of dispute.

The tribal evacuation (*Jalwa*) is the first of the customary law rituals to feature in some of these cases, particularly those relating to blood feuds. It is a legal custom that seems to be accepted by the community and one that people abide by in order to prevent further escalation of violence. It is a common practice in blood feud incidents, where the injured party makes it a precondition of any tribal truce. Often the offending party will voluntarily exercise the tribal evacuation as a sign of guilt and respect for the other side, which helps in preparing the climate for future conciliation. In addition to being a protective and preventative measure, tribal evacuation is an expression of the offending party's expulsion from the tribal collective identity as they are seen to have disturbed the balance within the tribal community. Tribal collective identity is a contract that all tribes are required to adhere to in order to keep the peace.[501] Blood feuds are regarded as a breach of that contract.

The second sequence of rituals relates to the tribal truce (*Atwa*), which is socially and legally recognised by the Jordanian community. The tribal truce, in most of these cases, was designed to prevent the injured tribe from taking revenge against the other tribe. Tribal truce is a complex procedure divided into a number of functions during a critical time, when the injured tribe is grieving and seeking revenge.[502] The tribal truce is established quickly to

[499] Abu-Hassan (n 16).
[500] Ahmad Alsalahat, 'Role of Tribal Law in Resolving Disputes' (Personal interview, 2015).
[501] Al-Abbadi (n 5).
[502] Johnstone (n 9).

highlight that the offending tribe is making an admission of guilt and will be prepared to make amends to the injured tribe. The spirit of tribal truce is to show the injured tribe through the work of the tribal delegation that the whole community is grieving and united with them in rejecting the offending tribe. Therefore, the ritual of tribal truce further reinforces the sentiments underlying the evacuation and allows for possible reunification.

The formation of tribal delegation (*Jaha*) is a critical customary ritual in this process due to the role that the sheikhs play in keeping the balance between the disputing tribes. This was evident in the town of Alsareh, where the relation between Alathamnah and Alsheab tribes was fractured following the killing and revenge killing of their members. This conflict threatened their shared lives, social bonds and, most importantly, their common identity. The ritual and symbolic nature of tribal delegation has been passed down through many generations, and it is a reliable marker of tribal membership that facilitates cooperation between the tribes. In the town of Alsareh, the tribal delegation consisted of distinguished tribal leaders who were highly respected and known for their humility and wisdom. These sheikhs were a reminder to the disputing tribes of their tribal honour and heritage. The sheikhs were able to reaffirm the identity of and preserve the social solidarity between these tribes.[503] This was also evident in the case of 'the dilemma of a sister' where the tribal arbitration committee requested the accused take an oath in front of the committee members. The oath was a symbolic ritual utilised by the sheikhs to reaffirm that the accused was innocent of any honour crimes, and he thereby sustained his identity, along with that of his family, as part of the local tribal society.

The function of the tent as a space for social engagements and convening tribal dispute resolution practices is a significant ritual as it reflects the shared history of tribes. The use of a tent was featured in most of these cases, reinforcing the common identity and traditional characteristics of tribal people. Due to the tent's association with their culture and nomadic background, public gatherings in these tents invoked a sense of generosity and consciousness which strengthened tribal honour and social bonds.[504] It is for this reason that any association with the ritual of the conciliation tent brings a sense of pride to the tribal people. This was evident in the case of 'the struggle of Jordanian youth', where the residents of Tafayleh district regarded the gesture of holding the tribal gathering in their neighbourhood as an honour and decided to waive their tribal rights in this dispute. The ritual of offering and drinking coffee is another integral custom associated with socialising and hospitality. As featured in a number of cases, drinking coffee is a ceremonial act that indicates that the conflict has been resolved and the shared identity of tribal people has been restored. The refusal of coffee was interpreted in some of these cases as rejecting hospitality, which

[503] Jabbour (n 190).
[504] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).

challenges the host's honour.[505] Therefore, resisting the offer of coffee was used as a strategy to pressure the host to accept the delegation's calls for conciliation. Sharing coffee meanwhile indicates that agreement has been reached.

The ritual of bringing a white banner and white camel to the injured tribe is a gesture of redeeming their honour and restoring balance within the community. It enabled the injured tribe to feel vindicated, motivating them to forgive and reconcile with the offending tribe. This process allowed the injured tribe to accept the offending tribe's return to the community and thus restored the relations and identity of local tribes. These rituals were accompanied by public speeches, which served as distinctive elements in these cases. Sheikhs used these speeches to invoke a sense of pride and honour within tribal people. Often these speeches use storytelling to maintain a strong network and unique group identity in the society. The linkage of these speeches with tribal ancestors through storytelling was instrumental in increasing social cohesion.[506]

The final ritual relates to the conciliation agreement (*Suk Al Sulh*), the ultimate outcome of these cases as the disputing parties pledged to keep the peace. These settlements reaffirm the identity of the tribes by highlighting their commitments to reconcile, often through blood money (*Dia*) and by pledging by their honour to respect the tribal agreement. It was observed that these settlements were signed by all involved parties, including representatives of police and other state officials, with each provided with a copy of the agreement. It was also noted that a number of the conciliation gatherings were filmed by professional cameramen and the outcomes posted in media outlets, including social media. This demonstrates the emergence of new rituals that are becoming part of tribal legal customs. It also signifies that tribal dispute resolution practices are adapting to social changes, particularly with regard to the use of technology and social media.[507] The appearance of new rituals within customary law is consistent with the changing nature of tribal identity, as the case studies show new dimensions of the identity of Jordanian people. Young people are resorting to social media to share stories on legal customs and express their opinion on these practices and their tribal allegiances, illustrating how both rituals and customary law are being challenged by people's changing identity.[508]

[505] Alsalahat (n 500).
[506] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[507] Ibid.
[508] Furr and Al-Serhan (n 30).

Figure 23: A conciliation gathering in Amman on 21 November 2015. The photograph (by Munther Emad) depicts a policeman and tribal representatives signing the conciliation agreement. Such gatherings consist of rituals which are commonly held under a Bedouin tent and features traditional customs like delivering public speeches and serving Arabic coffee.

6.2.2. Sulha – collective identity

The collective identity of the Arab community was expressed in the ceremonial act of *Sulha*, which was the focus of the case studies. As a peace-making practice, *Sulha* is the ultimate goal of customary law, utilising collective responsibility and social solidarity to restore peace within the community. The significance of *Sulha* practices, as featured in most of the case studies, was that they were conducted publicly and represented by a large gathering of tribal leaders. The use of motivational speeches and signing of the conciliation agreement, accompanied by the drinking of traditional coffee and shaking hands between the representatives of the disputing parties, emphasised tribal honour and solidarity. All of these procedures reaffirmed the collective identity of the community, which revolves around their common heritage and sense of pride in their tribal ancestors. In return, the maintenance of collective identity ensured the sustainability of the conciliation settlements that were agreed by the disputing parties.[509] This was applicable to the cases of 'the story of the town of Alsareh', 'the struggle of Jordanian youth', and 'the cycle of a neighbourhood dispute', where the tribal truce was breached and the wider community came together to place pressure on the disputing parties by way of social solidarity. It is, therefore, important to highlight that the community pressure was a valuable mechanism in the tribal dispute resolution process, influencing the collective identity of the tribes and reinforcing their social solidarity.

[509] Pely (n 3).

It is also important to note that the tribal truce was a temporary measure in these cases which focused on minimising the risk of violence and revenge attacks. Without the conciliation process of *Sulha*, the tribal hot blood could have resumed – which happened in the case of Alsareh town, where the injured tribe committed revenge killings. For this reason, the tribal leaders continued to persuade the disputing tribes to turn their tribal truce into a full conciliation in order to ensure lasting peace and security within the community. This illustrates how collective identity through the function of *Sulha* influences public order and social solidarity. However, as indicated in some of the case studies, it is not always possible to achieve conciliation between disputing tribes, some of whom took a number of years to make peace. In these incidents, the focus of tribal dispute resolution was limited to minimising the risk of violence through the application of tribal truce. The sheikhs and, occasionally, state officials, used the continuation of the tribal truce to exert pressure on the injured tribe to reconcile with the offending tribe.[510] This indicates that tribal truce is recognised by the tribal people as a temporary measure while the risk of violence between the disputing parties remains. It can therefore be argued that the collective identity and social solidarity of the tribes are more attached to the practice of *Sulha* rather than the tribal truce.

It is no coincidence that the *Sulha* is constructed so as to enable everyone to join the conciliation gathering and observe the sheikhs making peace between the disputing tribes. The act of forgiveness and conciliation play an important role in the maintenance of collective identity, defusing tension and replacing it with feelings of social solidarity.[511] This was evident in the case of Rania's father, who was initially angry and sought revenge against the teenager who killed his daughter. The father was adamant that he wanted the teenager and his family to be punished, resisting calls for conciliation. However, the involvement of the father's neighbours and the wider community in the *Sulha* process prompted Rania's mother to convince her husband to forgive and make peace for the sake of their daughter's spirit and their community. The shared sense of belonging enabled Rania's parents to feel connected with the wider community and transform their desire for vengeance to a restoration of peace. This sense of belonging even empowered the father to intervene with the state system for the release of the teenager from detention, which enabled both parties and the local community to heal from the tragic death of Rania. *Sulha*, in this sense, is an interactive and shared element of people's collective identity, preserving their cultural values and social solidarity. It is no wonder, then, that tribal ancestors have commented regarding *Sulha* that '*our traditional gatherings are our schools'.*[512]At these schools, participants not only learn

[510] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[511] Al-Abbadi (n 5).
[512] Ibid.

about their heritage, the performance serves to re-create tribal identity. It is in a sense a civic ritual not too dissimilar to voting or serving on a jury in a western society.

The function of *Sulha* in cementing social solidarity and strengthening the collective identity of the tribes is further complemented by the existence of tribal guarantors (*Kafeel*). The system of tribal guarantors is integral to the tribal dispute resolution process, ensuring that the disputing parties fulfil their obligations in keeping the peace. Interestingly, the offence of breaching the tribe's agreement with the tribal guarantor is one of the few that Jordanian state law still recognises as enabling sheikhs and state officials to work together.[513] This indicates the significant nature of this practice as it directly influences the integrity of customary law, particularly in being enforceable and able to generate social solidarity within the wider tribal society. It explains why tribal people continue to rely on tribal guarantors, with some of the cases illustrating the social authority of tribal guarantors. Their legitimacy enables guarantors to command compliance from the disputing tribes, with the risks of breaching the guarantor's trust bringing dishonour and social isolation for the tribe. In the tribal culture, there is nothing more severe for a tribe than losing its honour and being abandoned by the tribal community.[514] For this reason, it is critical for the tribe not to alienate the collective goodwill of the community, particularly when pursuing a conciliation settlement.

6.2.3. Shahama – expanded identity

The final dimension of identity relates to the notion of nobility, *Shahama*, which is a characteristic that Arab tribal leaders pride themselves on as one of their ancestors' legacies. *Shahama* was featured in a number of the case studies where tribal leaders distinguished themselves as noble and courageous in their stand for justice. This was manifested in their notion of generosity in protecting and representing those who sought their intervention regardless of their cultural background or opponent.[515] A number of cases indicate that this notion of nobility and legitimacy enabled tribal leaders to extend their authority to a diverse range of people and forge a broader concept of identity, which reinforces the values of tribal honour and social solidarity. The inherited sovereignty of these tribal leaders has enabled them to be widely recognised by tribal and non-tribal people across the region.

The case of the killing of the Jordanian student in Iraq illustrates how interstate tension was resolved through tribal customary law and became an opportunity for tribal leaders to extend their authority and establish strong ties between the tribes across the two countries.[516] This

[513] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[514] Abu-Hassan (n 16).
[515] Ibid.
[516] Al-Abbadi (n 5).

incident triggered a wave of revenge attacks against Iraqi people in the hometown of the Jordanian student. The convoy of the Iraqi ambassador was also attacked in Amman, which alerted Jordanian and Iraqi state officials to the seriousness of this situation. Jordanian expatriates in Iraq, meanwhile, were concerned for their safety given the risk of counter-attacks. This prompted prominent tribal leaders to take the initiative to formulate a tribal conciliation committee and establish a tribal truce; the high level of legitimacy these tribal leaders enjoy was illustrated by the fact that they were able to quickly stop the escalation of violence. In fact, the tribal committee demonstrated its extended authority in this case, travelling between the two countries and negotiating a settlement between the disputing tribes. It was reported that during this process, the head of the tribal committee met with the former Iraqi president as a show of respect and support from the Iraqi state for the committee's efforts in restoring peace and harmony.[517]

The Iraqi state authority also ensured that it was seen as taking this incident seriously, conducting a full investigation and prosecuting the defendant, which highlights the influence of the tribal conciliation committee in dealing with interstate tribal disputes. The Iraqi authorities further acquiesced to the requests of the victim's tribe by releasing the identity of the accused. This was a significant step for tribal customary law as it ensured that the tribe of the accused could be held accountable as a part of the conciliation process. This again highlights the ability of tribal leaders to engage with state officials, including those beyond the boundaries of their country. The function of tribal leaders throughout this case appeared to constitute a system of social identity that was widely recognised across the region and has unique authority, stemming from its connections with people's tribal heritage.[518] Tribal law was not only a reaction to people's anger during the tribal hot blood when the news of the victim's killing broke out; it was a conscious and lengthy process that went on for over three years after the tribal truce was secured, with a conciliation settlement eventually reached between the disputing tribes. This illustrates that the extended authority of these tribal leaders was focused on reclaiming the peace between tribes, rather than just securing the tribal truce and putting a hold on the escalation of violence.[519] The significance of the conciliation gathering in the hometown of the victim's tribe and the presence of tribal and state leaders from both countries revolves around the ability of sheikhs to exert their legitimacy as administrators of tribal customary law, which even crosses the state's boundaries.

The case of the Egyptian waiter who was assaulted by the brothers of a Jordanian MP in Aqaba is another example of the extended identity of sheikhs. This incident attracted a high

[517] Alsalahat (n 500).
[518] Ibid.
[519] Abu-Hassan (n 16).

level of attention as the assault was filmed and went viral on social media across the region. It opened up a debate on the treatment of Egyptian workers in Jordan and the perceived abuse of power by the Jordanian MP. Due to the level of condemnation and concerns over tension between the two countries, tribal leaders stepped in to resolve the issue through legal customs. The tribal settlement was initiated at the Egyptian consulate and featured the tribal leaders with the victim holding together the Egyptian and Jordanian flags as a gesture of unity between the two countries. The fact that the conciliation gathering was convened at the house of a distinguished tribal leader in Aqaba shows the influence of sheikhs' identity on securing peace while saving face.

Figure 24: A group of sheikhs meeting with Munther Emad in Amman on 20 November 2015. The sheikhs were generous and keen to provide support to the efforts of this thesis in establishing how tribal customary law resolves disputes in Jordan. The sheikhs' sentiments in welcoming the researcher and facilitating his fieldwork without having any pre-existing relations indicates the nature of their role in offering service and assistance.

The case of the Pakistani migrant who was assaulted by his Jordanian brother-in-law is a further illustration of the influence of sheikhs on cross-cultural conflicts. It highlights the accessibility of sheikhs to non-Jordanian citizens when faced with a dispute. The Pakistani migrant in this case appeared unsatisfied with the response of the Jordanian police and escalated his grievance to the local sheikh. The sheikh's intervention led the police to arrest and charge the brother-in-law, which paved the way for a conciliation settlement between the parties. The outcome was focused on redeeming the honour of the victim and restoring harmony within the family. The sheikh did not appear to be deterred by the fact that the victim was a foreigner and the accused a local citizen. The sheikh was focused on finding a solution that would satisfy the victim in reclaiming his dignity, while persuading both parties to

reconcile.[520] The Pakistani migrant's recognition of the local sheikh as an alternative dispute resolution mechanism highlights the evolving nature of the sheikh's identity in being recognised by range of community groups.

6.3 Security

This final section examines the goal of tribal dispute resolution practices as exemplified in the case studies. It is argued that these practices seek to establish security and maintain peace for the local communities. Customary law appears to be primarily concerned with the threat to public order and social harmony, which stems from people's sense of security and connection with the wider society.[521] The goal of seeking security underlies the function of tribal evacuation and tribal truce, particularly when related to blood feud incidents. This was evident in the tribal conciliation settlement, which was designed to restore security through collective responsibility and social solidarity. The function of tribal law in these cases indicates that preserving or restoring security was pursued in three ways.

Minimising risk was often the first step of the tribal dispute resolution process, which is designed to respond to the tribal hot blood when a serious conflict erupts in the community. The purpose of risk-minimising measures was to put an immediate stop to the escalation of violence and pressure the disputing parties to agree on a tribal truce. This agreement was critical in reducing the risks of revenge killings and allowing the sheikhs the opportunity to ease the volatile situation by engaging with the parties and hearing their grievances. Minimising risk was pursued through the practice of tribal evacuation, as this prevents interactions between the disputing parties during the period of tribal truce. The process of tribal truce and evacuation was often conducted as an urgent priority, as the risk of the serious escalation of violence at that moment was a real community concern.[522]

Saving face was the second approach of tribal law in seeking to maintain security within the community. Saving face was an important element in some of these cases, as tribal conflicts are often triggered by loss of honour and respect. Legal customs therefore gave significant attention to resolving conflicts between rival tribes without shaming any of the disputing parties. In fact, the rituals of tribal law were focused on honouring both parties for the purpose of saving face and enabling them to reintegrate back into their tribal community.[523] The final step was focused on restoring peace, which often seems to be the ultimate goal of tribal dispute resolution. Restoring peace is a noble cause in the eyes of tribal people, which

[520] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[521] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[522] Al-Abbadi (n 5).
[523] Jabbour (n 190).

further explains the distinguished status of sheikhs among the local communities. The notion of restoring peace was explored through the practice of the conciliation settlement and signing of the tribal agreement, which is regarded as a public declaration of reclaiming public order and community harmony.[524] Although peace was not necessarily restored in every case, it was a target that the sheikhs aimed at with the support of the community and the state.

6.3.1. Minimising risk

Tribal law has a specific process that relates to minimising the risk of community conflicts, particularly blood feud incidents. Tribal conflict often triggers the assembly of a customary delegation which seeks to contain the situation before it escalates and the conflict gets out of control. Facilitating the evacuation of the offending family is regarded as a necessity to protect them and prevent revenge killings by the injured family. In return, the delegation secures the support of the injured family, which feels empowered and thus amenable to a tribal truce that de-escalates the conflict and allows tribal leaders to pursue a conciliation settlement. The conditions of the tribal truce entail an agreement from the offending tribe to take collective responsibility for the crime committed by its member, and in return the injured tribe makes a commitment to not retaliate.[525]

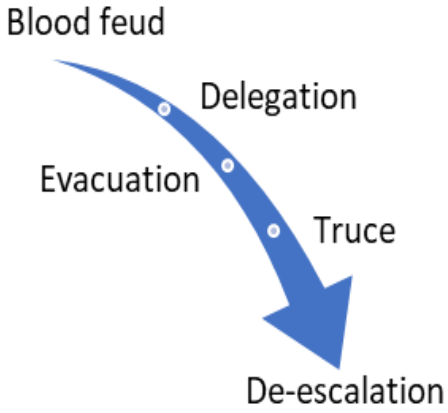

Figure 25: The de-escalation process of tribal customary law.

All 18 cases featured in this thesis included a customary delegation, which demonstrates the importance of the sheikhs for tribal customary law to operate. However, there were variations between these cases; the most serious cases, such as blood feud-related incidents, involved a large assembly of prominent tribal leaders, while family honour-related cases were managed by one sheikh who acted as a mediator between the two disputing families.[526] In

[524] Furr and Al-Serhan (n 30).
[525] Abu-Hassan (n 16).
[526] Ibid.

these cases, the focus was on resolving the dispute privately and away from the attention of the surrounding community. In contrast, the blood feud cases were deliberately designed to involve an extended number of tribal leaders so that the conciliation process could be made public. Therefore, the customary delegation is influenced by the conflict's impact and its potential to affect public order. Tribal evacuation was limited to blood feud-related cases where the disputing tribes resided within the same neighbourhood. This indicates that tribal evacuation is observed when the risk of revenge killing is extremely high.[527] In addition, tribal truce featured in seven out of the 18 cases, where it appeared that a conciliation settlement was not possible due to the high level of tension between the disputing parties. Therefore, the delegation sought a tribal truce to de-escalate the conflict and allow for a period of calm to prepare the two parties to engage in the conciliation process.

The tribal law process of de-escalation is often not as straightforward as it may appears in Figure 25. The tribal truce was breached in three of the seven cases and, on these occasions, the consequences were severe, with a number of people losing their lives. This shows that tribal law is not always successful in de-escalating the conflict and preventing revenge killings, reflecting the limitations of customary law, particularly when dealing with blood feud conflicts. The tribal truce was resumed immediately in these three cases as the delegation was extended to a larger number of sheikhs and the state authority became heavily involved. The failure of tribal truce, however, raises questions as to whether the de-escalation process under tribal customary law is adequate or whether it requires a mechanism to enforce the commitment of the disputing parties – or, perhaps, whether customary and state laws could have worked better together and intervened earlier in these cases.[528] These will be examined in the following chapter as it looks into the relationship between the two systems.

It is important to note that all seven cases that featured a tribal truce concluded with a conciliation settlement between the disputing parties. The majority of these conciliations were achieved within a few months from the date of the tribal truce. The common practice in these cases was the extensive involvement of tribal leaders, state officials and the wider community in efforts to bring the disputing parties to agree to a truce. This represents the deciding factor in whether the disputing parties were able to overcome their differences and resolve the conflict peacefully.[529] The involvement of the tribal guarantors was also integral to the de-escalation process since it forced the disputing parties to comply with the truce, otherwise they would be obliged to pay a monetary compensation for violating the

[527] Jain (n 26).
[528] Ibid.
[529] Al-Abbadi (n 5).

agreement. A party that breached a truce would lose its honour with their tribal guarantor, and subsequently come into conflict with the guarantor who was their ally in the initial conflict.[530]

Notably, the three cases that involved a breach of the tribal truce involved a pre-existing history of conflict between the disputing parties, while the remaining cases involved new disputes. The disputing parties in the cases of 'the story of the town of Alsareh' and 'the cycle of a neighbourhood dispute' had been in conflict for a number of years, so this breach of the tribal truce was not the first incident in which the two parties had failed to comply with their agreement. The case of 'the struggle of Jordanian youth' highlights a number of complex issues in Jordan, including young people feeling disenfranchised, with many struggling with their university education and facing high unemployment.[531] It could be argued that the de-escalation process of tribal law might be more effective if it were specifically tailored to the circumstances of each of these cases.

Figure 26: The author standing next to a women's rights activist (far left), tribal leader and journalist (far right), as part of seeking their input on how tribal law resolves disputes. The tribal leader was a former minister and his brother is a prominent tribal judge. These representatives reflect the reality of tribal law in Jordan as being fluid and interconnected to serve the purpose of keeping the peace and providing security.

[530] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[531] Kao (n 267).

6.3.2. Saving face

Saving face is an essential element of tribal law as it reinforces the de-escalation process and creates a conducive environment for the conciliation settlement. Saving face is embedded in the practices of tribal dispute resolution that revolve around preserving the dignity and honour of all parties involved in the conflict. It enables people and community groups to maintain their relationships and restores social harmony. The case studies demonstrate how the concept of saving face is interconnected with tribal people's identity and their emphasis on the customary code of honour. The concept of saving face is quite complex for Arab tribal people as it relates to a whole set of norms and customs. The simple act of visiting someone's home and accepting a cup of coffee is directly relevant to the notion of saving face.[532] In five of the 16 cases that featured this aspect, both the process and outcome of the legal customs were designed to save the face of those involved in the conflict, particularly with regard to the status of the sheikh.

The case of the 'breach of tribal bail obligation' demonstrates how the concept of saving face formed part of the tribal dispute resolution process. It illustrates that insulting a tribal leader who guarantees the agreement between the disputing parties is a serious crime among Arab tribes. Saving the face of the tribal guarantor enables the disputing parties to engage in the resolution process and have faith in the tribal settlement. Therefore, preserving the integrity of the tribal guarantor is vital for the survival of tribal law and its ability to enforce conciliation agreements. The authority of the tribal guarantor in demanding that the disputing parties comply with the tribal settlement reflects the high status and level of legitimacy of the tribal guarantor within the community. Without such status, the tribal guarantor would have no influence.[533] The reaction to the breach of tribal obligation was therefore significant, involving a community delegation of about 100 dignitaries including tribal leaders, state officials and members of non-government agencies who came together for the purpose of redeeming the honour of the tribal guarantor. The function of this delegation was focused on reinforcing the legitimacy and public status of the guarantor, rather than resolving the conflict through a private settlement. This was illustrated through the size of the community delegation and the rituals that were used during this process, which included public speeches, displaying a white banner at the front house of the guarantor and the offering of a white camel.[534] However, it is questionable whether the focus on saving face in this case addressed the causes of the initial conflict or was, rather, a tokenistic measure to preserve the status of the guarantor.

[532] Furr and Al-Serhan (n 30).
[533] Al-Abbadi (n 5).
[534] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).

The process of saving face appears to be primarily directed to reclaiming the honour of tribal leaders as a way of maintaining the security of the tribal community and preserving the integrity of tribal customary law.

The case of the Egyptian waiter again illustrates that the notion of saving face relates to protecting the image of the tribes and their interests within the community. The conciliation process in this case was instigated by the tribe of the Jordanian MP to defend its honour, particularly as the allegation of their tribal leader being involved in the assault became public news within the country. The tribal leaders of Aqaba were also interested in resolving this incident quickly through tribal conciliation once it became a public affair and source of tension between the two states, thereby threatening Jordan's reputation as a tribal society. The conciliation gathering was purposefully initiated at the Egyptian consulate and featured people from both sides holding the Egyptian and Jordanian flags as a gesture of social solidarity between the two nations. Even the settlement was carefully designed to enable the Jordanian MP and his tribe, along with the wider Jordanian tribal society, to save face and yet reconcile with the other side gracefully. This was evident in the public 'thank you' statement published by the Jordanian MP and his brothers in mainstream newspapers, rather than an apology for what happened. While this reinforces the importance of saving face for tribal people, it also highlights that customary values can provide a workable resolution even when a dispute involves non-tribal people.[535]

The case of the derogatory Facebook post is another example of the importance of protecting the authority of the sheikh. The tribal leader was outraged by this post and sought the intervention of a tribal judge as he felt he was being defamed by the activist. This illustrates that saving face is related to protecting the public image and legitimacy of tribal leaders.[536] The value placed on saving face was recognised by the judge, who ordered the activist to pay the tribal leader a significant amount of money as compensation for insulting the leader's reputation. Furthermore, tribal leaders facilitated a conciliation settlement which resulted in the activist issuing a public apology and, in return, the tribal leader waiving his compensation.

Finally, the cases of the Pakistani migrant and Zahra's story illustrate that saving face is not only relevant to the status of sheikhs or a tribal group; it can also involve a family unit or interfamily relationship. In these cases, tribal customary law became involved as a result of family violence, which the sheikh attempted to resolve by way of preserving the privacy and honour of both parties. In the Pakistani migrant case, the sheikh resolved the incident by

[535] Alsalahat (n 500).
[536] Abu-Hassan (n 16).

bringing the families together, in a situation where saving face appeared to be a satisfactory outcome.[537] In Zahra's case, however, saving face for the husband and his family was more about not being seen as weak or acknowledging their fault in perpetrating violence against Zahra. It shows how this notion can have both value and counter-implications for tribal dispute resolution.

6.3.3. Restoring peace

The final and most important step of seeking security for tribal customary law relates to restoring community peace, which includes the restoration of honour and achieving justice. Restoring peace and stability was the emphasis of legal customs in all the case studies, although this was successfully achieved in only seven out of the 18 case studies. This shows that security through the restoration of peace and conciliation is not always achievable – which is the reason tribal customary law may shift its focus to minimising risk and/or saving face. Although restoring peace was considered to be the ultimate goal of tribal customary law in these cases, peace could not be achieved without a sense of honour and justice within the disputing tribes.[538] Sheikhs, therefore, were often eager to restore relationships between the disputing parties and reclaim their social status through a sense of solidarity and coexistence.

Each of the four cases that involved a large-scale conflict were resolved through the restoration of tribal peace and conciliation. The focus of sheikhs, state officials and the surrounding community during these cases was on how to put an end to the tribal conflict and prevent an escalation of blood feuds between the disputing groups. The conflict in the town of Alsareh is a showcase of how a dispute between two rival tribes becomes an issue of public order and national security. The two tribes were engaged in a very serious conflict which dramatically escalated to revenge killings, impacting on the sense of security in the town and affecting the local hospital, which became one of the grounds for this bloody conflict. This prompted tribal leaders and state officials to assist in the dispute resolution efforts and exert pressure on the tribes to de-escalate the conflict and reconcile for the sake of national security. Tribal law was initially unable to put an end to this conflict and restore peace between the two tribes, as there were several breaches of the tribal truce which resulted in revenge killings. The breaches of tribal truce signified the seriousness and dramatic escalation of this conflict, leading more distinguished tribal leaders and community representatives to become directly involved in the dispute resolution process, ultimately resulting in a full conciliation between the two tribes. This case indicates that restoring peace

[537] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[538] Al-Abbadi (n 5).

is first and foremost a community demand, particularly when it involves a conflict that threatens the harmony and stability of the country. On the other hand, it appears that tribal leaders and state officials only became heavily involved when this conflict escalated to a dangerous level, rather than taking proactive measures to intervene between these tribes. Lastly, it appears that the notion of restoring tribal peace is heavily applied to large-scale conflicts that impact on the sense of social solidarity and security in the country.[539] The restoration of peace, in this case, refers to the absence of violence and revenge, rather than an active restoration of relationships between these tribes.

In the case of youth violence within Jordanian universities, the tribal dispute process only appeared to intensify after the conflict expanded to many universities and impacted on the security of the country. What appeared to be an ordinary dispute between a group of students on the university campus sparked a larger conflict between their tribes, resulting in university campuses becoming the arena for tribal blood feuds. Tragically, a number of innocent people, including a university lecturer, lost their lives as a result of this conflict. It also impacted significantly on the reputation and sense of security of Jordanian universities.[540] This led tribal leaders and state officials to work closely together along with the management of the affected universities in an attempt to bring an end to the violence. The King of Jordan's Advisor for Tribal Affairs and the Interior Minister worked personally with these tribal leaders and universities to reach a tribal conciliation settlement between the tribes involved. Although this serious conflict became an opportunity for both statutory and tribal law to work together along with the university community to address the underlying issues of young people, their intervention came only as a response to the dramatic escalation of violence that impacted upon public opinion and the stability of the country.[541] This case, however, shows that restoring peace can be applied in different community dispute settings, particularly when the issue relates to public order and harmony within the society. It may also indicate that young people can play a role in the restoration of peace within their community using the tribal customary law system.

The murder of a Jordanian student in Iraq is another example of how the notion of restoring peace can be applied to different settings, including an interstate tribal conflict. In this case, the murder of a Jordanian student at Baghdad University by an Iraqi presidential guard triggered unprecedented violence in the Jordanian city of Ajloun, the student's hometown, targeting local Iraqi migrants in apparent revenge attacks. The Iraqi ambassador's convoy was also targeted in Amman, Jordan, along with a number of properties belonging to Iraqi

[539] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).
[540] Kao (n 267).
[541] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).

entrepreneurs in the country. This prompted state officials from Jordan and Iraq to work closely with tribal leaders to facilitate a conciliation process between the student's tribe and the Iraqi guard's tribe. It is noteworthy that the tribal leaders who led this conciliation process travelled between the two countries and met with a number of relevant parties including state officials from Iraq and the administration of Baghdad University. The conciliation gathering was eventually convened in the student's hometown in the presence of government officials and tribal leaders from Jordan and Iraq, which resulted in blood money being paid to the victim's family and an offer of forgiveness to the perpetrator and his tribe. This case further reinforces that restoring peace can be achieved when community and official networks work together to reclaim a sense of security and harmony, despite the complexities of tribal conflicts.[542] It also shows that restoring peace is highly valued by the involved tribes, as from their perspective, the absence of peace means an ongoing escalation of violence and revenge killings.

The last case that featured a full-scale conflict resolved by restoring peace relates to the two Jordanian villages that were engaged in intense confrontation during the national election campaign. This conflict has a number of dimensions as it involved two rival tribes competing for a parliamentary seat in the national election. It also involved accusations that the state was involved in vote-rigging and supporting a particular candidate. The conflict impacted on the sense of security and civil order in the local region as the two villages were locked in ongoing infighting and confrontation. The conflict escalated when a brawl occurred in one of the towns during victory celebrations for the rival town's candidate. The tribal delegation, in this case, intervened quickly to prevent this conflict from escalating further. The sheikh involved worked closely with the local governor to exert pressure on the disputing tribes to prevent further confrontation, and to commit them to a conciliation process. The conciliation settlement was then achieved between the two tribes which facilitated the restoration of peace in the two villages.[543] Restoring peace, in that sense, was utilised when there was a threat to local harmony and civil order. It was also fulfilled when the sheikh and local government worked closely together along with the disputing tribes to reinforce the importance of tribal solidarity for the security and peace of the surrounding community.

The remaining three cases relate to neighbourhood disputes between unrelated families in which their extended tribes became involved when the conflict escalated. Rania's case shows how the tragic death of a six-year-old child as a result of reckless driving by a teenager disturbed the peace of a close-knit community. The two families involved had resided next to each other for many years and their relationship was very close, which was

[542] Alsalahat (n 500).
[543] Almady, 'Role of Tribal Law in Resolving Disputes' (n 487).

the norm for their small and crowded neighbourhood. This conflict was almost identical to the case involving two neighbouring families in a refugee camp whose children grew up together and became like one family. Similarly, their close ties were interrupted as a result of an incident between members of the two families. The escalation of these conflicts became a concern for the whole neighbourhood as it extended to their tribes and affected the harmony of the local community. Therefore, in all of these cases, the community was heavily involved in pressuring the disputing families to end their conflict, as was manifested through the community delegation that eventually led to their conciliation.[544] This indicates that the restoration of peace and harmony is a community-led process, in which the sheikhs and tribal delegations function as the administrator of the tribal customary law system.

Figure 27: Law enforcement presence at the tribal conciliation gathering for 'The story of the town of Alsareh'. This illustrates the level of engagement by the state system in the function of tribal customary law, which involves restoring social order and preserving community solidarity.[545]

6.4 Conclusion

The combination of these principles illustrates the significance of tribal customary law in the Jordanian community. These principles indicate that local legal customs are embedded within cultural values and intertwined with the state legal system. For this reason, the prevalence of customary law in Jordan can be explained by its ability to meet people's needs for security and peace, while also being in line with their values and beliefs.

The principles of honour, identity and security explain why the recognition of tribal customary law in Jordan relies on public acceptance and legitimacy within local communities. These

[544] Watkins (n 24).
[545] Sawaleif (n 436).

provide an insight into how this traditional legal system was able to survive and continues to be a dominant source of law despite socio-political changes in the region over the past 100 years. The depiction of these principles throughout the case studies demonstrates that customary law preserves a number of key practices, such as tribal truce and evacuations. Most importantly, local customary law continues to distinguish itself by its core feature of the conciliation gathering (*Sulha*), which appears to serve a number of social and security needs within Jordanian society. However, there have been a number of modifications to the practices of customary law, particularly with regard to tribal evacuations. This practice continues to be a contentious issue for Jordanian people, and it is likely that it will undergo further modifications in the coming years.

While the principles of honour, identity and security are not exclusive to customary law in Jordan or even within the Arab world, it is apparent that the way these principles are being operationalised in contemporary Jordan indicates the uniqueness of how sheikhs and state officials interconnect. Table 1 – Practices of tribal customary law in Chapter Two articulated how these principles, particularly with regard to the notion of honour were evident in the function of customary law in most of the selected countries. A number of scholars mentioned in the literature review have argued that some of these principles are common features of customary law across various cultures. However, the implications of such principles can vary between these countries, for example the Albanian and to some extent Afghani customary law's reliance on family honour is seen to perpetuate the prevalence of honour killings. There are also gaps in the literature as available information about Iraq and Yemen does not reveal a similar extent of where honour and identity are being operationalised in Jordan to cement harmony and reinforce legal pluralistic relationships. Customary system in Iraq and Yemen appears to have been used to reinforce old tribal divisions and at different stages either propping or challenging specific regimes. The abovementioned analysis of the case studies in Jordan points out that these principles are being utilised by both state officials and sheikhs when working to keep the peace and reaffirming their legitimacy within local communities.

The next chapter will further examine the relationship between customary law and the state system in Jordan using a number of local lenses. Building on the understanding of these principles and the revelations of all the case studies, legal pluralistic relationships in Jordan will be analysed in a structural fashion and within their appropriate local context. It will be argued that these relationships form a type of partnership, with the two systems influencing and reinforcing each other. This analysis will highlight the uniqueness of these principles within Jordanian legal pluralism and bring the discussion of this thesis to a conclusion.

Chapter Seven – The Partnership Between Tribal Customary Law and the State Legal System in Jordan

7.1 Introduction

This chapter demonstrates the coexistence of tribal customary law and the state legal system in Jordan. It utilises the findings from the previous chapters to illustrate how this relationship is built on mutual recognition, understanding and cooperation. These findings indicate that the state system in Jordan has gradually been consolidating its legal authority, while supporting tribal law to maintain an important role in keeping the peace within local communities. There have been conscious and deliberate engagements by the state legal system with tribal customary law to utilise its legitimacy and kinship networks in order to preserve social order and public solidarity. This chapter argues that legal pluralism in Jordan has been a local necessity which was constructed within its cultural framework and seems to have been beneficial for both tribal and state legal systems. However, it is argued that these legal pluralistic relationships have faced a number of challenges throughout the existence of modern Jordan. For this reason, the relationships have experienced a number of modifications and it is likely that there will be further adaptations in the years ahead.

The framework of this chapter is built on the table of intersections between tribal customary law and state system in Jordan (Table 3), which was presented at the conclusion of Chapter Three. The purpose is to demonstrate that the relationships between the state system and tribal law are structured through the process of customary practices and maintained by the sheikhs along with key state officials. It suggests that sheikhs play a pivotal role in these relationships and are recognised by the state system as the face of the tribal customary system. All preceding discussions indicate that the state legal system is lending a hand to support the function of tribal evacuation, truce, and conciliation for the purpose of restoring peace and security within Jordanian society. These will be examined throughout this chapter, with a particular focus on the practices of *Sulha* (conciliation settlements) and *Jalwa* (tribal evacuation). Finally, a comparison will be conducted between the Jordanian model and the seven countries previously discussed.

7.2 The engagement of sheikhs and state officials

It is evident that sheikhs play an integral role in the relationship between tribal customary law and the state legal system in Jordan. The case studies, along with the interviewees'

responses and the information provided in the literature, indicate that sheikhs have a unique status in Jordan which stems from a number of factors. First, the recognition of sheikhs derives largely from the community's acceptance of their role in resolving blood feuds and other crimes. They are seen to represent the interests of the community and serve its needs for keeping the peace.[546] There is a strong consensus among Jordanian people that sheikhs are a representation of their cultural identity and social norms. The state system has recognised the social validity of sheikhs and their values in maintaining solidarity and social order within local communities. This is evident in the level of approval and support state officials provide to these sheikhs. Sheikhs are also seen to invest in their networks with state officials because these associations facilitate their role in resolving disputes and also provide them with social and political prestige.[547] Most of the interviewees indicated that sheikhs enjoy a high level of credibility and respect among state officials and community groups because they are seen to secure compliance with tribal dispute settlements. Their tribal and personal characters are perceived to offer legitimacy to these settlements and motivate state officials to be seen as working closely with them.

The above is consistent with the argument that there is a stable relationship between the state system and tribal institutions in Jordan. The Jordanian monarchy appears to have consciously pursued measures to integrate tribal law into its state system and build strong ties with sheikhs since its inception. The outcomes of such measures are visible in the structure of relationships between state institutions and tribes, most notably through the role of sheikhs. It is for this reason that tribal identity is heavily rooted in the state system, which helps in facilitating loyalty and supporting the modern state.[548] This can be inferred from the level of liaison between sheikhs and other tribal leaders with state officials. Tribal leaders operated independently prior to tribal law being abolished in 1976, as tribal people were segregated and solely reliant on the Bedouin justice system, while non-tribal people in urban towns had access to the state legal system.[549] Not only did the majority of interviewees report that sheikhs have maintained their autonomy while working alongside state officials, but sheikhs are also seen as having extended their role to the wider community.

The case studies show the extent of sheikhs' involvement in resolving a range of blood feuds and other crimes, which sometimes involve non-tribal people or non-Jordanian citizens. It is evident that this has facilitated a more extensive role for sheikhs within the state system, with

[546] Abu-Hassan (n 16).
[547] Al-Abbadi (n 5).
[548] St Ledger (n 253).
[549] Al-Abbadi (n 5).

various field studies showing sheikhs are being widely utilised by state officials.[550] This was noted by a number of interviewees who stated that the police and court services work closely with sheikhs because their focus on reaching conciliation settlements assists the state system in preventing the escalation of violence. The role of sheikhs is seen as complementary to state officials, as they assist in containing disputes and crimes at the community level, freeing the state system to focus on prosecuting individuals. It is as though there are coordinated roles when responding to blood feuds and other grievances within the community: the state system takes responsibility for detention and law enforcement, while sheikhs facilitate social control to de-escalate conflicts.[551] Some of the cases illustrated how the state legal system exerts pressure on disputing parties, sometimes through the use of administrative detention, to assist sheikhs in persuading the parties to cooperate and thereby prevent revenge killings. This was acknowledged by some interviewees who stated that the involvement of sheikhs is in the interests of the state system, as they have the networks and respect within local communities to drive conciliation.

Secondly, the engagement of sheikhs with state officials reflects the consolidation of the kinship and citizenship of Jordanian people into a unified identity. Previously, kinship identity was the dominant feature influencing the function of tribal law. Following the inception of the modern state and its efforts to integrate the tribes, the concept of citizenship identity added another dimension to the relationship between tribes and the state system. Tribal leaders become part of efforts to bring kinship ties and national citizenship together when they are seen to be working with state officials.[552] It is for this reason that the state's engagement with tribal leaders represents more than the necessity of resolving community disputes amicably; it also reflects a strategic interest in unifying the Jordanian people and cementing the legitimacy of the state system. The state appears to recognise the importance of the kinship system in maintaining social balance and security in Jordan. Kinship is regarded as part of the social fabric of Jordanian people as it intersects with their identity and sense of solidarity. Kinship networks are often associated with tribal dispute settlements and play a crucial role in preventing blood feuds and de-escalating conflict.[553]

The role of kinship solidarity was evident in many of the case studies, influencing the way sheikhs and state officials worked together to resolve these disputes. It was often a factor when determining that there was a risk of revenge killings, and thus a need for state and tribal officials to work closely together to separate the disputing parties and contain the

[550] Jain (n 26).
[551] Abu-Hassan (n 16).
[552] Al-Abbadi (n 5).
[553] Watkins (n 24).

conflict. They coordinated their efforts, with state officials imprisoning those linked to the blood feuds and facilitating the evacuation of affected families, while sheikhs brought together a coalition of tribal leaders to influence the disputing tribes to accept a truce. These practices were also noted by a number of interviewees who stated that the arrangements that sheikhs and state officials put in place when responding to the disputing parties are designed to deal with conflicts from various aspects. The state gets to prosecute tribal members accused of committing a crime, while tribal law holds the involved tribes responsible for making amends for the wrongdoing and preventing the escalation of conflict.[554] Therefore, the tribal status of sheikhs encourages state officials to engage and cooperate with them. Sheikhs enjoy a high social standing within the community, which often stems from their strong kinship ties and respected families. Often these sheikhs also inherit their traditional authority through descent, which enhances their reputation and social prestige.[555]

The notion of social prestige further motivates sheikhs to expand their networks with state officials, particularly as the state system has proven to be valuable to the tribal system. State officials pride themselves on being tribal people who belonging to a well-known tribe or clan. This often prompts sheikhs from different tribes to compete over how extensive their networks with the state system are, as this can enhance their ability to resolve disputes swiftly and subsequently improve their social standing within the community.[556] It has been argued that this kind of tribal competition, which arises from strong kinship ties when the political parties are weak, can improve service provisions within local communities. The relationships between tribal people and their direct connections with the state system are deemed essential for social services and ensure accountability when responding to people's needs.[557] This is applicable to the way state officials and sheikhs engage with each other, as both can face pressure to respond to disputes and put an end to blood feuds within local communities. This was evident in some of the cases that resulted in revenge killings, where former prime ministers and other senior community leaders stepped in to intervene between the disputing tribes and negotiate a conciliation settlement.

A number of the interviewees stated that tribal people are more responsive to de-escalating their disputes when tribal leaders and state officials work together because they feel that they are being heard and that justice is being achieved through customary norms and social balance. This approach closes the gap between the formal legal system and tribal law, with a

[554] Abu-Hassan (n 16).
[555] Al-Abbadi (n 5).
[556] Ibid.
[557] Eleanor Gao, 'Tribal Mobilization, Fragmented Groups, and Public Goods Provision in Jordan' (2016) 49(10) *Comparative Political Studies* 1372.

balance being reached by prosecuting individuals and dealing with the implications of conflict for the community. Other scholars have noted that tribal kinships are on the rise in Jordan, which signifies the importance of these networks to local communities. Although such ties have been blamed for revenge killings and other tribal violence, tribal kinship has a role in mobilising solidarity and collaboration in tribal dispute management.[558] It reinforces the belief that the state system was forged around tribal identity and that its engagement with tribal law is a reflection of its own identity and the way disputes are being resolved. Tribalism is therefore perceived as an asset; it is argued that the deeper people can trace their roots, the more social capital they are likely to enjoy in Jordanian society.[559]

Figure 28: Community safety committee at Sweileh police station in Amman. The meeting, to which Munther Emad (middle) was invited as a guest, was cofacilitated by the tribal sheikh Ahmad Alsalahat (left) and lieutenant colonel Khaled Tarawneh (right). The sheikh is a known community leader who descends from a Palestinian heritage, while the lieutenant colonel comes from an influential Jordanian tribe. With the image of King Abdullah II in the background, this gathering represents the notion of partnership between state and tribal systems that works to resolve conflicts in Jordan.

Thirdly, the approval of the sheikhs' role by the state system endorses their status and empowers them through state support. In addition to their traditional authority, sheikhs are formally recognised by the police authority, court system, regional governates and other agencies. In many cases, the police department and the court system utilise sheikhs by referring matters for tribal settlements or postponing legal proceedings until a tribal conciliation is completed.[560] It is customary for police chiefs, regional governors and district administrators to consult with sheikhs when a blood feud or other serious dispute erupts within their jurisdiction. Sheikhs' input is necessary for state officials to determine the steps

[558] Watkins (n 24).
[559] Ibid.
[560] Furr and Al-Serhan (n 30).

that need to be taken to contain the conflict, which are often coordinated with the process of tribal law. State judges also take into account tribal dispute resolution procedures during court deliberations, sometimes only considering a bail application if there is a tribal conciliation.[561] These measures were featured in some of the case studies, where regional governors acted as the point of liaison between sheikhs and the state system as they are authorised under the Crime Prevention Law to issue orders for police to execute an arrest warrant or facilitate tribal evacuation once it is determined that there is a risk of a revenge attack. Some responses from the interviewees noted that the state often uses these provisions when working with sheikhs to complement tribal law efforts to contain conflicts.

The state's recognition of sheikhs extends to the monarchy, which has historically paid special attention to the tribal system and sought ongoing relations with tribal leaders. The Royal Diwan (the institution responsible for handling the relationship between the monarchy and Jordanian people) has issued a letter of endorsement to prominent sheikhs to recognise their role in resolving disputes involving blood feuds, honour crimes and breaching the surety of tribal guarantors.[562] Sheikhs express pride in being authorised by the monarchy as they regard this as a reinforcement of their legal authority. Various tribal leaders who were interviewed spoke fondly of their networks with the Hashemite dynasty and the perception that it descends from the Prophet Muhammad through longstanding tribal connections. King Abdullah I established the Jordanian Kingdom in 1921 on the basis of an agreement with tribal leaders, which legitimised his rule over the country in exchange for recognition of tribal autonomy. This agreement was regarded as the cornerstone of the modern state of Jordan as it paved the way for a constitutional monarchy, which was promulgated in 1928 and followed by the first parliamentary election in 1929.[563] These measures may explain the blend of traditional tribal customs and the contemporary state system in Jordan.

Prior to 1921, the Ottoman Empire maintained an indirect rule, with tribal people segregated and reliant on sheikhs to resolve their disputes. Tribal law was the main source of justice that governed people's relations, through kinship or defence pacts with other tribes. Following the creation of Transjordan, people began to be distinguished as Bedouin or non-Bedouin – that is, as tribal nomads or urbanised residents.[564] This was an outcome of the British and French mandates, under which tribal people, for the first time, found themselves stranded within political borders that divided their lands and ignored kinship ties. The British regime established an alliance with tribal leaders by offering them independence in return for their

[561] Watkins (n 24).
[562] Ibid.
[563] Abu-Hassan (n 16).
[564] Al-Abbadi (n 5).

support. It sought to integrate the nomads into the armed forces to gain their loyalty and exploit their local knowledge.[565] Although tribes maintained a degree of autonomy, their integration was perceived as a colonial strategy of achieving control. The regime took steps to regulate tribal law and establish links between the state system and tribal people. In 1924, it formed tribal courts for the nomads, which effectively limited their jurisdiction yet established the co-existence of tribal law and the state system.[566]

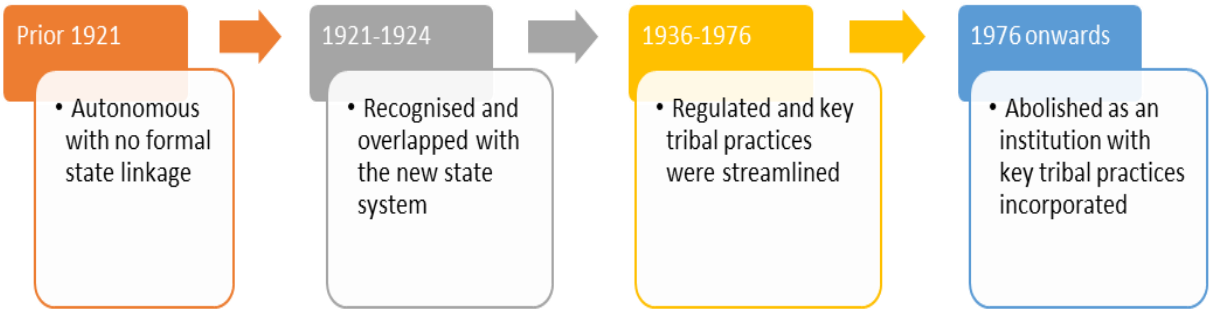

Figure 29: Changes to tribal customary law over time in Jordan.

Tribal customs continued to operate independently and to be regarded as the dominant source of law, particularly in remote areas. In 1936, the state of Transjordan, then a British protectorate, decided to modify tribal courts with the aim of consolidating its legal authority and establishing a balanced relationship with sheikhs. However, while tribal law was thereby regulated and linked with the new state system, sheikhs retained ultimate tribal authority. It is for this reason that modifications sought to structure tribal courts into different districts and place them under the legal authority of the state system. In 1976, shortly after the civil war, tribal law was abolished as a system, as it was perceived as contributing to dividing the population into tribal and non-tribal people.[567] The prevailing view was that Jordan had two separate legal systems for two group of people, which caused isolation and a weakened the state system.

The Royal Decree that abolished tribal law in 1976 (article 34 of the Civil Code) contained exceptions allowing cases of blood feuds, honour killings, and violating the security promised by the guarantor of a truce to be resolved through tribal dispute settlements. It has been argued that the monarchy intended to unify a society polarised between East Bankers and Palestinian Jordanians, or tribal and non-tribal groups.[568] It was envisaged that by absorbing the tribes and bringing all Jordanians under the jurisdiction of civilian law, the state system

[565] Furr and Al-Serhan (n 30).
[566] Khalil (n 184).
[567] Al-Abbadi (n 5).
[568] Watkins (n 24).

would be strengthened and engage meaningfully with all citizens. The state was still perceived as having made concessions by allowing these cases to be resolved through a tribal dispute settlement, and effectively incorporating tribal customs into the social and legal system of modern Jordan. The Royal Decree did not dictate that these cases must relate to tribal people, in contrast to tribal courts prior to 1976, which were only authorised to address tribal disputes.[569] This represented a recognition of the importance of tribes and their legal customs for the legitimacy of the state and the security of local communities. It was also an endorsement of the role of sheikhs and tribal kinship in enhancing social solidarity and the national identity of all Jordanians. This was a departure from the tokenistic, tactical or containment approaches adopted by the Ottomans and the British with regards to tribal law.

Over the past 45 years, the engagement of sheikhs and state officials evolved in various directions and became a significant feature of legal pluralism in Jordan. The expectation was that the rise of the state system would decrease the use of tribal customary practices and eventually they would fade away. However, the existing evidence and the cases provided in this thesis suggest that tribal law remains both strong and prevalent. It is evident that there is an intertwined engagement between state officials and tribal leaders, which goes beyond resolving blood feuds and honour crimes to cover other disputes and a range of community safety issues. These dispute resolution practices are no longer restricted to tribal groups, with some cases involving non-tribal as well as non-Jordanian people. The stability of Jordan and the growth of its legal system challenge the common belief that this is not feasible while there is a strong tribal customary system.[570] This highlights the exceptional nature of Jordan's model, which shows it is possible to preserve influential tribal customary law while enhancing the state system. Most interviewees pointed out that the status of sheikhs was instrumental in establishing a constructive engagement with state officials.

Jordan has experienced significant changes over the years, and these have impacted on the relationship between tribal leaders and state officials. The country has a relatively well-functioning legal system and high level of security, which has been maintained despite the growing instability of the region, influxes of refugees and economic strain. High government capacity and community resilience have enabled Jordan to cope with these challenges. Jordan hosts the second largest number of registered refugees per capita in the world, significantly influencing the demographics of the country and increasing the demand for services, including access to justice. Over 30 per cent of the population are non-Jordanians, with most residing in urban areas and integrated into the wider community through work and

[569] Al-Abbadi (n 5).
[570] Abu-Hassan (n 16).

other social engagements.[571] This has placed further pressure on the state legal system. It has been more feasible for sheikhs to step in to fill the gaps in state-sponsored justice as they are culturally accessible and likely to lead disputing parties to conciliate. This was evident in some of the case studies that involved non-Jordanians reaching out to sheikhs to resolve their disputes peacefully. It also was observed during the fieldwork that Syrian refugees working in Amman and engaged in disputes with local people resort to tribal law to defuse the conflict. Many of the interviewees provided similar explanations that involving the state legal system would escalate the dispute in these cases and would not necessarily lead to a satisfactory outcome.

The engagement of tribal leaders and state officials is currently manifested through various processes of tribal dispute settlements. Regional governors and district administrators have direct contact with a list of local sheikhs whom they utilise when a dispute arises, most of which relate to blood feuds or tensions that threaten community harmony. In these cases, sheikhs are consulted in assessing the need for dispute settlement and whether tribal truce and evacuation are warranted to prevent revenge attacks. Police chiefs also liaise with sheikhs on a range of security issues. Sheikhs are represented on the community safety committee, which consists of community leaders and occurs at local police stations. The police refer cases to sheikhs for a tribal settlement or accompany the *Jaha* delegation when serious violence erupts and there is a need to contain the conflict. Furthermore, court judges often refer cases for tribal settlement prior to making a legal determination. Judges also sometimes take into consideration whether releasing a person on bail would facilitate or jeopardise the tribal dispute settlement.[572] Former and current ministers are increasingly participating in tribal settlement procedures, particularly those that involve high-profile disputes, such as the case of Alsareh town. Most of these engagements are captured in the case studies, which reinforce the consistency of this type of legal pluralism.

These legal pluralistic relationships have, however, raised concerns that tribal law may undermine procedural fairness or derail the growth of the state system. With the revival of tribal customary law there is a perception that overreliance by the state on sheikhs to resolve disputes through tribal conciliation may allow offenders to evade prosecution or mitigate their sentence.[573] The state's engagement with tribal law is sometimes seen as undermining the rule of law, particularly with regard to facilitating tribal evacuations and referring disputing parties to resolve their conflict through a tribal settlement. The growing prevalence of tribal law could be interpreted as a sign of a weak state that is being overpowered by tribalism, or

[571] Jain (n 26).
[572] Watkins (n 24).
[573] Kao (n 267).

of a state system that is failing to take responsibility for keeping the peace. Such perceptions can place further pressure on the state system and its engagement with tribal customary law, particularly when tribal disputes escalate to revenge killings and disrupt the security of local communities.[574] For this reason, the application of legal pluralism in Jordan has conflicting dimensions. On one hand, it is justified to prevent blood feuds and restore peace; on the other hand, it has been viewed as violating universal human rights and reducing the state's sovereignty. This reinforces earlier arguments that the engagement of sheikhs and state officials should not be narrowly assessed from either of these positions; such engagements are naturally fluid and intertwined with local circumstances that involve deep-rooted cultural values such as tribal identity and codes of honour.

The status of tribal leaders has also influenced the perception of legal pluralism in Jordan. Although sheikhs are the cornerstones of this complex engagement with the state system, attitudes towards the role of sheikhs are shifting within some community groups. The social composition of the Jordanian community is changing due to the growing social and generational gaps in the country.[575] Jordan has one of the youngest populations in the world, with over 60 per cent of its population being under 30 years old. Many of the interviewees shared that there is a shift in attitudes among young people regarding tribal law and the role of sheikhs in resolving disputes. Some of the case studies and observations obtained from the fieldwork similarly indicate that there is a perceived rift between the younger generation and tribal elders. Sheikhs are also accused of using social coercion when bringing disputing parties to accept a tribal settlement. Sheikhs are seen to use their leverage with state officials by either seeking to pressure disputing parties to reconcile or keeping cases involving family honour away from public scrutiny.[576] These issues further illustrate the complexity and dynamic nature of legal pluralism in Jordan.

7.3 The state's engagement with tribal evacuation: Jalwa

The practice of *Jalwa* was considered by the interviewees as a major challenge to tribal law in Jordan. A large proportion (43%) of the interviewees believed that the custom of *Jalwa* needs to be regulated to minimise its impacts on the evacuated families. This view is reflected in the modifications introduced to the scope of *Jalwa* in recent years. Ten per cent of the interviewees thought that tribal law had implications for women's rights and safety, and ten per cent believed that there is a perceived lack of fairness and due process in the functioning of tribal law. These interviewees were referring to the barriers that women face in

[574] Lousada (n 27).
[575] Furr and Al-Serhan (n 30).
[576] Watkins (n 24).

participating and having their voices heard under tribal law. According to this view, tribal law is facilitated by sheikhs who are often elderly tribal leaders, making some community groups like women and young people feel excluded from the process. However, 37 per cent of the interviewees believed that tribal law does not conflict with human rights as it reflects cultural and moral values. These interviewees were adamant that tribal law allows all groups, including women, to be heard and caters for their need for safety and protection.

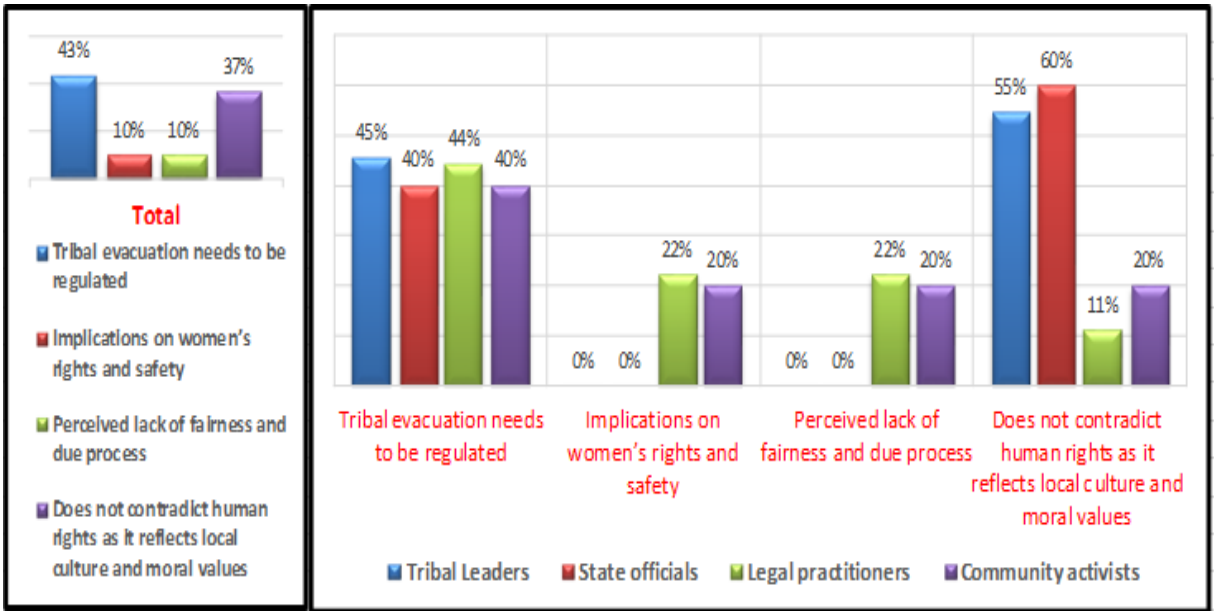

Figure 30: Challenges of tribal customary law in Jordan.

Figure 30 shows that all groups of interviewees were in agreement on the need for tribal evacuation to be regulated. Interestingly, only legal practitioners (22%) and community activists (20%) believed that tribal law had implications for women's rights and safety or issues with a perceived lack of fairness and due process. On the other hand, 60 per cent of state officials and 55 per cent of tribal leaders stated that tribal law does not contradict human rights. This indicates that state officials and tribal leaders are largely aligned in their views, while legal practitioners and community activists share common opinions around the fairness of tribal law.

The state's involvement in the execution of *Jalwa* demonstrates the extent of legal pluralistic relationships in Jordan. *Jalwa* is considered the most contentious feature of tribal law and continues to raise debate over the relevance of traditional justice to the Jordanian legal system. The practice of *Jalwa* persists due to the deep-rooted belief among tribal people that the offender's family and relatives must be evacuated from the area in which they live until a conciliation is reached with the victim's tribe. *Jalwa* is only applied in cases involving serious blood feuds and honour crimes such as premediated murder or rape, and where the opposing parties are neighbours. It is designed to prevent revenge killings, de-escalate

conflict and, ultimately, restore peace between the disputing tribes.[577] However, it is also seen as an act of collective punishment and vengeance by the injured party against those related to the offender. While the practice has been limited to a specific timeframe and to the immediate family of the offender, in some cases even fifth cousins have been required to relocate for few years until they were allowed to return home.[578] What makes *Jalwa* even more contentious is that the state legal system is often involved in facilitating the evacuation of offender's families. Jordan has been criticised for absorbing *Jalwa* into a modern civil state and approving dozens of evacuations every year.[579]

The Al-Hayat Centre for Civil Society Development (HCCSD) is one of the human rights groups advocating for *Jalwa* to be abolished and pressing the state system to abandon its approach of merely restricting the scale of evacuations. It is difficult to determine the magnitude of *Jalwa* as the documented numbers vary, but according to some figures, including those from the Interior Ministry, hundreds of Jordanians have been evacuated over the past decade. There are, however, reported cases of blood feuds where the victim's family did not pursue *Jalwa* as they decided to forgive the offender's family. The regional governors preside over the state's process of authorising *Jalwa*, pursuant to the provisions of the Crime Prevention Law of 1954. HCCSD is lobbying the state government to renounce *Jalwa* as it lacks any legal basis and infringes upon citizens' rights and freedoms.[580] The concern is that regional governors do not limit themselves to approving *Jalwa* and ordering police to facilitate the evacuation; there has been a case of a governor rejecting the sheikh's recommendation to evacuate the immediate family of the offender, and insisting instead that *Jalwa* be extended to the fifth degree of kinship in order to prevent revenge attacks. It is also not uncommon for governors to authorise the administrative detention of those family members who refuse to evacuate for their own safety due to concerns over revenge killings.[581]

The above shows that the state's involvement in *Jalwa* is not consistent with the assumption that the state system is weak and overpowered by tribal customary law. On the contrary, the state system is administering *Jalwa* from a position of strength and on the basis of prioritising certain legal principles, such as keeping the peace, over individual rights. This reflects the complexity of the relationship between the state and tribal system in Jordan, which appears to operate in the case of *Jalwa* from a fundamental interest in preserving social order and keeping the tribal society together. The ramifications of losing social control over blood feuds are seen as a threat to national security in Jordan. There have been a number of cases over

[577] Sutton (n 249).
[578] Ayman Halasa, 'Jalwa in Jordan: Customary Law and Legal Reform' (2013) *The Legal Agenda*.
[579] Taylor Luck, 'New Tribal Law Could Bring Great Change to Jordan' (2015) 21 *The National* 1.
[580] Halasa, 'Jalwa in Jordan' (above n).
[581] Watkins (n 24).

recent years in which the state has had to deploy hundreds of security officers and military forces to control riots and enforce curfews when a blood feud escalated to revenge killings between rival tribes.[582] These security measures alone are insufficient because they cannot replace the role of tribal law in reconciling the disputing tribes. State officials therefore believe that utilising tribal law and collaborating with sheikhs is their best chance to curb civil unrest and de-escalate conflict. It is a deliberate strategy to respond instantly and contain blood feuds by separating the parties and creating a space for conciliation. *Jalwa*, in this sense, reflects how the state legal system and tribal law reinforce each other.

Figure 31: The deployment of anti-riot forces was depicted in the case of Alsareh town that witnessed rapid revenge attacks and led to the closure of public facilities and night curfews.[583]

Tribal violence such as that which occurred in Alsareh is rare, which shows why the two systems actively work together to preserve the fragile tribal relationships. For this reason, tribal disputes are quickly dealt with by state officials and tribal leaders. Regional governors, district administrators and police chiefs join sheikhs and act as mediators when visiting the houses of the disputing parties and seeking their agreement to a truce. *Jalwa* is often exercised by the offender's family voluntarily as state officials and sheikhs persuade them to evacuate to prevent blood feuds. It is seen as a means of distancing the feuding families and calming tensions to allow the authorities to restore security.[584] *Jalwa* is also designed to empower and vindicate the victim's family and restore their dignity. It is a form of healing for

[582] Madalla A Alibeli and Karen Kopera-Frye, 'Tribal Law And Restoring Peace In Society: The Case Of'al-Jala'in Jordan' (2011) 2(3) *International Journal of Business and Social Science* 46.
[583] Sawaleif (n 436).
[584] Luck (n 579).

the victim's family as it helps them to feel less angry and vengeful as they come to terms with their grief. The process restores social balance, which is critical for tribal co-existence that has been disturbed by a blood feud or honour killing. It provides sheikhs and state officials with a calm and contained environment to negotiate a truce, reduce the risk of reprisal attacks and eventually restore a sense of peace.[585] Thus, state officials view *Jalwa* as a protection against vengeance attacks, despite the concerns that it uproots families from their homes.

The HCCSD, however, labels *Jalwa* a violation of human rights and argues that it contravenes the Jordanian constitution. It is regarded as a form of collective punishment that violates the principle of individual responsibility and undermines the rule of law. It also damages the reputation of the state, particularly as *Jalwa* has drawn the attention of the international community and was condemned by Human Rights Watch and the UN Human Rights Committee. It is for this reason that HCCSD issued a declaration on 17 June 2013 documenting the implications of *Jalwa* and calling for regional governors to stop authorising such practices.[586] However, the custom of *Jalwa* is rooted in tribal traditional justice and predates the modern state of Jordan. Although the legal status of Jalwa officially ended when tribal law was abolished in 1976, its legitimacy remains largely unchallenged and it enjoys the support of the state system. Most importantly, the recognition and acceptance of Jordanian society remains the main reason for the continuous legitimacy of *Jalwa*. Many Jordanians refer to *Jalwa* as a reflection of their tribal virtues and moral framework, which are rooted in a sense of identity, honour and solidarity.[587] This explains the process that the state government has been undertaking over the recent years of introducing modifications to *Jalwa* that go some way to addressing human rights concerns while preserving the tribal essence of *Jalwa* by preventing revenge killings.[588]

The application of *Jalwa* was historically regulated by the state system in 1936 under the British Mandate, with *Jalwa* being restricted to cases involving blood feuds and honour crimes. It also limited the relatives of the offender affected to the fifth degree of kinship. In 1973, the state introduced guidelines further limiting *Jalwa* to the third degree of kinship. However, historical records show that this was never implemented because of a lack of cooperation and the risk of revenge feuds.[589] The persistence of *Jalwa* comes from public support and security threats to social peace, as was again made evident after the abolition of tribal law in 1976, which was supposed to terminate the practice of *Jalwa*. Tribal customs of

[585] Alibeli and Kopera-Frye (n 582).
[586] Halasa, 'Jalwa in Jordan' (n 578).
[587] Sutton (n 249).
[588] Luck (n 579).
[589] Al-Abbadi (n 5).

Dia (blood money), *Atwa* (truce) and *Jalwa* (exile) were reviewed in Jordan in 1987, 2006 and 2009, which illustrates that the monarchy recognises the legitimacy of these practices despite abolishing tribal law. *Jalwa* was further amended in 1987 by reducing the degree of kinship to the second generation.[590] This indicates that Jordan intended to remove tribal law as a separate legal system by abolishing it in 1976, while gradually absorbing and regulating tribal practices within the modern state system.

The debate over *Jalwa* has continued in recent years, with the state government introducing further changes through the Crime Prevention Law in 2016 to refine the scope of *Jalwa*. This has limited the evacuation to the offender's father and siblings for a period of two years, subject to renewal. The changes also strengthened the role of regional governors in assessing and coordinating *Jalwa*. Governors were given further discretionary powers under the Crime Prevention Law to authorise administrative detention and prevent the risk of blood feuds. Interestingly, these amendments stated that *Jalwa* can be enforced not only in blood feuds or honour crimes, but also when breaching the security promised by tribal guarantors.[591] While this indicates that the Jordanian government recognises concerns over uprooting families from their communities, it also actively fosters a closer relationship with tribal law. Despite the criticism that the state government receives over *Jalwa*, it is clear that it has a strategic interest in preserving social balance and community cohesion. The government recently issued a charter on 29 September 2021 further regulating *Jalwa* by limiting it to a maximum of one year, at which time it needs to be renewed if a tribal settlement has not been reached. This change was announced following consultation between the Ministry of Interior and tribal leaders, who made a commitment to minimise the use and impact of *Jalwa*.[592] These modifications show that Jordan is determined to continue building on its relationship with tribal law.

This determination is also manifested in opposition to the state's Supreme Court of Justice, which declared that there is no legal basis for *Jalwa*. The court ruled in 1984 that regional governors have no legal authority to enforce any tribal customs that were part of tribal law because such law was abolished by Royal Decree in 1976. Therefore, the court deemed the administration of tribal customs by governors – including enforcing evacuation or administrative detention – not permissible. It was also noted that tribal law was designed for specific tribes, and hence it cannot be extended to all Jordanians. However, the court ruled that governors are granted discretionary powers under the Crime Prevention Law to restrict

[590] Watkins (n 24).
[591] Ayman Halasa, 'Crime Prevention in Jordan: Consecrating Jalwa', *The Legal Agenda* (2016, October 3), <https://english.legal-agenda.com/crime-prevention-in-jordan-consecrating-jalwa/>.
[592] PNA, 'Jordan: Announcement of a New Charter for Jalwa', *Petra News Agency* (2021, September 29)<https://www.petra.gov.jo/Include/InnerPage.jsp?ID=190612&lang=ar&name=news>.

people's freedoms in order to restore security.[593] This raises the question of why the Jordanian state continues to facilitate *Jalwa* when its own Supreme Court states that the practice has no legitimacy. The state's support for *Jalwa* thus evidently stems from prioritising social order over concerns about infringing individuals' freedoms and about repercussions for its own international standing. The high level of involvement by the state system in the application of *Jalwa* suggests that this legal custom is deeply rooted in and its legitimacy derives from public recognition. For instance, in January 2016, the Deputy Prime Minister was directly involved with a group of sheikhs in negotiating a truce between two disputing tribes which resulted in facilitating the evacuation of the relatives of the offender out of their town under police protection.[594] The cases in Chapter Four provide similar accounts that confirm the state system is intertwined with *Jalwa* practices.

Jalwa is occasionally enforced when members of the offender's family refuse to leave their home voluntarily and are thus regarded as potential instigators of violence. In these cases, the governor can authorise the administrative detention of any person deemed a threat to public order until the dispute is contained. Such measures are used against victims, mostly in cases of honour crimes where the state may detain a person for fear of their safety until a settlement is reached with the relevant tribe.[595] However, the detention of victims of honour crimes is no longer a practice, as in 2018 Jordan established an alternative to prison for women placed under administrative detention. This was a joint initiative between civil society organisations and the state legal system, which shows that there are some deliberate and collaborative measures being taken in Jordan to fill the gap between tribal customary law and the modern state system.[596] The HCCSD has formulated similar approaches over recent years by consulting with tribal leaders and state officials, which resulted in restricting the practice of *Jalwa* to limited circumstances.[597]

While the application of *Jalwa* presents some challenges, these also offer opportunities for state officials, tribal leaders and civil society organisations to work on the implications of *Jalwa* for the community. The fact that *Jalwa* has been modified a number of times over recent years shows the level of cooperation and recognition from all sectors of the country, including tribal leaders, regarding the effects of evacuation and administrative detention. It also illustrates the delicate balance Jordan is maintaining by not abandoning *Jalwa* and disturbing social balance.[598] There are times *when* Jalwa is inverse, meaning the victim's

[593] Halasa, 'Jalwa in Jordan' (n 578).
[594] Lousada (n 27).
[595] Furr and Al-Serhan (n 30).
[596] Jain (n 26).
[597] Halasa, 'Crime Prevention in Jordan' (n 591).
[598] Watkins (n 24).

family chooses to evacuate their homes instead of the offender's family. Like forced *Jalwa*, inverse Jalwa is rare, occurring where the victim's family is adamant about not reconciling with the offender's family and thus seeks revenge to redeem its honour and dignity. It may also occur when the offender's family is seen as more powerful and uninterested in making amends with the victim's family. In this case, the victim's family undergoes self-imposed *Jalwa* rather than having to accept a conciliation settlement when there is no genuine will to restore broken relationships.[599] It is for this reason that *Jalwa* is most commonly undertaken voluntarily, as it shows that the offender's family is evacuating their homes willingly as a sign of guilt for their member's action, and is thus a gesture of respect to the victim's family. This sets the scene for tribal leaders to de-escalate the dispute and restore social balance.[600]

Public opinion surrounding *Jalwa* further illustrates the complexity of this tribal custom within modern Jordan. In a recent study examining Jordanian attitudes, it was found that the majority of participants support the use of *Jalwa*. It discovered that there was no significant difference between young and old people; however, people who grew up in rural areas were more in favour of preserving *Jalwa* in regional Jordan than those who grew up in urban areas. Nevertheless, almost all participants agreed that *Jalwa* should be restricted to the immediate family to minimise its impact on the community and make it more compatible with modern times.[601] These views are consistent with the responses collated from interviewees for this thesis, who acknowledged the concerns over uprooting families from their community because they are related to an offender. Some tribal leaders noted that they have been advocating that *Jalwa* be eliminated or limited to extreme cases because they believe that, in contemporary society, *Jalwa* has far-reaching consequences and impacts on the work, study and social life of those affected. Interestingly, one sheikh rejected any amendments to *Jalwa* because of his concern about disturbing social balance and losing control over revenge feuds.

The concerns of this sheikh seem to resonate within the state system, which has been maintaining a delicate balance between modifying *Jalwa* and preventing revenge feuds. Regional governors exercise this approach when they take a direct role in implementing *Jalwa* by visiting the disputing families and seeking their consent to a truce of three days to contain the conflict. The Public Security Department would then ensure that the offender's extended family evacuate safely and protect their properties from reprisals. Sometimes this may escalate to imposing a curfew and checkpoints to separate the disputing tribes when tension is widened. These processes are conducted under the supervision of regional

[599] Alibeli and Kopera-Frye (n 582).
[600] Al-Abbadi (n 5).
[601] Sutton (n 249).

governors and the Ministry of Interior.[602] It is reported that hundreds of families every year abandon their homes and workplaces and withdraw their children from schools or universities as a result of *Jalwa*.

Despite concerns over the use of *Jalwa* in modern times, it is perceived as a security measure that is credited for saving lives and preserving tribal unity. Sutton assessed public attitudes in Jordan towards *Jalwa* in 2018 and found that a majority of participants viewed it as an effective peacekeeping mechanism. *Jalwa* is also seen as a form of social deterrence that reinforces self-awareness and moral values through rejecting violent crimes and preserving social solidarity.[603] It discourages people from committing crimes, knowing that their loved ones may suffer or be humiliated as a result of their actions. It is thus seen as reducing tension between disputing parties, protecting the offender's family and deterring future crime.[604] Although some regard the use of *Jalwa* as unconstitutional, they recognise that its legitimacy remains largely unquestionable due to public support. For this reason, there is a general consensus that limiting the use of *Jalwa* to the immediate family of the offender is a practical reform that still attracts the support of the wider community.[605] Preserving *Jalwa* is also seen relieve pressure on the state by relying on kinship networks to exert social control over their members and ensure conformity with the tribal truce process. This explains why tribes use the fifth degree of kinship as a threshold, as this relationship defines the extent of collective responsibility for blood feuds and mutual aid.[606]

The application of the tribal truce, evacuation and administrative detention was featured in a number of the cases presented in Chapter Four. In the town of Alsareh, the murder of Dr Qatebah triggered revenge attacks and the Governor of Irbid intervened to establish a truce between the two tribes and liaised with sheikhs to de-escalate the conflict. Security forces were deployed and imposed an evening curfew throughout the town to prevent further revenge feuds and facilitated the evacuation of the families of the accused. Within a few weeks, however, a breach of the truce occurred in the town, resulting in a further death. Security forces made a number of arrests to prevent further escalation of tribal violence and the authorities facilitated the evacuation of a number of families from the Alsheab tribe. The governor exerted pressure on both tribes to resolve the dispute. This was evident in the administrative detention that was exercised against members from both tribes. There were former ministers involved in this process who joined the tribal delegation to appeal for calm.

[602] Halasa, 'Jalwa in Jordan' (n 587).
[603] Alibeli and Kopera-Frye (n 582).
[604] Sutton (n 249).
[605] Halasa, 'Jalwa in Jordan' (n 578).
[606] Alibeli and Kopera-Frye (n 582).

Other cases provide further insight on these engagements, such as that of the Jordanian student killed in Iraq. State officials worked with sheikhs to reach a truce and de-escalate the conflict as some reprisal attacks were perpetrated against Iraqi people in Ajloun, the hometown of the victim's tribe. In the case of the 'dilemma of a sister', dealing with an honour crime, the sheikh worked with the governor and the victim was placed under an administrative detention due to fears for their safety and the risk of blood feuds. This placed pressure on the families to reach a truce and accept a conciliation settlement. In the case of Rania, who died in a traffic accident, tribal truce and evacuation were exercised under the justification of separating the disputing parties and protecting the offender's family. The truce enabled the offender's family to evacuate safely under police protection and provided an opportunity for tribal leaders to contain the conflict. The case of university violence shows how brawls between students from rival tribes were handled, as the deployment of security forces was complemented by sheikhs reaching a truce and pressing tribal leaders to exert social control on their members to curb youth violence. These engagements highlight the fluidity and the extent of relationships between the state system and tribal law in Jordan.

Figure 32: An artwork circulated in various newspapers sympathising with families displaced as a result of blood feuds in Jordan. The article reads, 'Jalwa: a heavy legacy that saved lives in the past is being used to displace families in the present'.[607] It shows the shift of public opinion surrounding the impact of Jalwa on Jordanian society.

In summary, the application of collective responsibility is seen as a useful mechanism for the state system and tribal law as it helps prevent blood feuds and de-escalates conflict. *Jalwa* enables tribal leaders and state officials to engage quickly with disputing tribes through a balanced approach, whereby the offender's family is morally expected to evacuate and, in

[607] Alrai, 'Tribal Jalwa: A Heavy Legacy', *Alrai Newspaper* (2021, June 10), <https://alrai.com/article/10608897>.

return, the victim's family contains its outrage and authorities are able to de-escalate the conflict. Jordan demonstrates that an ancient tribal tradition like *Jalwa* can be incorporated into a modern state system – although it is a complex task that requires a deliberate strategy and delicate balance to build a meaningful relationship between modernity and tribalism.[608] *Jalwa* also illustrates that tribal identity and cultural values of honour and dignity are at the heart of the dispute resolution process in Jordan. At the same time, modifications to *Jalwa* demonstrate that state officials and tribal leaders are adaptable and responsive to social changes.

7.4 The state's engagement with conciliation settlements: Sulha

In response to the question of whether there are any emerging issues that tribal law could resolve, 37 per cent of the interviewees stated that tribal law should be focused on conciliation settlements to enable disputing parties to make peace and forgive each other. This reinforces the common belief that the distinctive feature of tribal law in Jordan is conciliation settlements. However, 57 per cent of the interviewees thought that tribal law should engage with young people and universities to curb social disorder, and seven per cent believed that tribal law needs to bridge the gap with the new generation to grasp emerging social issues.

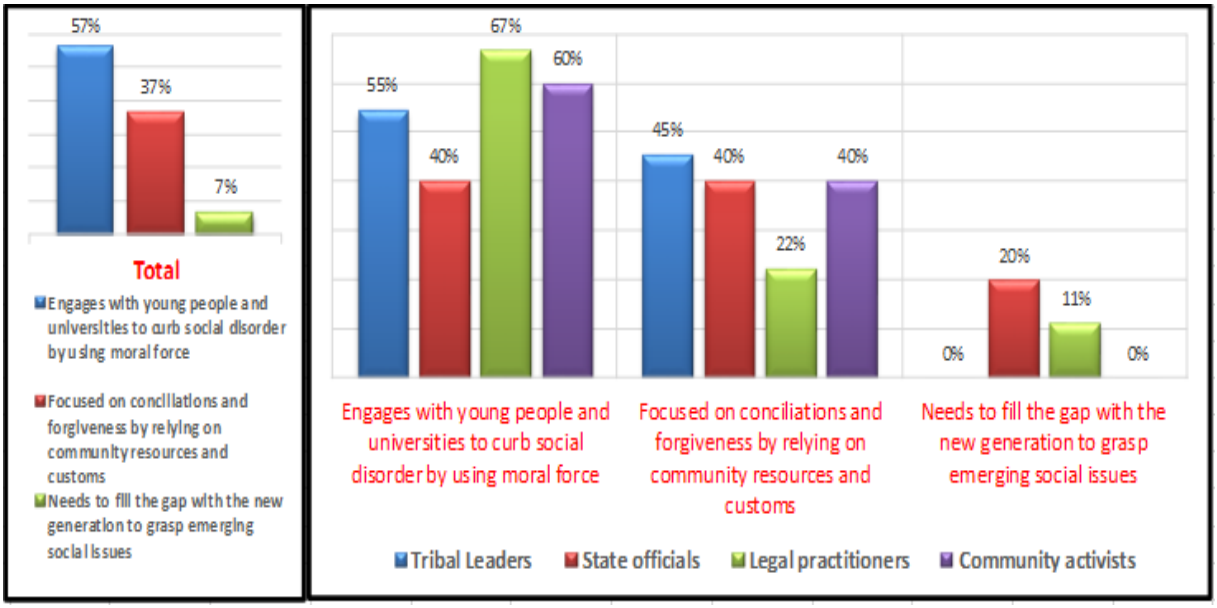

Figure 33: Priorities for tribal customary law in Jordan.

Figure 33 highlights that almost all groups of interviewees, except legal practitioners, were in agreement on the need for tribal law to focus on conciliation settlements. The majority of legal practitioners (67%) believed tribal law needs to engage with young people and universities to combat social violence. State officials (40%) were the least likely to suggest

[608] Sutton (n 249).

that tribal law should work with young people and universities on the rise of youth violence. Perhaps this is an indication that state officials do not see a role for tribal law in this area. However, state officials (20%) and legal practitioners (11%) were the only interviewees to suggest that tribal law needs to bridge the gap with the younger generation. These results may indicate that while there is strong support for tribal law to remain focused on traditional conciliation settlements, there are also very strong views that tribal law also needs to engage with the younger generation and emerging social issues.

The state's engagement with the conciliation process of *Sulha* comes in various forms. It is perhaps most visible when the state system is seen to be publicly working with tribal law. As the ultimate process of tribal dispute resolution, *Sulha* brings the community and the state system together under a Bedouin tent to restore broken relationships and preserve social balance. The cases in Chapters Four and Five have shown how state officials were invested in this process and contributed to the restoration of peace.[609] In the case of Alsareh town, there were a number of high-profile individuals involved in the conciliation process, given the level of seriousness of this dispute. The former prime minister, Abed Al Raouf Alroaydh, was the head of the tribal delegation that intervened between the Alsheab and Alathamnah tribes. The delegation also included politicians, religious clerics and tribal leaders who joined their efforts to persuade the two tribes to reconcile. The size and high profile of the delegation was a deliberate strategy to appeal to the disputing tribes to exercise forgiveness and preserve tribal solidarity. The presence of senior state officials emphasises the honour and respect for these tribes. It shows that the engagement with these public conciliation processes not only serves the state's interest in keeping the peace but also fulfils the desire of state officials to reaffirm their tribal identity.[610]

The conciliation agreement was signed publicly by the police representative along with members of the delegation and guarantors of the disputing tribes. This signifies the collective responsibility for maintaining the conciliation, with the state declaring before the attendees that it is committed to preserving the integrity of the agreement.[611] It was noted that the state's participation in this conciliation was photographed and filmed, which was later circulated by media outlets across the nation. The agreement sought a commitment from the two tribes to drop their cases in the state courts, while allowing the state to continue with its prosecution of those charged with murder. It was a condition that individuals from both tribes charged with the premediated murder were not to be given any leniency. However, the agreement enabled the release of individuals who were in administrative detention as well as

[609] Johnstone (n 9).
[610] Abu-Hassan (n 16).
[611] Al-Abbadi (n 5).

allowing the evacuated families to return to their homes and businesses in the town. Both tribes provided assurance through their guarantors to abide by the agreement and be held responsible for any violations by their members. A copy of the agreement was obtained by the Interior Ministry to be documented in the local police station and the governor's office. Although these engagements often lead to criticism of the state by some community groups, the state appears to see the value of being involved in tribal settlements as outweighing any risks.[612]

Resolving blood feuds and community frictions through a tribal dispute settlement aids the state system in various ways. It facilitates an instant response to curb the escalation of conflict by using customary measures such as separating the disputing parties and invoking collective responsibility to prevent revenge feuds. It allows the state to prioritise its resources, while working with tribal leaders on keeping the peace.[613] The state recognises that a tribal conciliation agreement is more likely to ensure compliance from the disputing parties than a formal court proceeding. Although the concept of collective responsibility sometimes turns a dispute between two individuals into a larger conflict between their families or tribes, it also means that individuals are more conscious of the ramifications of dragging their community into conflict.[614] For this reason, tribal dispute resolution mechanisms are seen to provide a quick settlement that compels all parties to reconcile and offer forgiveness. *Sulha* also focuses on enabling community groups to preserve their honour and sense of belonging. These values make conciliation settlements a moral obligation and a shared duty between the state system and tribal law in Jordan.[615] The case studies indicate that the state's involvement in tribal conciliation settlements represents a strategic priority for the country as it solidifies the collective responsibility of maintaining social order.

This was manifested in the case of the Jordanian student killed while studying in Baghdad. The state system resorted to tribal law to keep the peace in Ajloun, one of the most tribal regions in Jordan, as well as preventing potential interstate tension with tribal people in Iraq. The risk of tribal violence and the incentive to reach a quick settlement prompted the state systems in both Jordan and Iraq to collaborate and facilitate the mission of the tribal delegation to resolve the dispute. Barjas Al Hadid, a well-known tribal judge in Jordan, was reported to have travelled to Iraq and met with Saddam Hussein along with state and tribal figures during this process. The conciliation settlement was eventually conducted in the presence of government officials from both countries and included a significant amount of

[612] Watkins (n 24).
[613] Abu-Hassan (n 16).
[614] Al-Ramahi (n 11).
[615] Al-Abbadi (n 5).

blood money and assurances that the businesses and homes of Iraqi people in Ajloun would be protected. The accused was also released from prison in Iraq. On one hand, this shows the influence of the tribal system in Jordan on modern state systems, which agreed to resolve this dispute through a tribal settlement. On the other hand, it also reveals how state officials from both countries recognised the legitimacy of tribal law in resolving a dispute that crossed jurisdictions. This highlights the adaptability and accessibility of tribal law in the region.

The case of the 'dilemma of a sister' reveals another dimension of the state's involvement in honour-related crimes. The state system seems to recognise the public order risk of these crimes as the governor authorised the detention of the male who was assaulted over concerns for his safety. The governor was interested in having this dispute resolved promptly; hence, the sheikh was supported by the state when putting together an arbitration committee that resulted in allowing the accused to make an oath. Here, tribal settlement entails providing the accused with an opportunity to clear his name, where the honour and reputation of all parties, particularly the sister, were preserved. The state legal system in Jordan appears to recognise customary norms related to family honour. Hence, it was open to facilitating cultural needs for saving face and protecting people's reputations.[616] The conciliation gathering was also attended by several state officials including a senior police representative. A copy of the agreement was taken by the police representative to be archived with local police. The male was then released from administrative detention. Such a dispute illustrates how these two different procedural systems have come to have a shared goal of keeping family honour intact.

The state legal system was also seen to be working with tribal law in traffic-related disputes. In the case of Rania, the victim's father was adamant about not reconciling with the offender's family. The state, in turn, was not inclined to release the offender before a tribal dispute settlement was reached with the victim's family due to fear of reprisals. The offender was 17 years of age at the time, so the court system would have been able to release him had there been no concerns for his safety. On one hand, this placed pressure on the offender's family to continue with their efforts in reconciling with the other family. It also led to tribal leaders exerting pressure on the victim's father to accept a conciliation settlement. This case shows that the use of coercion, or social pressure, to persuade disputing parties to resolve their grievances is not an uncommon strategy for tribal and state systems in Jordan.[617] On the other hand, it reinforces how the state system prioritises preventing revenge

[616] Stewart, 'Customary Law Among the Bedouin of the Middle East and North Africa' (n 1).
[617] Watkins (n 24).

Figure 34: A Jordanian Police representative signing a conciliation agreement at the conclusion of the public settlement, where other members of the tribal delegation also signed the document to declare the authentication and support for this conciliation contract.[618]

feuds and keeping the peace over other legal principles such as the fairness of legal procedures and the rule of law. This was not a straightforward task; it was shown in this case that the state legal system was under mounting pressure from civil and legal institutions to release the offender. The presiding judge then ordered his release, mitigating the perception of tribal law interference in the court system. However, the offender was detained shortly afterwards under the Crime Prevention Law because of reports of a possible revenge attack.

This shows how the state justifies the use of administrative detention to preserve social order and allows tribal law the opportunity to resolve community disputes. Although this raised concerns over human rights and the role of tribal law in undermining the state legal system, it appears to have enabled the sheikh to persuade the father to acquiesce to a tribal settlement. The sheikh capitalised on this momentum by convening a tribal delegation to facilitate a conciliation settlement, which occurred in the neighbourhood and in the presence of state police and community leaders. The gesture of having state officials join tribal leaders under a Bedouin tent in resolving a local community dispute appears to be significant. It indicates that the state system is embedded in these customary procedures, rather than

[618] Raialyoum, 'A Tribal Reconciliation Deed in Jordan', *Raialyoum* <https://www.raialyoum.com/-صك-صلح-عشائري-بالأردن-يطيح-بمنظومة-الق/>.

merely complementing tribal law in Jordan. The state seems invested in preserving social balance and solemnising the rituals of making peace between the tribes.[619] Rania's father shared that this was a turning point in resolving the dispute as he felt respected and heard when the state and tribal law acknowledged his grief. He stated that this provided him with a sense of justice and solidarity, which allowed him to forgive and make amends with the other family. The father expressed his gratitude for this process as he felt that it saved him from resorting to vengeance. Thus, this case shows how traditional rituals are being incorporated into the modern legal system.

The conciliation featured an offering of blood money, which was forfeited by the victim's family and indicated their forgiveness of the offender's family. This emphasised the honour of the disputing parties and the value of restoring relationships. The court system recognised such rituals when the father appeared before the presiding judge to present the agreement and request the release of the offender. Rania's case illustrates how the governorate, police and court institutions are interconnected with tribal law, with both systems sharing common values, particularly with regard to keeping the peace. In contrast, the case of youth violence within Jordanian universities reveals a problematic relationship between the state system and tribal law. The escalation of violence within university campuses was blamed in some quarters on the state and its method of engagement with the tribal system, which bolstered tribalism and weakened the rule of law. The state was seen as depending on tribal customs and abandoning its duty of enforcing civil law,[620] Tribal leaders engaged with the Interior Minister and various governors to curb the rise of violence. The King's Advisor for Tribal Affairs led the process of conciliating the disputing tribes through a tribal gathering, which included a large contingent of state officials. This further emphasises the argument over whether the state's engagement with tribal law undermines the rule of law and the state's sovereignty, or strengthens stability and social solidarity.[621]

The other element of the state's engagement with conciliation settlements relates to public acceptance and the likelihood of compliance with tribal law, in comparison with the state legal system. The case of the 'breach of tribal bail obligation' provides further insight into the attitudes of Jordanians towards justice and how this influences the state system to support the prevalence of tribal law. The case suggests that this violation of tribal law is still recognised as a crime in the eyes of Jordanians and their modern state system. The breach of the surety promised by the guarantor occurred when a revenge feud was perpetrated against the protected tribe. Apart from the revenge crime, the mere violation of the settlement

[619] Al-Abbadi (n 5).
[620] Kao (n 267).
[621] Jain (n 26).

was considered a serious crime because it dishonoured the guarantor. It was deemed an insult to the guarantor's status. The guarantor sought the intervention of the governor, and a conciliation settlement was facilitated to redeem the guarantor's honour and prevent tribal tension. The rituals involved in this process signify the importance of preserving the guarantor's role; again, state officials were part of the delegation convened for this purpose. The settlement was signed by the police chief and led to the withdrawal of the guarantor's complaint. This reveals the shared recognition of tribal guarantors by the state system and Jordanian society.

This suggests that the state's decision in 1976 to abolish the tribal system to allow tribal customs that deal with cases of breaching the guarantor's surety was not a tokenistic approach. Tribal customs have since been approved by the monarchy to resolve these cases, along with blood feuds and honour crimes, because of their implications on social balance and public order. This explains the state's recent reform, rather than abolition, of tribal evacuation in these types of cases. The belief is that tribal people are likely to adhere to legal customs in resolving serious crimes due to their reliance on collective responsibility and social solidarity. Restoring honour and dignity is often the most satisfactory solution in these cases.[622] The state's engagement with tribal law utilises these principles as a security measure. The question is whether this engagement changes when less serious crimes are involved. The case of the 'father's predicament' was resolved without any involvement from the legal system, and there was resistance from the sheikh when the victim's brothers wanted to report the incident to the police. However, in the case of 'the standoff of a Pakistani migrant', the incident was reported to the police, although no formal action was taken. The victim then reached out to the sheikh, who escalated the matter with the police authority. This led to the arrest of the offender and a subsequent conciliation settlement within the family. This indicates that the parties in domestic disputes typically endeavour to resolve the issue without state intervention, unless there is lack of compliance.

The case of the 'Egyptian waiter' provides insight into the role of legal and political institutions in resolving this incident. As the assault was filmed and circulated on social media, the police were under pressure to prosecute the offenders, who were the brothers of a Jordanian MP. The Interior Ministry and other departments were involved since the incident became a national affair, potentially impacting the country's ties with Egypt. Sheikhs played a role in resolving the dispute through cooperation with the Aqaba governor and the Egyptian consulate. The conciliation focused on restoring the victim's dignity while saving the face of the MP. The delegation joined the disputing parties in holding the Egyptian and Jordanian

[622] Al-Abbadi (n 5).

flags as a gesture of unity. The case of the 'heated election' gives further insight into the fluidity of relationships between the state system and tribal law. The brawl was the result of a heated election campaign between two rival candidates representing their tribes across two neighbouring villages. Although the state was accused of siding with one candidate, this did not seem to prevent the governor and sheikh from working together to resolve the traffic accident that resulted from the brawl. This shows how tribal law can be available in a range of circumstances, with state officials not hesitating to tap into it whenever there is a need to de-escalate tension and elevate social solidarity.

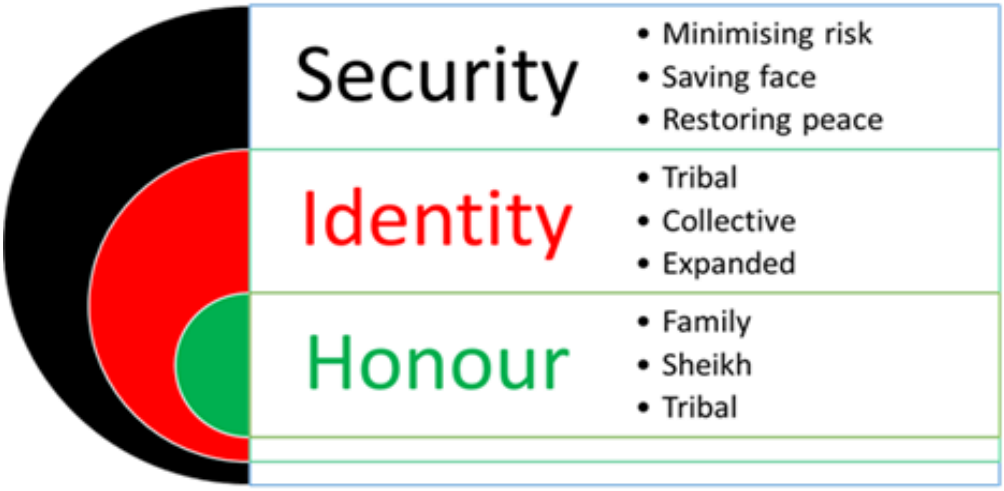

Figure 35: Principles of tribal customary law.

These cases reveal that the state's engagement with customary law involves multiple dimensions which revolve around enforcing security, maintaining identity and restoring honour. It is argued that the collaboration between the state system and customary law is based on these principles, which are cultural values and the incentives for social order. This is a distinctive model of partnership between traditional tribal law and modern civil law in Jordan, as the two systems have become intertwined along these principles. The state system seems invested in tribal law as part of a deliberate strategy of preserving security and social order. It was shown in the previous chapter how security was manifested in the case studies, as tribal law resolved disputes by way of minimising risk, saving face and restoring peace. State officials appeared aligned with this strategy; hence they facilitated the sheikhs' role. Tribal law utilises the concept of identity to invoke a sense of belonging as a means of resolving disputes and preserving social solidarity.[623] The state system appears to prioritise collective responsibility as it enhances national identity as well as helping to prevent revenge feuds. State officials were also seen to capitalise on this concept by joining the conciliation delegations and demonstrating their tribal identity rather than their official status. This serves

[623] Ibid.

to enhance their prestige, social capital and moral authority within the wider community.[624] Lastly, the function of tribal law is based on the value of honour, which penetrates all aspects of people's lives in Jordan. Regional governors and other prominent state officials openly align themselves with tribal values and regard their engagement with tribal delegations and conciliation settlements as a source of honour and satisfaction. In summary, these principles demonstrate how tribal law and the state system reinforce each other through a partnership arrangement. Such an arrangement, whether it is a deliberate strategy, spontaneous or good fortune, is evidently a source of stability in Jordan.

7.5 Jordan's model of partnership in contrast with other states

It is clear that relations between customary law and the state legal systems are based on different models. This was evident in the seven cases examined throughout the thesis to shed light on models from different parts of the world. Jordan's model seems to differ from these cases in a number of respects. There are, however, similar features between Jordan's model and a number of these cases, mostly revolving around the commonality of customary law. Albanian and Jordanian customary laws both enjoy strong community recognition and have experienced different relationships with formal legal systems over the past century. Both customary laws have a strong focus on the value of honour and sense of identity. They also govern various social norms, including resolving blood feuds and revenge killings. However, Albanian customary law is not currently codified by the state system, despite it being written down. The written text has not enabled Albanian customary law to be aligned with statutory law. On the contrary, it led customary law to become rigid and open to conflicting interpretations. The reliance on Albanian customary law is also seen as an outcome of a weak state system, especially in rural areas.[625]

In contrast, tribal law in Jordan continues to operate mostly in oral form. It is recognised by the state system, being regulated and modified a number of times over the past 45 years. The practice of *Jalwa* has been amended several times since 2016, demonstrating the level of active engagement between the state system and tribal law. It may also illustrate that the unwritten text affords officials in Jordan the flexibility to introduce such changes. This indicates that the state system is resorting to a harmonisation strategy to strike a balanced approach between the need for *Jalwa* and addressing human rights concerns. While the state is bridging the gap with tribal law, it is keen to preserve the integrity of some customs such as *Jalwa*. The state accepts that tribal law has a degree of autonomy and its values are different from civil law. Tribal law, in return, does not question the legitimacy of the state

[624] Watkins (n 24).
[625] Joireman (n 83).

system and its authority to introduce these changes.[626] This reflects the cooperative and flexible legal pluralistic relationship between the state system and tribal law in Jordan. Albanian customary law, however, operates to fill a security vacuum, particularly in northern Albania and Kosovo, due to the lack of trust in and recognition of the formal legal system.[627]

This reflects the importance of recognition in validating a legal system. While recognition of Albanian customary law is built on community acceptance, the state legal system seems to lack public legitimacy. This prevents constructive engagement between customary law and the state legal system. The case of Afghanistan provides further insights. Customary law in both Afghanistan and Jordan is officially recognised in their respective constitutions and viewed as legitimate by local communities. Both systems are based on traditional tribal justice that reflects cultural values and seeks to maintain social solidarity and security. They are also both seen as an impediment to civil law and human rights, particularly with regards to collective responsibility and gender inequality. Following the fall of the Taliban in 2001, the new state system had a period of relative stability and substantial international support to rebuild the country. Instead of engaging constructively with customary law, however, the state relied heavily on law enforcement for social order. The state system was also seen as corrupt, dysfunctional and incompatible with local culture.[628] Apart from drafting legislation to regulate customary law – which was never enacted – the state system did not pursue a holistic approach to work effectively with the traditional system. Consequently, the relationship between customary law and the state system moved from competitive to combative in those 20 years, which eventually culminated in the failure of the new regime and the return of the Taliban.[629]

In contrast, the state system in Jordan has been investing in its relationship with tribal law to preserve social balance and public order. The state system aligns itself with the tribal system to enhance its legitimacy and secure popular support.[630] It is a distinctive strategy, with the state inviting tribal sheikhs to share the responsibility of keeping the peace and maintaining stability within local communities. A public opinion survey conducted in 2014 by the Program on Governance and Local Development found that 59 per cent of Jordanians favour a state system that is a mix of tribal and civil law, compared to 29 per cent who prefer tribal law alone and only 12 per cent favouring civil law alone.[631] This illustrates the significant support for the incorporation of tribal law into the state system in Jordan. It also indicates that the

[626] Swenson (n 57).
[627] Bardoshi (n 101).
[628] Braithwaite and Wardak (n 104).
[629] Swenson (n 57).
[630] Watkins (n 24).
[631] Jain (n 26).

state's engagement with tribal law is a conscious approach to reflect people's desires and strengthen its legal authority. While the state system is seen to benefit from this relationship, there are incentives for tribal law to maintain a degree of autonomy and increase its validity. For this reason, sheikhs have been able, over the past 45 years, to expand on their role by resolving a wide range of disputes involving the wider community.

The state's engagement with customary law in Afghanistan and Jordan shows how this relationship can be linked to community cohesion and national stability. Timor-Leste's journey since gaining independence highlights how a new regime can consolidate its authority and achieve security by having a shared vision and collaborative relationship with customary law. Jordan and Timor-Leste have a common experience with regard to embracing customary law as a source of national pride that links to people's heritage, indigenous identity and struggle for self-governance. Sheikhs or village chiefs are perceived as facilitating moral authority and trust between traditional justice and the new state system. The state system is seen to tap into those traditional leaders to enhance its legitimacy and social solidarity. However, both systems seem to prioritise community harmony over individualised justice. For example, traditional justice represents a hierarchical and patriarchal system that favours repairing relationships over addressing the root causes of structural violence. This poses risks to state-building efforts with regards to the rule of law and basic human rights.[632] Despite these concerns, the state of Timor-Leste has made significant inroads in securing peace and stability, which is attributable to its collaborative engagement with customary law. The state entrenched its recognition of customary law in the constitution as well as through strategic initiatives to facilitate linkages between village chiefs and the formal legal system.[633] Timor-Leste's Constitution makes explicit reference to customary law in Article 2: Sovereignty and Constitutionality, where it states that the 'state recognizes customary laws of East Timor, subject to the Constitution and to any legislation dealing specifically with customary law'.[634]

Timor-Leste recently drafted the Traditional Justice Act to regulate village justice and strengthen the state legal system. The proposed Act authorises village chiefs to resolve a range of disputes, enables women to be involved and requires traditional settlements to be written down. The passing of this Act will be a turning point for legal pluralism in Timor-Leste and may influence how traditional justice will be placed within the modern state system. The question if this bill does not pass the parliament and customary law remains unregulated is

[632] Graydon (n 116).
[633] Swenson (n 57).
[634] Grenfell (113).

whether legal pluralism and the country's stability will be affected in the future.[635] This could resemble the moment Jordan abolished tribal law 50 years after the state system was founded, which led to the current revival of customary practices 45 years down the track. Whether through good fortune or strategic vision, Jordan today has a culturally sensitive system that combines tribal law with a modern civil state to foster stability. Timor-Leste needs a bit of both to continue building a cooperative approach with traditional justice to improve social balance and security. In this context, Timor-Leste's homicide rate was 4.1 per 100,000 people in 2015, up from 3.6 per 100,000 in 2010, which may echo the rising concerns over the sustainability of its government system and overall stability.[636] It should, however, be pointed out the unique history of Timor-Leste with regard to the occupation and attempted genocide by Indonesia, which may require extensive process of state-building.

Timor-Leste's homicide rate, therefore, does not alone explain the complex relationship between state and non-state justice. Timor-Leste is a post-conflict country, leading to a more complicated relationship between the state system and customary law with a greater dependence on stability and peace. For the two systems to work together cohesively and deliver justice, the formal legal system must be easily understood and accessible and the customary system cannot be imposed arbitrarily or impartially.[637] The two systems are equally overwhelmed and unable to sufficiently cater for the needs of their community, hence their relationship is strained and they are unable to deliver justice effectively to the people of Timor-Leste. This is reflected through the violence levels in Timor-Leste, particularly the high rates of domestic violence where a study by the Asia Foundation reported that about 60% of young women in a relationship had experienced intimate partner violence at least once in their life.[638] In addition to the effects of colonialism, the difficulty of advancing women's rights in Timor-Leste is also attributed to a range of realities including the lack of constructive engagement with non-state justice. For this reason, the engagement between state and non-state justice requires a direct engagement and a tailored approach specific to each country's circumstances, where Timor-Leste seems to need a harmonisation and bridging approach to enable the two systems to work together on local challenges including gender equality.[639]

This also reinforces that the correlation between stability and constructive legal pluralistic relationships is not always a clear pathway; it can shift at any time, as is evident in

[635] Grenfell (n 113).
[636] UNODC (n 255).
[637] Meghan Campbell and Geoffrey Swenson, 'Legal pluralism and women's rights after conflict: The role of CEDAW' (2016) 48 *Colum. Hum. Rts. L. Rev.* 112.
[638] Asia Foundation, *Understanding Violence against Women and Children in Timor-Leste: Findings from the Nabilan Baseline Study–Main Report*, Dili The Asia Foundation No (2016).
[639] Campbell and Swenson (n 637).

Afghanistan and, potentially, in Timor-Leste. A failing state system, like that of Somalia, appears to engage with customary law from a very different position. The manner in which customary law in Somalia operates is influenced by the current civil war. Local communities are heavily reliant on clan elders to meet their needs and resolve disputes. In the absence of a central government, these elders have utilised community resources to resolve conflicts. However, elders have worked with rebel groups and local state officials to achieve public order in some parts of the country.[640] There is a striking resemblance between Jordan and Somalia with regards to the symbolism of reaching conciliation settlements under a Bedouin tent or a pastoral tree. It signifies the moral authority of traditional justice and the rituals of resolving community disputes. The tent and tree have a social and cultural value as they connect people with their ancestry and encourage a sense of social solidarity. This reflects the common emphasis of customary law on its legitimacy, which facilitates public participation and cooperation.[641]

While customary law in Somalia functions in the vacuum of a failed state system, customary law in Jordan engages with a state system that has evolved in its authority and capacity. Clan elders in Somalia seem to engage with state officials out of necessity rather than recognising the legitimacy of the state system; hence, they also work with rebel groups and other factions that compete for the state's authority. Some elders have been drawn into an internal struggle for control and tribal claims in a deeply divided country.[642] On the other hand, the Hashemite Kingdom has strategically aligned with local tribes since the founder King Abdullah I made a historic pact with them in 1921 to share the governance of Jordan. Additionally, by being regarded as the descendants of the Prophet Muhammad's family, the Hashemites have gained both traditional and religious legitimacy.[643] It is for this reason that the relationship between the Hashemite regime and tribal institution revolves around mutual approval and interests, with both systems lending authority and support to each other. This is manifested under the Bedouin tent when conciliation settlements are negotiated. It is customary for sheikhs to use the figures of Allah, the Prophet and the King to persuade the injured party to lower their demands for blood money.[644] This indicates that the engagement of the state system with tribal law is based on moral and legal authority.

These comparisons indicate that the stronger the state system's legal and moral authority, the more it is able to engage constructively with customary law, and subsequently enhance its capacity. The more ineffective and illegitimate the state system, the more dominant

[640] Kulow (n 108).
[641] Al-Abbadi (n 5).
[642] Kulow (n 108).
[643] Abu-Hassan (n 16).
[644] Al-Abbadi (n 5).

customary law is, and consequently the relationship deteriorates. Yemen's case provides further insight into this relationship, as the state's engagement with customary law has shifted several times during the ongoing conflict. Similar to Jordan, the state system and customary law in Yemen have coexisted throughout modern history. The relationship between the two systems is intertwined with social identity, cultural values and their dependence on each other. Additionally, tribal leaders in Yemen and the rest of the region have always played a role in ruling local communities, where they were rewarded by the government for their loyalty and support. In turn, this further embedded their status and influence within the country, which appears to have strengthened tribal law.[645] Tribal leaders are known for being resourceful, with diverse networks that contribute to their ability to quickly contain tribal disputes. Yemen has a developed tribal law that deals with complex disputes and which engages with state officials, non-government agencies and international companies. Tribal law is accustomed to change, having survived many wars and regimes by being resilient, adaptable and flexible.[646]

Nevertheless, the application of tribal law in Yemen occurs predominantly in rural regions where the state system has minimal influence. The Ottomans and British were only able to control the cities, as their legal authority never extended to rural tribal areas. Some attempts were made to incorporate tribal law into the state court system, but these efforts came to nothing due to the collapse the Saleh regime in 2012. Such initiatives permitted tribal mediation to resolve disputes but – unlike Jordan - excluded homicide cases. South Yemen's regime has attempted to eradicate tribal law as it was perceived as inferior, but its mandate was limited to major cities.[647] The deterioration of security and increased demand for justice have widened the gap between rural and urban areas, and subsequently strained the relationship between tribal law and the state system. The perpetuation of civil war seems to undermine the credibility of both systems, particularly as state officials and tribal leaders are increasingly accused of corruption. The current prevalence of tribal law in Yemen is therefore regarded as a substitute for an unstable and weak state system.[648] In contrast, Jordan's stability over the past century has enabled the state system and tribal law to enhance their capacity and develop a localised partnership that has not been seen in neighbouring countries.

This further indicates that the weakness of the state system and lack of stability derail the growth of legal pluralism and lead to full reliance on customary law. However, Iraq seems to

[645] Adra, *Qabyala* (n 202).
[646] Al-Dawsari (n 205).
[647] Adra, *Qabyala* (n 202).
[648] Corstange (n 126).

offer a counter-example as the collapse of Saddam's regime and the rise of instability have provided new opportunities for customary law and its relationship with the newly formed state system. Iraq has seen the rise and fall of many regimes over the past century, with customary law subjected to conflicting strategies. The Ottomans had minimal engagement with tribal people, especially during their late period as tribes were increasingly allowed to self-govern. The British used tribes for political purposes by recognising some sheikhs and forging an alliance with their tribes at the expense of other tribes. Saddam used a strategy of repression by initially banning tribal law and imposing a secular state system. This dramatically changed when the regime came under threat and Saddam offered incentives to some tribes to gain their trust and support.[649] There is growing evidence that the new state system in Iraq is forging a closer working relationship with customary law. Sheikhs and state officials are seen to cooperate on local security and sharing information on terrorism. Sheikhs are also coordinating their dispute settlements with police and court authorities. This emerging relationship reflects the increasing demands for security and a recognition of the role of customary law in enhancing the state's capacity and legitimacy.[650]

There are also emerging reports that state officials and sheikhs are taking advantage of the desperate need for security by investing in their political and financial interests. The new state system continues to face serious challenges in rebuilding Iraq, including being perceived as illegitimate and corrupt. Some sheikhs are increasingly seen as corrupt and complicit in their dealings with state officials and petroleum companies. Therefore, it is still too early to determine whether the current engagement efforts between the state system and customary law in Iraq will evolve into strategic cooperation or remain confined to the need for security and stability.[651] Jordan, on the other hand, had a significant period of stability that has enabled the state and customary systems to forge a strong and dynamic relationship. Although these systems challenge each other, they have come to trust and rely on one another to maintain social solidarity and stability. The cases in this thesis demonstrate how the two systems have lent support to each other in resolving disputes amicably. For example, sheikhs were quick to facilitate a conciliation settlement when a dispute erupted between tribes across Jordan and Iraq. State police and governors have been active in supporting sheikhs to de-escalate conflicts, by way of separating the disputing tribes. These engagements show that there is an interactive legal pluralistic relationship in Jordan.

The final comparison relates to customary law in the Palestinian territories and Israel, which illustrates various similarities and differences with Jordan. Customary practices between

[649] Asfura-Heim (n 118).
[650] Bobseine (n 58).
[651] Ibid.

these jurisdictions have unique commonalities due to their shared history. Prior to 1948 when Israel was established, Palestinian and Jordanian people followed the same tribal system, which was a dominant source of law in most areas. The Ottomans and British also had consistent strategies for customary law in these areas, with tribal people either left alone to govern themselves or used as a base to establish control over the region. Some tribes across these jurisdictions are connected by blood relationships and, despite the new political borders, they continue to preserve their kinship identity through marital and other shared exchanges. Under Israeli rule, Palestinian people began to utilise tribal law differently to people in Jordan. As more people started to boycott the Israeli legal system, tribal law turned into an alternative mechanism for dispute resolution. It became a platform for Palestinian people to assert their desire for self-determination and social solidarity.[652] For this reason, the prevalence of customary law within the Palestinian territories and Israel is an expression of identity and resistance rather than a substitute for a weak state system. Palestinian customary law is also seen to be heavily focused on *Sulha* (conciliation settlement) due to the need to maintain internal social order.[653]

On one hand, the Palestinian Authority, Hamas and other factions have strategically facilitated the use of customary law to enhance their legitimacy and social capital. Sheikhs often engage with all Palestinian organisations in the occupied territories to ensure compliance with and public support for conciliation settlements. In this sense, customary law and Palestinian factions have shown flexibility in supporting each other.[654] On the other hand, the Israeli legal system is seen to adopt a compartmentalised approach to customary law, seeking to limit or marginalise its application. The complex relationship between the Palestinian Arab minority and the state of Israel results in customary law being a source of suspicion and struggle.[655] Although it can be argued that there is a strong legal system and high level of stability in Israel, the state's engagement with customary law seems to lack the necessary legitimacy and flexibility needed for constructive legal pluralistic relationships. Jordan, however, exhibits an engagement between the state system and customary law that is adaptable to the changing circumstances. The fact that sheikhs and senior state officials coordinate and consult with each other when a local dispute erupts indicates that there is a high level of flexibility and cooperation between these systems.

The cases in this thesis provide further opportunity for comparison between the Palestinian territories and Jordan with regard to the state's engagement with customary law. The key

[652] Khalil (n 184).
[653] Zilberman (n 189).
[654] Welchman (n 187).
[655] Topidi (n 397).

features of customary law between the two jurisdictions are very similar, as all relevant comparative cases in Chapters Four and Five featured some aspects of an evacuation, delegation, truce, blood money and conciliation settlement. It is also evident that there is an intersection between the Palestinian Authority and customary law in Gaza. The comparative case in section 4.7 (blood feud in a refugee camp) resembles other cases from Jordan, with customary law and local police intervening to de-escalate the dispute by evacuating the offender's family, facilitating a community delegation to reach a truce, and eventually achieving a conciliation settlement between the disputing parties. The local police were involved in evacuating the offender's family, attending the conciliation settlement and signing the agreement. However, it was noted that neighbours were involved in protecting the properties of the offender's family from revenge attacks. The sheikh involved also faced some difficulties in convincing the victim's family to agree to a truce. There was no evidence of state officials' involvement in this process as the community delegation appeared to work alone. Interestingly, the conciliation gathering occurred at a school campus and hosted a large crowd including Palestinian factions.

The comparative case in section 4.8 (neighbourhood dispute) also reflects other cases with regards to the authority of sheikhs, which stems from public recognition. In this case, it was evident that the injured family accepted the involvement of the community delegation, which provided the delegation with the public legitimacy to intervene and work with state authorities. Local police were involved in containing the dispute and court proceedings appeared to work in parallel with customary law. However, the delegation was unable to reach an immediate truce due to resistance from the injured party. After several breaches of the truce, a conciliation settlement was reached which featured blood money of 6000 dinar, designed to prevent further breaches. However, the state court ordered the offending family to pay 17,000 dinar in compensation before their members were released from prison. These discrepancies outraged the offending family, as the court system was perceived to side with the other family, which exacerbated the situation and triggered another breach of the truce. These comparative cases further emphasise this thesis's argument that the engagement between the state system and customary law in Jordan is more structured and coordinated than in the Palestinian territories or the other countries discussed. The Palestinian territories have very similar conditions to Jordan with regards to the commonality of customary law and its shared history and values, public legitimacy and flexibility or resilience to adapt to various circumstances. The two jurisdictions differ, however, in their state regimes, with Jordan having had greater opportunity to build a stable and robust legal system.

These comparisons demonstrate three variables in the engagement between state systems and customary law. First, there is a level of flexibility in the relationship between the state system and customary law in Jordan. This flexibility enables customary law to be utilised through a form of cooperation, sharing responsibility with the state system to keep the peace. This was manifested in the recent reforms of *Jalwa* (evacuation) as state officials and tribal leaders appeared responsive to such a process, mostly led by non-government agencies. The Supreme Court also asserted that governors have a discretionary power to authorise *Jalwa* when there is a risk of social disorder. On the other hand, it was argued that engagement between the state system and customary law is constrained in cases such as Israel or Albania, due to customary law being either compartmentalised or confined within a written text. Secondly, there is a level of stability that enables the state system and customary law in Jordan to share a constructive engagement, and subsequently expand their capacity and authority. This was manifested in the continuation of the regime that carried out the vision of working with the tribes and integrating customary practices into the modern state system. In contrast, instability in Yemen, Somalia and Afghanistan has hindered the engagement between the state system and customary law, with their relationship deteriorating and becoming more combative. Interestingly, Iraq's current instability may provide emerging opportunities for engagement between the newly formed state system and customary law. In contrast, the stability in Timor-Leste suggests that it may not be sufficient for the state system and customary law to expand their relationship further. The current parameters of customary law in Timor-Leste suggest that it is confined to local villages, hence why tribal leaders are known as village chiefs. The current function of customary law in Jordan, however, highlights its expanded access and authority, as revealed by the cases.

Finally, there is mutual recognition between the state system and customary law in Jordan. This recognition is manifested in the state's efforts to incorporate customary practices and to preserve their integrity for the purpose of maintaining social balance and preventing tribal conflict. State authorities recognise that customary law has moral legitimacy and public support. There is a consensus among tribal leaders that the state system has the legitimacy and moral authority to govern their tribes. For instance, sheikhs and state officials often consult and lend support to each other on a range of issues and coordinate their processes to restore public order. Police stations nowadays have a register of all local tribal truces (*Atwa*) to be monitored for risk assessment.[656] In contrast, it was argued that the perceived lack of legitimacy of the state systems in Iraq, Yemen, Somalia and Afghanistan undermines their engagement with customary law. It also undermines the integrity of some sheikhs, who may be increasingly drawn into corrupt or unfair practices with state officials. For this reason,

[656] Watkins (n 24).

the notion of legitimacy is seen to influence the efficacy of both systems and, hence, is interconnected with the other variables of stability and flexibility.

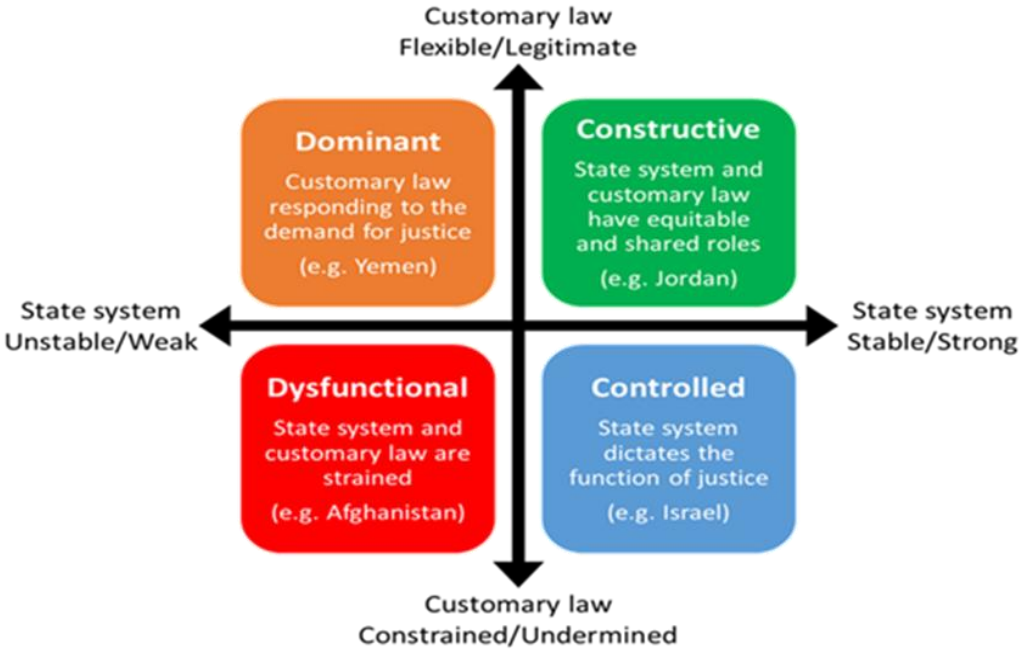

Figure 36: Four conceptual styles of engagement between state systems and customary law.

Figure 36 illustrates these variables using four conceptual styles of engagement between state systems and customary law. A dysfunctional style is applicable to the case of Somalia and, more recently, Afghanistan. In this style, the state system is absent or failing and customary law is increasingly undermined and overwhelmed by the deteriorating conditions. A dominant style can be seen in the case of Yemen and Iraq, where customary law is filling the gaps that result from the growing instability and weakness of the state system. A controlled style was argued to be relevant to Israel, where customary law within the Palestinian Arab minority appears to be marginalised. In this case, a strong and stable state system is paired with customary law that has been strained and fragmented following years of neglect. Lastly, a constructive style has been demonstrated throughout the thesis to be exhibited in Jordan, where the state system and customary law have become partners in keeping the peace. It was shown that such engagement enables the two systems to expand their capacity and authority. As a result, the stability, legitimacy and flexibility of their engagement enables customary law to be utilised as a model for preventing disputes and preserving security.

Figure 37 is deliberately being presented at the end of this chapter for the purpose of assessing the future of customary law in Jordan. Half of the interviewees stated that customary law will remain a part of Jordanian way of life. However, 33 per cent thought that

customary law is currently being challenged and may fade away in the future due to rapid social changes. The remaining 17 per cent of interviewees believed that customary law should be regulated and further integrated into the state legal system. These responses indicate that there is a majority view that tribal customary law will continue to play a role within Jordanian society. This further reinforces earlier findings that indicate most Jordanian people would support a legal system combining civil and customary law. This complements the longstanding engagement between these systems, whereby ordinary Jordanians and community leaders are becoming accustomed to sheikhs and state officials working side by side to resolve disputes. In this sense, customary law is adaptable, often cooperative and sometimes complementary to the formal legal system.

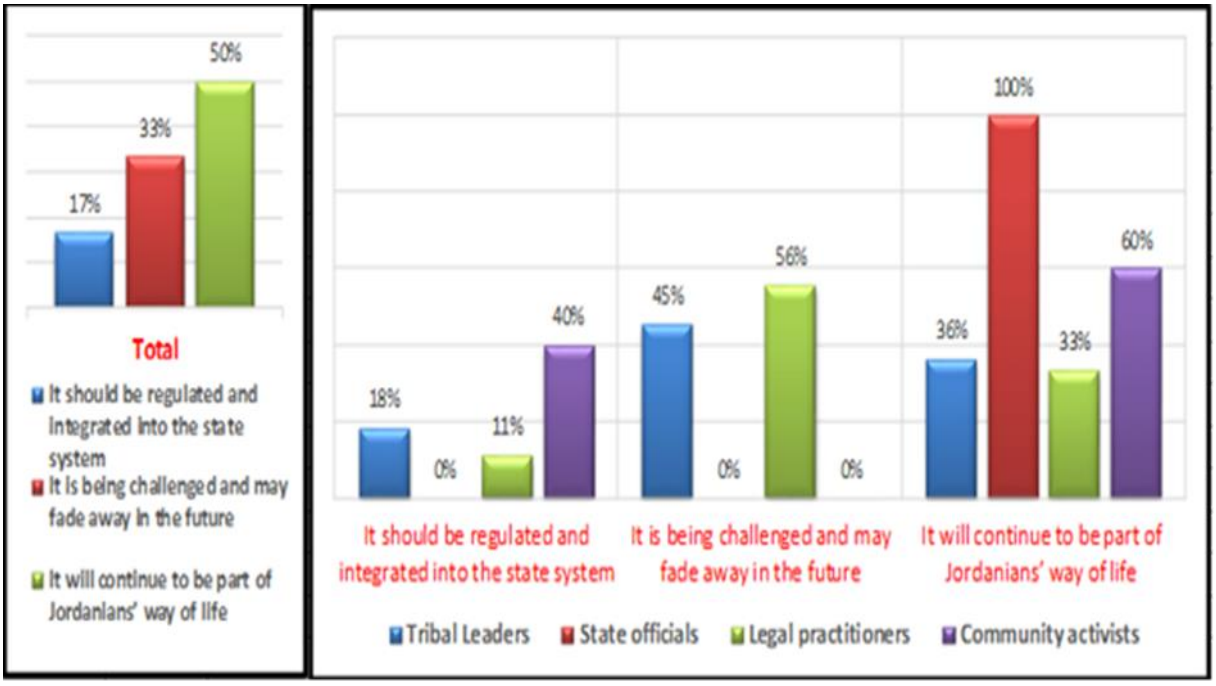

Figure 37: Future of tribal customary law in Jordan

Interestingly, all state officials interviewed supported the notion that tribal customary law will continue to be part of Jordanians' way of life, which suggests that state representatives prefer tribal law to remain part of the society. To a large extent, community activists (60%) and legal practitioners (33%) supported this argument, which further suggests a degree of faith in the importance of customary law within Jordan. However, 56 per cent of legal practitioners and 45 per cent of tribal leaders thought that tribal customary law may fade away due to social changes, which reinforces earlier arguments about the constraints and emerging challenges of tribal customary law. Finally, 40 per cent of community activists and 18 per cent of tribal leaders stated that customary law should be fully integrated into the state system, which may reinforce the previous finding regarding the challenges facing this system in Jordan.

7.6 Conclusion

This chapter has demonstrated Jordan's exceptional model of engagement between the state system and customary law. It was determined that this engagement occurs at different levels and involves various departments. It is also not one-sided, with both systems having mutual authority and shared roles. Regional governors and police chiefs coordinate processes with sheikhs that are designed to de-escalate disputes. This engagement shows a mutual recognition of the legal authority of both systems and public acceptance of their cooperation.

The most contentious engagement relates to the practice of *Jalwa* (evacuation), as the two systems are determined to lend support to each other when there is a serious risk of revenge feuds. The state system appears to walk a fine line between addressing concerns over evacuating extended families and preserving public order. The state has, however, recently managed to introduce a major modification to this practice by limiting it to one year and to the immediate family of the offender. This highlights the delicate balance that the state is striking and its strategic interest in preserving the use of customary law in Jordan.

Sulha (conciliation settlements) is a significant point of engagement between the state system and customary law. It was demonstrated that state officials are deliberately choosing to take part in these public gatherings for the purposes of providing support to the conciliation process and enhancing their own social capital. Sheikhs are also expanding their capacity and prestige by having senior state officials support their conciliation efforts.

The comparison between Jordan and the other seven countries outlined some similarities and, most importantly, distinct differences. It was demonstrated that Jordan’s model of engagement combines three variables: *mutual legitimacy*, *stability* and *flexibility*. It was argued that the other cases lack some or all of these variables. This led to the development of four conceptual styles of engagement between state systems and customary law: *dysfunctional engagement* by both systems, *dominant engagement* by customary law, *controlled engagement* dictated by the state system, and *constructive engagement* from both systems.

Chapter Eight – Discussion

8.1 Introduction

In this concluding chapter, I tie together the main findings of the thesis, explore the implications of these findings, discuss the way in which this thesis might contribute to socio-legal studies, outline the research limitations, and suggest areas which could be the focus of further research and consideration in the future.

The discussion is built on the preceding chapter, which explored various aspects of the evidence collected for this research and demonstrated that it supported the hypothesis regarding the operation of tribal customary law in Jordan. This thesis was purposefully structured around a number of dimensions to ensure a holistic examination of the research. Chapter One provided an overview of the thesis background, purpose, and methodology. Chapter Two reviewed the literature relevant to this thesis, which produced multiple insights into the concept of customary law, customary practices within selected jurisdictions – Albania, Afghanistan, Timor-Leste, Somalia, Yemen, Iraq and the Palestinian territories/Israel – and a thorough exploration of the function of tribal customary law in Jordan. Chapter Three produced further insights into legal pluralistic relationships within these jurisdictions, which informed the analysis in this thesis with the identification of some commonalities, and most importantly, distinctive features of Jordan compared with the other countries examined. Chapters Four and Five presented first-hand accounts gathered during the fieldwork of how tribal customary law in Jordan operates to resolve blood feuds, honour crimes and other disputes, with a number of comparative cases from Gaza. These two chapters described 12 cases from Jordan and gave rise to interesting new insights into how the system operates in contemporary Jordan. Chapter Six extended the discussion of this thesis by elucidating the three principles of tribal customary law – *honour*, *identity* and *security* – that are applied to resolve crimes and disputes in Jordan.

Although the primary focus of this thesis is on the contemporary application of tribal customary law in Jordan, articulating the country's historical developments under the Ottoman, British and modern Jordanian state system was critical to the analysis. For this reason, these developments were explored through Chapter One (Background and Rationale) and Chapter Two (Tribal Customary Law in Jordan), as well as Chapter Seven. The historical narratives explain how contemporary tribal customary practices in Jordan have

evolved and defied predictions that tribal customary law would eventually fade away as the modern state system advances.

The emergence of Jordan as a state in 1921 triggered new realities for tribal customary law, the state system and local inhabitants. Under the Ottoman rule before World War I, tribal people were mostly left to govern themselves and regulate their own affairs. Tribal customary law operated independently, especially in rural and remote areas. Over time, this led to the existence of two justice systems: customary law for tribal people and formal civil law for urban residents. In this sense, the reliance on tribal customary law further contributed to the development of this traditional system within tribal communities. However, tribal customary law was still mostly confined to rural and remote areas at this time. The British regime tried a different strategy, regulating customary law for the purpose of controlling tribal people and ensuring their loyalty is secured. This strategy was perceived to serve the colonial interests of expanding British authority and countering Arab nationalist aspirations. The title of the legislation passed by the British in 1924, the Bedouin Control Laws, reflects an attitude of seeking to dictate the social lives and legal system of tribal people. The Emirate of Transjordan, which was still a British protectorate, further amended these laws in 1936 for the purpose of regulating and limiting the application of tribal customary law.

As the Hashemite Kingdom of Jordan became fully independent in 1946, it took a step further by ‘abolishing’ tribal customary law as a separate institution in 1976. The regime sought to expand its legal authority and unify the population, particularly following the civil unrest that occurred in 1970 between the Jordanian Armed Forces and Palestinian fighters. The country was seen as divided into various factions, including tribal and non-tribal people. The earlier policies adopted by the Ottoman and British regimes created a further divide between tribal and non-tribal people as they were linked to two different legal systems. These policies were perceived as a tool to expand those regimes’ control by dividing the population. In contrast, the Jordanian regime felt empowered following its victory in the civil war and, with the support of tribal people, sought to expand its legal authority across the country. For this reason, the regime set out to abolish tribal law and incorporate key customary practices into the formal legal system. The preservation of these legal customs within the formal system demonstrates that the regime was taking a balanced approach that reflected its interest in utilising tribal justice to keep the peace and maintain social order. Forty-five years later, these developments have led to a unique legal landscape. As the state system expanded its legal authority and enhanced its capacity, tribal customary practices equally expanded their authority and coverage to the whole population. Over these years, Jordan has made impressive progress in its state-building efforts, strengthening the rule of law, modernising

state institutions such as the judiciary and police force, and improving human rights and gender equality. Interestingly, tribal customary practices have also flourished, with urbanised and refugee communities also utilising these practices.

This thesis establishes that customary law in Jordan shares some characteristics with other non-state justice systems in many countries, particularly within the Arab world. It was evident that traditional justice presented in the selected countries has common features with regard to being focused on filling the gaps and restoring social order. Such justice enjoys public support and legitimacy as it tends to stem from local cultural norms and identity. The thesis corroborated the claims of existing literature with regard to customary law being accessible and more effective in restoring trust and community ties. However, in some of the examined countries like Iraq, Syria and Yemen the local customary law and tribal structures have been fragmented due to the lack of social order, internal tribal conflicts and most significantly confrontations between the tribal system and state regimes. Israel, on the other hand, being politically stable state seems to have systematically marginalised Bedouin tribal law. In this sense, the function of customary law in Jordan reveals a local significance with regard to the level of engagement between a strong tribal system and a relatively stable regime.

As argued throughout this thesis, there is strong evidence that suggests that despite the abolition of tribal law in 1976, customary legal practices continue to play a significant role in Jordan. More importantly, non-tribal members have also relied on the traditional tribal legal practices to adjudicate a multiplicity of disputes. Although Bedouin people and their customary practices came under the jurisdiction of the state-centric system, Jordan's experience shows that the form of adjudication was increasingly handled informally in traditional ways by local tribal leaders. This reveals the decentralised and devolutionary methods within Jordan of putting semi-sovereignty into the hands of tribal communities, which is quite unique in the modern emergence of the state-centric system. Jordan is unique in the sense that it has, through the evolutionary process, become a system that exceptionally manages to combine all of the (sometime competing) factors and still manages to 'work' in a seamless and effective manner.

The thesis has also corroborated the claims of existing literature on the significance of tribal leaders and the historical interpretation of honour and kinship. This emphasises the importance of customary law in maintaining solidarity and social balance. The findings of this thesis confirm what existing scholars, particularly Stewart, have revealed with regard to the relevance of honour and identity to Bedouin customary law. Most significantly, the thesis shows that tribal honour and kinship are no longer ancient norms that were anticipated to fade away. The thesis provides a nuanced analysis of the contemporary application of these

norms within Jordan. It is evident that honour has a modern connotation in Jordan, which brings both traditional and state justice systems together. This modern connotation of honour in Jordan involves a duty to restore peace and ensure a sense of social solidarity, which is the complete opposite of older notions of 'honour killing'. The thesis has revealed examples drawn from Jordan's nuanced collaborative relationships between tribal sheikhs and the supportive, cooperative state officials. Jordan's model of engagement between state officials and tribal leaders is evidently contributing to the country's social stability and resilience. In the context of the state-centric and bureaucratised system of legal proceedings, this thesis makes a significant contribution through its critical focus on the tribal adjudication that was still handled in traditional ways by local sheikhs. Many examples are presented in this thesis, illuminating the ways in which tribal legal customs have been applied to areas such as blood feuds, revenge killing, honour crimes, and other conflicts that have been traditionally-rooted in ideological relationships and cultural arrangements. It is hoped that the thesis's contribution – highlighted in the upcoming research findings - provides meaningful examples for other regimes into how historically opposing tensions between the indigenous people and their customary practices, and the state-centric system can engage constructively.

8.2 Main research findings

This thesis set out to examine and describe the function of tribal customary law in resolving blood feuds, honour crimes and other disputes in Jordan. The thesis also focused on investigating the engagement of the Jordanian state system with tribal customary law during this process. I initially planned to investigate the practices of customary law in a number of countries and was anticipating that it would be challenging to capture a clear and contemporary picture of these practices, as the customary system was described as being fragmented and fading away in the Middle East. My interest in these practices stems from my professional experience in Western restorative justice, which correlated with my childhood memories of Arab customary practices. My personal experiences, and existing information, suggested that customary practices, despite their limitations, continue to provide people within Arab societies with an accessible mechanism for dispute resolution and keeping the peace. The increasing, and surprising, prevalence of tribal customary law in Jordan led me to focus on investigating how and why Jordan has developed a unique and functioning model in a region where this system is largely fragmented and neglected.

Due to the complex nature of this research, I adopted a multifaceted approach to the research for this thesis, as outlined in Chapter One. This research utilised first-hand resources such as case studies, ethnographic observations, interviews, photographs and personal reflections. I collected 12 case studies of the customary practices in operation in

Jordan and how they resolved blood feuds, honour crimes, and other disputes, in addition to four comparison cases from Gaza. This combination of direct observation, comparative case studies and interviews is, to the best of the author's knowledge, unprecedented in this field. The research also included secondary data such as Arab media reports, the existing scholarly literature and comparative analysis. The fieldwork examinations, along with the second-hand information, generated significant insights into the application of legal pluralism within Jordan in comparison to other jurisdictions. Being a native Arabic speaker and working in the field of community justice within a Western society also put the researcher in a unique position to provide ground-breaking research and analysis in this area.

The key findings of this thesis can be summarised through the following themes:

- **The resilience of tribal customary law in Jordan:** The research revealed that the tribal customary system has endured changing circumstances and hardships throughout its recent history, as previously outlined. Interestingly, not only has it been able to survive these obstacles, but it has also thrived and continues to provide quick and accessible justice to its local inhabitants during these turbulent times. The system has proven its adaptability and resilience in surviving extreme conditions, largely due to its ability to remain continuously relevant and maintain a deep-rooted attachment among the Jordanian population. Tribal customary law was neglected and marginalised by the Ottomans for hundreds of years, and yet it remained the dominant legal system for tribal people in rural and remote areas. The British strategically endeavoured to control and regulate tribal justice, yet tribal customary law was fluid enough to create a de facto legal system under the regime. The newly emerging Jordanian state resorted to abolishing the tribal system to assert its legal authority and unify the local inhabitants. Remarkably, not only did tribal customary law withstand this challenge, but it also expanded its authority and practices to become increasingly prevalent in both rural and urban communities across Jordan. Also, customary practices have become widely accessible to diverse community groups including migrants and refugees. The case studies and other research in this thesis demonstrate the increasing popularity of tribal customary practices in Jordan, which are utilised for both conventional crimes and emerging forms of conflict. This reveals that, through its resilience and adaptability, tribal customary law has become entrenched within the fabric of modern Jordan. For instance, tribal customary practices are no longer limited to resolving blood feuds and honour crimes within rural areas, but now address contemporary disputes for all residents.
- **The exceptionalism of the Jordanian state's engagement with tribal customary law:** The core finding of this thesis is that Jordan presents a unique model of engagement

between the state system and tribal customary law, which is not found in any of the other seven examined jurisdictions. This thesis argues that Jordanian exceptionalism is built on certain ingredients that have evolved through its modern history, which enabled the state system and tribal customary law to form an unexpected partnership. These ingredients consist of the two systems having a mutual moral and legal authority, which helped in expanding their current legitimacy across the country. The two systems have also shown a degree of flexibility to accommodate each other and coordinate their efforts in keeping the peace and restoring social security. This is manifested in their fluid and yet structured engagement, whereby they sometimes work collaboratively, and at other times complement each other. It is a partnership that can be described as a hybrid or mix of two different legal systems that have a shared vision of keeping Jordanian society together. The state system has consistently cemented its relationship with sheikhs and sought to gradually modify tribal practices so they can be preserved for the future. Tribal leaders, in turn, have been largely accommodating to the state system's measures in consolidating its authority and addressing concerns over legal customs. In this sense, the state appears to be using strategies of harmonisation and incorporation through this partnership, with tribal customary law assisting the state in keeping social balance.

- **The shared legitimacy of Jordan's state system and tribal customary law:** The uniqueness of Jordan's model of legal pluralism stems from the mutual recognition between the state system and tribal customary law. The thesis demonstrated that tribal customary practices are voluntarily embraced, not only by tribal people, but equally by non-tribal and even non-Jordanian citizens. The decision to abolish customary law in 1976 made a concession to allow cases of blood feuds and honour crimes to be resolved through tribal customs. However, over recent years, the authority of tribal customary law has unexpectedly expanded to encompass a range of crimes and disputes both conventional and emerging, such as social media grievances, university clashes and electoral strife. This reveals the public acceptance and increasing prevalence of tribal customary law within the modern state of Jordan. State officials appear to have recognised these realities and accepted that tribal customary law is embedded within Jordanian society. This recognition is reflected in their increasing cooperation and engagement with tribal leaders to keep the peace and prevent the escalation of community disputes. The state's recognition of tribal customary law has been manifested through its efforts to modify and preserve customary practices such as *Jalwa* (evacuation), which is seen as both controversial and integral to the state system. Tribal leaders have been equally accommodating in their recognition and acceptance of the state's legal authority over their tribes. The thesis has also shown that the Hashemite monarchy enjoys some level of moral authority due to its tribal and religious ancestry. In

this sense, this research has shown that the state and tribal customary systems in Jordan lend legitimacy and recognition to each other.

- **The contemporary use of tribal customary law in Jordan:** This thesis has revealed that tribal customary practices address modern and newly emerging issues that fall well outside their traditional focus on revenge killings and honour crimes. The cases examined included a fall-out between two parliamentarians, a defamation case involving social media, and the assault of a foreign worker by the brothers of a Jordanian politician. Sheikhs, who are known for their traditional authority, have also been seen to engage with contemporary institutions, such as university administrations and the Egyptian consulate, and even to travel interstate to meet with Iraqi state officials and Baghdad University management. It was also noted that tribal dispute mechanisms are being documented for the purpose of the state's legal proceedings, such as judges taking conciliation settlements into account, governors approving the detention or release of individuals following consultation with sheikhs, and police chiefs archiving tribal conciliation agreements for the state record. Conciliation settlements nowadays feature professional cameramen and involve live coverage on social media as a means of publicising the conciliation agreement. The research has shown that the tribal customary system is not only designed to achieve group conciliation but also seeks to prevent revenge killings and deter future crimes. This was evident in the way tribal truces and evacuations operate, which also explained why the state system seeks to accommodate them for the purpose of preserving social order. This further reinforces the argument for Jordan's exceptionalism, as it uses tribal dispute resolution mechanisms that are traditional in form but utilise modern features.
- **The stability that underpins legal pluralistic relationships in Jordan:** This thesis has illustrated that the key ingredient in the engagement between the state system and customary law is stability. The state and customary systems have a mutual interest in preserving social order and maintaining community cohesion. As the two systems have come to rely on and reinforce each other, there is a strategic priority in maintaining security and social order within the country, particularly as the surrounding region has been increasingly affected by civil unrest and instability. It was shown that these systems share responsibility when coordinating their efforts to keep the peace in local communities. The state system recognises that customary law has the ability to preserve social balance and generate collective responsibility, which are important for the diverse Jordanian society. Customary law is equipped to maintain social solidarity as it focuses on repairing broken relationships and ensuring community compliance with conciliation settlements. In return, sheikhs were seen to reach out to state officials and utilise state resources when coordinating to resolve tribal disputes. These interactive and shared

arrangements seem to have contributed to the enhancement of the state's capacity and efficiency, while providing sheikhs with additional resources for ensuring compliance with their conciliation efforts. In contrast, as demonstrated through this thesis, the state system and customary law in countries like Afghanistan, Yemen and Iraq operate competitively or antagonistically, undermining each other and hence failing to collaboratively enhance local stability and security.

- **The principles of honour, identity, and security that underpin tribal law in Jordan:** The research analysed how contemporary customary practices use traditional values of honour to restore a sense of self-worth, respect and dignity as a means of resolving conflicts and keeping the peace. The thesis also showed how tribal identity operates to preserve social solidarity and a sense of collective responsibility to ensure compliance with conciliation settlements. The concepts of honour and identity have an operational role in resolving disputes, with sheikhs using preventative and deterrence strategies to achieve conciliation. The ultimate aim for tribal customary law in Jordan is to preserve security by relying on social solidarity. The thesis sets out to investigate honour crimes and eventually discovered that Jordan's engagement between state system and customary law is founded to precisely prevent acts of retaliation.
- **Collective responsibility is illustrated through the relinquishing of the Arab dagger:** Tribal Arabs explain the notion of collective responsibility through the metaphor of holding an Arab dagger with five fingers. In their eyes, social responsibility is extended to the fifth degree of kinship when a serious crime is committed. As such, tribal customary law holds five generations of the offender's extended family responsible through *Jalwa* (the practice of evacuation). Each finger that is loosened from the dagger represents one less generation of the offending family held responsible. Thus, Jalwa ensures collective responsibility, prevents revenge feuds and achieves future deterrence within Arab tribes.

Figure 38: The metaphor of collective responsibility through the relinquishing of the Arab dagger. Illustration by Rama Emad, my daughter, as a contribution to this thesis.

These findings were built on the thesis's research questions. The thesis outlined six broad questions in Chapter One that guided me throughout this journey. The research has subsequently established that tribal customary practices in Jordan are organised primarily through sheikhs, who take on the responsibility of liaising with state officials, particularly regional governors and police chiefs. The thesis illustrated that in blood feuds and serious disputes, sheikhs tend to coordinate their tribal dispute resolution process with the local governor to ensure that conflicts are being contained. Sheikhs tend to focus on bringing influential tribal leaders and disputing parties together to ensure their support for and agreement to tribal truce. Governors and police chiefs, in turn, ensure that evacuations are facilitated in an orderly manner and that disputing parties are separated to provide a period of calm for mediation.

The abolition of tribal customary practices over 45 years ago seems to have produced the Royal Degree's not necessarily anticipated outcome in Jordan, with these practices now widely prevalent and utilised by diverse community groups, including refugees and other non-Jordanian citizens. The use of tribal customary law is also no longer limited to blood feuds and honour crimes. Tribal customary practices, as shown in this thesis, are currently

utilised to resolve a range of crimes and disputes, including thoroughly modern disputes involving social media and state elections. Throughout most of these disputes, especially those that threaten social order, state officials are actively involved and collaborate with sheikhs. Regional governors provide the state linkage with tribal customary law, lending state resources to support sheikhs, enforcing administrative detention, ensuring police enforcement of the tribal dispute resolution process, and recognising tribal settlements within state legal proceedings.

There is a strong engagement between the state system and tribal customary law, producing favourable outcomes for the state. Customary practices provide a better chance than formal legal proceedings of preventing revenge feuds and ensuring conflicts are resolved quickly and at less expense, satisfying local communities. The thesis has shown, especially through the case studies, that restoring peace and order is more likely to be achieved when disputing parties feel that their honour and identity are being preserved. The customary process of appealing to the disputing parties and generating public participation in the conciliation settlements is popular within Jordanian society. This process is manifested in the ritual of erecting Bedouin tents within local neighbourhoods for tribal dispute settlements, which serves multiple purposes including keeping the peace. This tribal system is also seen to enhance the country's stability and boost the state's legal authority and capacity due to its deep-rooted legitimacy among Jordanian people.

8.3 Implications of the findings

This thesis does not suggest that the engagement between the state system and tribal customary law in Jordan is free of challenges. In fact, the research highlighted a number of perceived concerns regarding the use of tribal customary law in Jordan, including being categorised as a patriarchal system that does not allow women to play an active role. It was also noted, through the preceding cases, how tribal customary law resolves domestic violence privately as it focuses on preserving the honour and reputation of the family. The thesis established that this customary system values collective community interests over individual rights. While this helps de-escalate tensions and prevent revenge feuds, it can lead to tribal law being perceived as undermining the rule of law and perpetuating violations of human rights. The state system was shown to support the use of truces, evacuations and blood money to keep the peace and maintain social order. This illustrates that the relationship between the state system and tribal customary law is not necessarily just or fair. Nevertheless, the implications of the findings include a suggestion that tribal customary law and legal pluralism in Jordan should be assessed using a local lens rather than Western frameworks that may lead to overgeneralisations and even stigmatisation.

The thesis argued that the engagement between the state and customary systems is an expression of the general population's desires. The evidence presented in the thesis from the survey conducted by the Program on Governance and Local Development highlights that about 60 per cent of Jordanians prefer a mixed legal system of tribal and civil law. Additionally, most of the participants interviewed for this thesis described customary law nowadays as working more closely with the state system. The thesis also pointed out some indications that tribal leaders and state officials are working closely with civil society organisations to modify the use of evacuations in an attempt to address ongoing concerns over the fairness of customary law. It was even demonstrated that tribal leaders themselves are pressing state officials to repeal the civil law that provides justification for honour crimes.

Another implication of the thesis pertains to the growing divide between the younger generation and tribal leaders, who are commonly elderly people. Although the younger generation remain attached to their heritage and tribal identity, sheikhs face increasing difficulty in ensuring compliance by young people. A majority of the interviewees identified that tribal customary law needs to engage with young people in order to curb social disorder. This challenge was manifested in the case of university violence, which led to multiple fatalities. It is also, along with rapid social change, the reason a large number of participants expressed concern over the future of customary law.

8.4 Contribution of the thesis

This thesis contributes to socio-legal studies by generating multiple insights from the coexistence of social fields within the Jordanian context, which remains largely unexplored. By examining Jordan's model of legal pluralism in comparison to other jurisdictions, the thesis developed a conceptual framework that warrants further examination. Commonly, the prevalence of customary law is described as occurring in a vacuum left by the formal legal system. Legal studies often identify the revitalisation of customary law as being due to the weakening of state systems. Indeed, the prevalence of customary practices is sometimes seen to limit, or come at the expense of, the viability of the state system. However, this thesis has shown that a strong and popular customary system can coexist with an equally strong and legitimate state legal system. The thesis has further demonstrated that the existence of this equal relationship in Jordan has contributed to the manifestation of constructive engagement between the state system and tribal customary law. Furthermore, it was argued that, through constructive engagement, Jordan has been able to maintain its stability. The state legal system was also able to enhance its legal authority and capacity. It was shown that tribal customary law has been able to expand its influence and usage beyond rural areas

and resolve common tribal disputes. For this reason, the thesis concluded that the key ingredients for Jordan's legal pluralism are *mutual recognition*, *flexibility* and *stability*.

These insights offer a unique contribution as the thesis conceptualises that a weak or failing state system paired with a strong customary system would inevitably lead to customary law being a dominant source of law, due to overreliance by local inhabitants. The thesis argues that, in such circumstances, the state system will become further debilitated as it does not have an opportunity to enhance its capacity and hence increasingly relies on customary law. Secondly, the thesis posits that a weak or failing state system matched with a constrained and undermined customary law would result in a dysfunctional legal environment. In these circumstances, both systems are increasingly stretched and unable to meet the increasing demand for justice, a situation commonly found in severely war-torn countries. Thirdly, the thesis suggests that a stable and strong state system that dictates a constrained and undermined customary system would produce a controlled legal system. In these instances, customary law is administered through a tokenistic and confined approach. Finally, Jordan's model has shown that having state and customary systems equally recognised, stable and strong facilitates opportunities for constructive engagement that can produce meaningful justice for local inhabitants. This thesis contributes this framework of partnership, uniquely found in Jordan, which may offer some basis for further examination and discussion in the area of socio-legal studies.

8.5 Limitations and other points of consideration of the thesis

Notwithstanding the unique data set generated by the research set out in this thesis and the significant insights into the contemporary application of tribal customary practices, as well as their intersections with the state legal system, an evaluation of the research findings should be undertaken with consideration of a number of other aspects. The thesis did not obtain case studies that were resolved by civil law, as this was not envisaged to be of value for the thesis. The fieldwork was also only conducted in Jordan due to an inability to access other jurisdictions. Consequently, other jurisdictions were examined using second-hand resources, with the exception of Gaza where four case studies were obtained. Moreover, the focus of the research was refined several times; hence, the earlier interviews with sheikhs, state officials, legal practitioners, and community activists could have been more focused or followed with further fieldwork to reflect the changes in scope and focus.

The postulated framework of partnership between the state system and customary law is limited to Jordan's circumstances. There are a range of internal factors that have contributed to this partnership and its evolution through the history of modern Jordan. The expansion of

customary practices after the tribal system was abolished in 1976 was influenced by complex social variables that were not necessarily intentional or anticipated 45 years ago. This thesis stresses that Jordan's model may not be applicable to other jurisdictions given the unique local circumstances. However, the ingredients of the engagement between Jordan's state and customary system deserve some attention when examining legal pluralistic relationships within similar environments. Moreover, the constructive engagement between the state system and customary law in Jordan constitutes only one element leading to Jordan's stability; other socioeconomic factors also contribute. Thus, Jordan is not immune from experiencing setbacks in the future that may hinder the engagement between the state system and customary law. Nevertheless, this engagement has been able to withstand a number of challenges over Jordan's modern history. Jordan continues to undergo rapid change, particularly those influenced by the current unpredictable conditions in the region. Jordan seems to be determined to balance its relationship with tribal customary law and maintain its image of being a modern civil system, which has been evident in the latest modifications introduced to the practice of *Jalwa*. However, it is at present unknown how these modifications might impact Jordan's current constructive engagement.

It must be also taken into account that the fieldwork for this thesis was undertaken several years ago; the researcher was unable to conduct further field examinations in Jordan due to COVID-19 outbreaks over the past two years. Therefore, with the passage of time, there may be emerging developments that this study has not been able to capture.

8.6 Future research

Over the past few years, this thesis has undertaken a journey of discovery through the application of tribal customary law in Jordan and elsewhere, through which it has uncovered a number of gaps that deserve further examination by future socio-legal studies. The thesis would recommend the following areas for future research.

1. The thesis has unexpectedly discovered a wealth of unexamined data on the models of legal pluralism in developing countries. In particular, it was found that the Arab world lacks contemporary socio-legal studies into the intersections between modern state systems and traditional customary practices. The evolving engagement between the state system and customary law in Yemen, Iraq, Palestine and Jordan illustrate the benefit that would be gained from examining these engagements through further focused research.
2. The conceptual model of the four styles of engagement between state systems and customary law deserves careful and comprehensive research, particularly as this thesis

was unable to examine it further due to its limited scope. The thesis draws attention to the linkages between the stability, legitimacy and flexibility of contemporary and traditional legal systems, which were found to be thriving in Jordan.

3. Contemporary media and public affairs coverage of tribal law in the Arab world often has negative connotations and ascribes blame for tribal violence and civil unrest. It is also often described as an outdated relic, a fact that may contribute to the neglect and stigmatisation of this social field. Despite its challenges, the thesis found that this system offers valuable answers that deserve collective interest. For example, it was noted that no Arab universities offer courses in the use of tribal law, which is surprising given the significance of tribalism within the Arab world.
4. Tribal practices are often studied through an orientalist lens and focus on conventional themes such as their influence on revenge killings. However, there have been few socio-legal studies on the contemporary use of tribal law in resolving emerging disputes – such as those involving university violence and social media grievances – by focusing on keeping the peace and restoring honour rather than on individual punishments.
5. The principles of tribal honour and identity deserve further integrative research as they were shown through this thesis to play a critical role in both triggering tribal revenge and other violence and, conversely, providing a mechanism for social control and solidarity.

8.7 Coda

Camels are an important part of life for nomadic people in a desert environment. They are a source of wealth as well as a means of transport. The Prophet himself began his career as a camel driver. White camels, as we have seen, are sometimes offered as a token of contrition to an injured party. The path to justice, in the eyes of Arab people, can be symbolised by the journey of a camel in the Arabian desert – sometimes slow but generally reliable. Cameleers mastered the practice of loading the camel to achieve a perfect balance – otherwise the camel would struggle to walk and inevitably die in the desert. Justice in Jordan resembles the successful journey of the camel, in which a balance is achieved between state law and customary law. An unbalanced load represents the violation of people's rights and broken relationships, which leads to a loss of honour, respect and reputation. When justice is achieved and people claim their rights, the camel's load is rebalanced and it is able to continue its journey. In this sense, the pathway of justice and peace can only be achieved through the restoration of honour, stability and social balance. The thesis has articulated this concept, which was found to be equally understood by both tribal customary law and the state system in Jordan. The reason both systems recognise the need for and seek to implement such a balance is that it preserves social balance and community cohesion. This

explains why a modern state system intersects with a traditional justice system – they equally share a desire to resolve blood feuds and other emerging crimes through an approach of prevention, de-escalation and deterrence.

Tribal customary law in Jordan and the rest of the Arab world is often portrayed as harsh and backwards and is blamed for most social issues. Although it is not free of problems, it nevertheless offers meaningful and tangible justice that works for local inhabitants. Even the practice of tribal evacuation, which generates legitimate concerns, has a purposeful role within local Jordanian communities; it strategically separates disputing parties, contains the escalation of conflict and prevents revenge feuds. The state system of Jordan recognises these contributions; without tribal customary law, it would have been overwhelmed or its capacity overstretched in an attempt to manage such feuds. Through this unexpected partnership emerging out of convenience and shared responsibility, the state system has been able to consolidate and expand its legitimacy and legal capacity. In return, tribal customary law has gained new momentum and, arguably, become more relevant than ever before; its engagement with the state system and the wider population has enabled it to further master its function of conciliation and justice. Therefore, the exceptionalism of Jordan's story is manifested through the significance of tribal customary law to the fabric of modern Jordan, despite public predictions that it would fade away and become irrelevant.

The metaphor of the camel's load is one that was understood by my grandmother over 45 years ago, when my father and older siblings had to evacuate for their own protection and out of respect for the injured party. My grandmother appealed to influential tribal leaders for her family to return home safely while acknowledging the wrongdoing by a member of her clan, revealing her appreciation of the maintenance of social balance and honour.

Figure 39: The metaphor of tribal justice through the journey of a camel in the Arabian desert. Illustration by Rama Emad, my daughter, as a contribution to this thesis.

Paying Tribute

Finally, it is only appropriate that I pay my respects to Sheikh Ahmad Alsalahat, a pillar of the tribal justice system in Jordan, whom I met during my fieldwork and who was instrumental in equipping me with generous support and resources for the research.
Sadly, he is no longer with us.

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Appendices

Appendix 1: Details of the interviewees

List of interviewees in Jordan		
Name	Representation	Date/Place
Sheikh Dalal Almadi	Tribal leader	1/11/2015 Amman
Mohammed Almasri	Legal practitioner	3/11/2015 Amman
Hakem Al Daejah	Tribal leader	4/11/2015 Amman
Samih Bino	State official	4/11/2015 Amman
Bady Beqain	Community activist	5/11/2015 Amman
Ahmad Alsalahat	Tribal leader	7/11/2015 Amman
Abed Alhafed Alrehayhi	Legal practitioner	8/11/2015 Amman
Ala'a Al-khawaldeh	Legal practitioner	8/11/2015 Amman
Mahmoud Alkalailah	Tribal leader	9/11/2015 Madaba
Ewader Alzben	Tribal leader	9/11/2015 Madaba
Odeh Almes'han	Legal practitioner	9/11/2015 Amman
Aref Jaradad	State official	10/11/2015 Amman
Awad Alymon	Legal practitioner	11/11/2015 Amman
Hanna Alhour	Legal practitioner	11/1/2015 Amman
Rand Abu Doha	Community activist	12/11/2015 Amman
Dania Alnaser	Community activist	12/11/2015 Amman
Hamad Almaedah	Tribal leader	12/11/2015 Kurk
Haifa Haider	Legal practitioner	14/11/2015 Amman
Mohammad Al-Jribia	Legal practitioner	15/11/2015 Amman
Yousef Ziada	Tribal leader	15/11/2015 Amman
Omar Doraz	Tribal leader	15/11/2015 Amman
Khalil Ziada	Tribal leader	15/11/2015 Amman
Mutaz Aldihini	State official	16/11/2015 Amman
Omar Yacoub	State official	16/11/2015 Amman
Salman Abu Alem	Tribal leader	17/11/2015 Al Mafraq
Mohammad Alfaoure	Community activist	17/11/2015 Al Mafraq
Mohammad Alfoareh	Legal practitioner	17/11/2015 Al Mafraq
Mohammad Alrfaya	State official	18/11/2015 Amman
Daoud Alkharsha	Tribal leader	19/11/2015 Kurk
Marym Alouzi	Community activist	25/11/2015 Amman

Appendix 2: Interview Questions

Section 1 – Function of Bedouin customary law:

1. Can you describe BCL process and how it impacts on the escalation of violence?

2. Have you noticed a change in BCL process and what is the role of formal authorities?

3. To what extent do citizens are aware of customary law and respect its implementation?

4. Some people believe that customary law is fading away, while others believe that customary law remained entrenched in Arab communities. What you think?

Section 2 – Features of Bedouin customary law:

5. Why people resort to customary law and how this affect the rule of law?

6. How the role of BCL conciliators influence the process of customary law?

7. Do women and youth participate in BCL process and is it accessible to everyone?

8. What differentiate customary law from other systems and does it clash with state law?

Section 3 – Prospect of Bedouin customary law:

9. Some people say that using customary law facilitate access to justice and social peace, while others say that customary system is hindering fairness and justices particularly for minority groups and people who are not from tribal background. What you think?

10. Some people suggest that some elements of customary law would be problematic for statutory law and human rights standards. What you think?

11. Do you believe customary law can be utilised in dealing with contemporary legal issues such as combating youth radicalisation and delinquency?

12. What is the preferred place for the future use of customary law practices?

Appendix 3: General Questionnaire

1. What is your knowledge with Bedouin customary law?
2. Have you ever had a personal experience with Bedouin customary law?
3. How local community generally regard Bedouin customary law?
4. How often Bedouins utilise Bedouin law to resolve their disputes?
5. Do you think that Bedouin law practices are decreasing or increasing and why?
6. What are the types of conflicts that lead Bedouins to utilise Bedouin law?
7. Who are the most community groups that utilise Bedouin customary law?
8. When it becomes a necessity to utilise Bedouin customary law and why?
9. What are the advantages and disadvantages of utilising Bedouin customary law?
10. Do some Bedouins refuse to deal with Bedouin law? Who, when and why?
11. What are the circumstances that lead Bedouin law to be influential or insignificant?
12. What are the current steps of resolving disputes through Bedouin customary law?
13. What are the changes that occurred to Bedouin law and why has that happened?
14. How local community generally regard formal legal system?
15. How often Bedouins utilise the formal legal system to resolve their disputes?
16. What are the types of conflicts that lead Bedouins to utilise formal legal system?
17. Who are the most community groups that utilise formal state law?
18. What are the advantages and disadvantages of utilising the formal legal system?
19. Do some Bedouins refuse to deal with the formal legal system? When and why?
20. What are the areas of communality or conflict between Bedouin and State law?
21. Do you think the state officials engage with the function of Bedouin law? How?
22. What are the common and/or contradicting ground between Bedouin and Sharia law?

23. Do you think religious leaders engage with the function of Bedouin law? How?

24. What are the common and/or contradicting ground between Bedouin law and RJ?

25. What are the challenges of Bedouin law with regard to human rights and rule of law?

Demographics

1. Site:
2. Village:
3. Tribe:
4. Gender:
5. Age:
6. Marital status:
7. Education:
8. Employment:
9. Identity:
10. Religious status:

Appendix 4: Observation Checklist – Conciliation Gathering

Features/Parties	Mediators	Claimants	Defendants	Others
Pre-forum Initiation Rules Rituals				
Forum process Initiation Rules Rituals				
Post-forum Initiation Rules Rituals				
State				
Sharia				
Human Rights				

Appendix 5: Focus Group

1. Some people believe that customary law remained entrenched in Arab communities, while others claim that customary law is fading away from most Arab countries. Which of these two statements do you agree with most and why?

   A. What are the social and political factors that have influenced such outcome?

   B. What are the potential or actual implications of such outcome?

2. Some people say that using customary law to resolve conflicts is good for the society, while others say that customary system is hindering the spread of rule of law. Which of these two statements do you agree with most and why?

   A. How is using Bedouin and other tribal law to resolve conflicts good for the society?

   B. How is the use of tribal system hindering the spread of rule of law in the country?

3. Some people suggest that the dynamics of customary law provide social balance and access to justice within local communities, while others assert that the mechanisms of customary law disadvantage women and other community groups. Which of these two statements do you agree with most and why?

   A. How and which dynamics of CL that provide social balance and access to justice?

   B. How and which mechanisms of CL that disadvantage some community groups?

Appendix 6: Participant information sheet

WESTERN SYDNEY UNIVERSITY

Participant Information Sheet

ارشادات المشاركة في البحث

أنت مدعو للمشاركة في هذه الدراسة الذي يجريها الباحث الدكتور منذر عماد وبإشراف كل من البروفسور ستيفن فريلاند والبروفسور ديفيد تايت والبروفسور ميردت روزنر. هذه الدراسة تابعة لكلية القانون في جامعة غرب سيدني – أستراليا.

عنوان الدراسة: ما هي خصائص القانون العرفي وكيفية استخدامه في الأنظمة القانونية المعاصرة؟

ملخص الدراسة:
الدراسة تهدف إلى استكشاف خصائص وإجراءات القانون العرفي في المجتمعات العربية. تتضمن الدراسة مقابلات مع رجال الإصلاح والعاملين في مجال القانون بالإضافة إلى الأفراد الذين شاركوا في جلسات الإصلاح. تتطلع الدراسة إلى التعرف على وجهات الرأي اتجاه القانون العرفي وكيفية تفاعله في عدة مجتمعات عربية. يرجى من هذه الدراسة تسليط الضوء على الأسباب التي تدعو إلى التوجه إلى القانون العرفي من خلال التعرف على فعالية نتائج هذا النظام في الشرق الأوسط.

كيف تم دعم هذه الدراسة؟
الدراسة عبارة عن مشروع رسالة دكتوراه لدى كلية القانون في جامعة غرب سيدني.
توقعات المشاركة في الدراسة:
الإجابة على عدد من الأسئلة حول آرائك اتجاه القانون العرفي.
مشاهدة مشاركتك في إحدى جلسات الصلح الخاصة بك.

الوقت المستغرق للمشاركة بالدراسة:
من المتوقع قضاء 30-45 دقيقة لإجراء المقابلة.
مشاهدة جلسة الصلح تعتمد على الوقت المستغرق لكل جلسة.

الفائدة المرجوة من هذه الدراسة:
لا يوجد عائد شخصي للمشاركين في هذه الدراسة ولكن المعلومات المقدمة سوف تساهم في تسليط الضوء على القانون العرفي وارتقاء الجهاز القضائي وبالتالي تسهيل حصول عدد أكبر من الناس على آليات حل الصراعات في المجتمع.

هل من مخاطر للدراسة؟
من غير المتوقع أن تسبب هذه الدراسة لأي ازعاج أو مخاطر حيث أنها تختص بمعرفة الآراء العامة حول القانون العرفي.

نشر نتائج الدراسة:
سوف يتم استخدام نتائج هذه الدراسة فقط للبحث العلمي حيث أنها جزء من مشروع تابع للجامعة.
البيانات الخاصة بالنتائج سوف يتم حفظها في الجامعة لمدة أقصاها خمس سنوات.

الانسحاب من الدراسة:
المشاركة في هذه الدراسة تطوعا وللمشارك الحرية في الانسحاب من الدراسة في أي وقت من دون توضيح السبب.

هل يمكن التحدث مع الآخرين عن الدراسة؟
نعم، بكل تأكيد يمكنك التعبير عن رأيك في هذه الدراسة وتقديم بيانات الباحث لأي شخص آخر يرغب في المشاركة.

الاحتفاظ بالبيانات:
هناك العديد من المبادرات القانونية التي تتطلب الاحتفاظ ببيانات الأبحاث مع مراعاة سرية المعلومات والمحافظة على البيانات الشخصية الخاصة للمشارك في أي بحث معتمد. للمزي من المعلومات يمكن الرجوع إلى الدوائر التالية:
http://www.ands.org.au/
tp://www.rdsi.uq.edu.au/about.

Appendix 7: Consent form

Human Research Ethics Committee
Office of Research Services
هيئة أخلاقيات البحث الانساني
مكتب خدمات البحث

Participant Consent Form
نموذج موافقة المشارك

هذا النموذج خاص في مشروع البحث وبالتالي البيانات الخاصة بالمشاركين هي لاستخدام هذا البحث العلمي فقط.

عنوان المشروع ما هي خصائص القضاء العرفي وكيفية استخدامه في الأنظمة القانونية المعاصرة.

أنا، ---------- (اسم المشارك) أوافق على المشاركة في مشروع البحث (ما هي خصائص القضاء العرفي وكيفية استخدامه في الأنظمة القانونية المعاصرة).

أنا أقر (ضع علامة صح على كل أو أي من النقاط التالية):

☐ أنني قرأت إرشادات المشاركة في البحث أو تم توضيحها لي وأعطيت لي الفرصة لمناقشة معلومات البحث وطبيعة مشاركتي فيه.

☐ الإجراءات المطلوبة لهذا البحث تم توضيحها لي بالإضافة إلى الإجابة على أية أسئلة متعلقة في طبيعة هذا البحث.

أنني وافقت على المشاركة في المقابلات الخاصة بالبحث للتعرف على آرائي وخبرتي في موضوع البحث. المقابلة قد يتم تسجيلها خطيا أو لفظيا.
☐

☐ أنني وافقت على حضور الباحث لجلسة الإصلاح الخاصة بي ومشاهدته لي ما يجري في هذه الجلسة من نقاش.

☐ إنني أعلم أن مشاركتي وإدلائي بالمعلومات سوف يتم الاحتفاظ به بسرية تامة واستخدامه من أجل البحث العلمي فقط.

☐ أنني أعلم انه يمكنني الانسحاب من هذا البحث في أي وقت دون أن تتأثر علاقتي بالباحث.

التوقيع:
الاسم:
التاريخ:

يرسل هذا النموذج إلى العنوان التالي:
School of Law, University of Western Sydney
Locked Bag 1797
Penrith NSW 2751
Australia

هذه الدراسة تمت المصادقة عليها من هيئة البحث الانساني التابعة لجامعة غرب سيدني (رقم المصادقة:11134)

إذا كان لديك أية استفسارات أو تحفظات حول الجانب الأخلاقي لهذه الدراسة يمكنك الاتصال بالهيئة على البيانات التالية:
Tel +61 2 4736 0229
Fax +61 2 4736 0905
humanethics@uws.edu.au

سوف يتم التعامل بأي شكوى ترفع للهيئة بسرية تامة ويتم التحقق من هذه المعلومات وإخبار المشتكي بالنتائج.