

“To Be Obligated: Real Debt, Fictional Crimes,  
and the Force of Law in Egypt”

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To be presented through the UCI Center for Law, Culture and Society  
April 26, 2010

This paper is an investigation into modern legal subjectivity, transactional practices, and moral personhood in contemporary Egypt. Based on recent ethnographic research on practices of private law in Port Said, it investigates how locals come to possess economic and social entitlements vis-à-vis one another and how concomitant obligations are construed and actualized. The analysis is rooted in a discussion of Egyptian legal reform and the economic rise and fall of Port Said in the 20th century. Early in the century, legal reforms radically altered the scope of *shari'a* and carved out a separate space for moral personhood in the private sphere. More recently, Port Said underwent dramatic economic and demographic changes in the 1970's and 80's related to its Free Zone status. These shifts produced new exchange relationships in the market and new strategies by which locals mediate the increasing tenuousness of private law agreements. Port Saidians deploy documentary technologies including 'honesty receipts' and post-dated checks to radically enhance guarantees, and to fictionalize and obscure the true subject of disputes and agreements. Innovative uses of commercial documents, somewhat counter-intuitively, limit law's intervention and create space for accruing moral value.

In 2005 I went to Port Said to do research on practices of private law and dispute processing among the *nouveau riche*. Throughout that year, and during three return trips in 2007 and 2009, I observed lawyers as they advised clients, prepared documents, presented cases in court, and discussed them informally with other lawyers. I also spent countless hours with litigants and traders talking about crediting, contracting, surety, and dispute resolution. When I returned I found myself grappling with a paradox. On the one hand, the stereotype of Egyptians is that they are litigious, a stereotype inevitably bolstered by statistics that show the courts to be overburdened with cases.<sup>1</sup> On the other hand, I found Port Saidians to be deeply ambivalent about using the courts to resolve disputes and formalize agreements. I don't mean to suggest that Port Saidians don't pursue legal recourse for restitution or damages. They do, in great numbers. But, I argue, legal recourse is a source of anxiety, which is revealed through innovative uses of

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<sup>1</sup> According to Ministry of Justice yearly Legal Statistics report for 2002-2003, there were 1,462,897 civil and commercial cases and 124,208 criminal cases under review in 2002. This massive number of cases was presented before approximately 224 Summary and Primary courts (Bernard-Maugiron and Dupret, 2002).

commercial documents that enable parties to maintain greater control over the trajectory of disputes and insert flexibility into agreements. Through modalities of surety, Port Saidians make determinations about how the law shall adjudicate their problems and limit law's intervention.

Moreover, I posit that practices of private law are shaped by socio-economic shifts in Port Said since the 1970's and by legal reform processes of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Port Said is a city of a half a million residents bordering the Suez Canal and the Mediterranean Sea. Since the city's founding the local economy has been reliant primarily on trade and ship provisioning, and in 1974, following the end of the war with Israel and the re-opening of the canal, Port Said was granted Duty Free status and its role in the importation and sale of quality foreign goods swelled.<sup>2</sup> Associated with the shift to a freer business environment was a dramatic increase in the local population as Egyptians from around the nation migrated in search of opportunities to take part in the trade boom. These shifts dismantled the local social order and can be seen as having an impact on local practices of contracting, surety, and dispute resolution. At the same time, Egyptian law bears the imprint of radical reform and contestation, and is the site of particular anxieties about the role of *shari'a* in modern life. We see this in debates about how to interpret Article Two of the Egyptian constitution stating that Islam is the principle source of law (Lombardi 2006), and playing out in lawsuits such as the well-known Abu Zayd *hisba* case (Bernard-Maugiron 2006), or the 1985 case brought before the Supreme Constitutional Court by the rector of al Azhar concerning the constitutionality of article 226 of the Civil Code, which allows for interest in cases of

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<sup>2</sup> Port Said's duty free status was established in 1976, and was one of the first initiatives of Sadat's Open Door (*infitah*) policies.

delayed payment (Tripp 2006). The new liberal legal order shifted morality into the realm of personal responsibility, which has implications for how Egyptian legal subjects define, secure and claim their rights and obligations.

This analysis of quotidian practices of private law is framed by scholarship on citizenship, law, and property in the Middle East. Studies of citizenship in the Middle East (Bibars 2001; Botman 1999; Davis 2000; Joseph 2000) reveal that access to rights are complicated by the way patriarchal family forms intersect with and shape state institutions. Analyses of law, Islam and morality (Dupret 2005, 2007; Masud et al 1996; Messick 1993; Vogel 2000) and the ethnography of adjudication and dispute processing in Egypt (Brown 1997; Drieskens 1999; Dupret 2004; Hill 1979) have made important contributions to how we understand legal subjectivity in the Middle East. Moreover, attention to shifting class boundaries and property rights, privatization processes, and the shift to a market-based legal system aids in contextualizing the sources of tenuousness in contemporary practices of private law (Cuno 1981, 1992; el-Dean 2002; Hill 2003; Mayer 1985b; Owen 2000). Although this paper does not address personal status laws in Egypt specifically, there are important findings from the ethnographic study of Islamic family law that are useful here. In particular, Annelies Moors' (1995, 1999) work on inheritance and Islamic marriage contracts in Palestine is particularly notable for her attention to the way that kin relations intervene in individual claims to property and for her observation that litigants – female litigants in particular, she notes – often use circuitous legal strategies to achieve aims that appear contradictory to their formal claims. This insight is applicable to my own analysis, in that it calls attention to the ways in which litigation is often nonlinear, embedded within a complex of strategies, and

shaped by social networks and kin relations.

Socio-legal scholars have advocated for the study of law in everyday life as a means by which we might better understand the ways in which law and society are mutually constitutive (Merry 1990; Ewick and Silbey 1990; Sarat and Kearns 1993). Among the avenues pursued in this vein are community studies that have sought to identify how social status and local networks impact patterns of litigation (Greenhouse et al 1994). In this volume, David Engel (1994) examines decision-making in the realm of private law, comparing personal injury claims and contract disputes, as a mode of moral and ethical signification. He posits that differing conceptions of individualism, falling along ethnic, economic, and religious lines, are expressed in interpretations of personal injury litigation, and that discourse and practice surrounding such litigation play a role in reinforcing insider and outsider status in the community. This scholarship makes provocative claims for how identity and community are constituted in part by law use and avoidance, and shapes my own reading of private law practices as inflected by economic and demographic transformations in Port Said.

In relation to this, I take up critical legal scholar Robert Cover's assertion that "[l]aw is a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate, or dignify" (Minow et al 1992:100) as an ethnographic project to consider how law serves as a resource in signification not limited to its *textual* signifiers. Law is evoked rhetorically, feared and flaunted. In the process, it contributes to the attribution of meaning to action, as well as to the constitution of relationships and of the self. Law's capacity to signify can be related to another point Cover makes, that legal interpretation is an act of violence. Judgment in a court of law has consequences for

the body and for property rights. In the following, I apply these insights to an analysis of innovative uses of commercial documents in Port Said in order to consider the role these documents play in processes of signification related to the constitution of status and personhood.

### *Practices of Private Law*

Let me take a step back and anchor this discussion in the ethnography, and in particular the ethnography of legal documents. In studying transactional practices and related dispute processing among traders and their customers, wholesalers and retailers, neighbors, landlords and tenants, family members and the like, I was keenly aware of and interested in the role documents played or didn't play in such processes. The most common document in play between parties was a type of commercial document known as an honesty receipt, or trust receipt (*iySāl amāna*). Although I also looked at uses of post-dated checks, contracts, 'false' contracts and anti-contracts, honesty receipts were by far the most ubiquitous and were deployed in the broadest range of disputing, crediting, and contracting practices.

In any of the many stationery shops in Port Said one will find shelves stocked with pencil sharpeners and 2-hole punches, colorful notepads for schoolchildren, and somber desk sets for professionals. One will also find inexpensive booklets of *shīkāṭ* (non-bank issued checks), *kambiyālāt* (bills of exchange or drafts), and *iySālāt amāna* (honesty receipts). Containing ten or more single-copy (non-carbon) forms, these booklets are the means by which many retail credit transactions are guaranteed. They are types of informal commercial documents, in local parlance often referred to as customary

documents (*muharrarāt ‘urfīya*)), a term that applies to a range of commercial documents that are informally composed and sometimes legally weak. In the Evidentiary Law as to the Civil and Commercial Articles of Law 25/1968, a distinction is made between ‘informal’ and ‘official’ documents. Official documents are legally characterized as those produced by a public employee or those ‘received’ by him (notarized). Informal documents, on the other hand, are characterized as follows: “If such documents do not assume official capacity, they shall merely have the value of informal documents whenever the parties concerned shall have put down their signature, their stamps or their fingerprints thereupon” (Trade Law 25/1968/Article 10). Although honesty receipts are sometimes notarized, in most of the instances I observed they were not.

The Egyptian Trade Law (1999) outlines the provisions for commercial papers, including promissory notes, checks, and others (including honesty receipts). An honesty receipt is similar to a bill of exchange and is designed to provide surety for a transfer of assets between three parties in which money or goods moves from person A (the agent) to person C (the recipient) via person B (the agent’s intermediary). Such transfers are relatively common in Egypt where much business is transacted in cash rather than through checks, credit cards, or bank transfers. There are many varieties of these receipts, each with a slight variation in the wording of the document and the information requested. In addition, some booklets include a receipt stub that can be filled out to record the names and addresses of each of the three parties to the receipt. The following is a translation of the text of one version:

#### Honesty Receipt

I (space for B’s name), residence (space for address), ID card number (space for number), governorate (space for governorate) have received from Mr. (space for A’s name and residence) the amount (space for sum) and no more. And therefore with all

honesty I will convey it and surrender the amount to Mr. (space for C's name and residence). If I do not surrender this amount it will be considered squandered and to be a breach of trust and carries a misdemeanor with it. The one who admits to what is in the receipt (space for B's signature). And this receipt from me is notification of surrender.

Failure to deliver means that the intermediary (B) can be accused of breach of trust (*khiyānah al-amāna*), charged with, and found guilty of a criminal misdemeanor. It is therefore a commercial document that carries the potential of a prison sentence of up to three years for non-delivery, at the judges' discretion. In addition to the misdemeanor case the plaintiff can also raise a civil case for compensation. As such, the potential of criminal prosecution upon failure to deliver monies as stipulated in an honesty receipt means that there are similarities to prosecution for 'bouncing' a check (knowingly issuing a check in bad faith). One important difference between using post-dated checks and honesty receipts is that the former pose a risk to the debtor's assets, which can be procured upon presentation of the check unless the funds have been withdrawn. Honesty receipts don't transform personal assets or private property into collateral. Rather, they transform the body into collateral; the body is staked as surety through the threat of incarceration.<sup>3</sup>

Honesty receipts are very often not used to secure the transfer of funds via a third party agent. Rather, they are used to secure delayed transactions, marriage proposals, the terms of marriage contracts, informally negotiated debt repayment schemes, and other transactions and agreements. For example, I spent time with Hani a trader who owns two

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<sup>3</sup> There may be some useful parallels to be drawn with analyses of the criminal incarceration of debtors historically. As Finn (2003) points out for eighteenth century England, "By seizing men's bodies for their debts, the civil law substituted persons for things in market exchange, allowing the human body served as collateral for goods obtained not through productive labor and the cash nexus but rather through the operation of consumer credit" (10). This practice was supported by small-claims statutes that gave creditors broad powers and by the legal challenge of seizing debtors' lands and monies. Further, completion of the prison sentence liquidated the debt, such that one could truly absolve the debt with the body (111).



stores specializing in home goods (*mu'arad manzaliya*). These small-scale department stores retailing appliances, furniture, house wares, electronics, and other domestic consumer goods are ubiquitous in Port Said. Like a lot of other traders in town, Hani provides credit to most of his customers. A customer makes a down-payment and can take the goods but is required to sign a number of honesty receipts. Hani and other traders hold the receipts until the debt is paid off; if the debt goes unpaid, Hani will often renegotiate the terms of the installment payments to spread the debt burden out over a longer period of time. But if it continues to go unpaid he can use the honesty receipts to raise a breach of trust case against the customer.

Using honesty receipts as surety makes their absence in similar transactions marked and meaningful. For instance, when Essam, a newly-married English tutor told me about some recent major purchases he had made on credit, he emphasized that the store-owner had let him take several pieces of furniture on installment without requiring honesty receipts. This, he pointed out, was a sign that the retailer trusted him, although it also portended that he would be called upon in the future to do this man a favor; in this case, to tutor the man's son. Because honesty receipts are routinely used to guarantee delayed transactions, the refusal to use them creates positive social value and accrues favors.

In other instances, honesty receipts are the mechanism for guaranteeing negotiated settlements following a dispute or a petty crime in order to forestall police involvement. One of the lawyers I interacted with frequently, Nirmeen, was routinely retained by three brothers who jointly owned a successful home goods store. They typically had her file cases against customers who defaulted on credit payments, although

recently they called her for after discovering that one of their employees had been embezzling money from the store for a period of months. The young man, Rasheed, had stolen over 1,900LE (Egyptian pounds) by logging installment payments made by customers at lower values than the actual payments and skimming off the difference for personal profit. Eventually, customers began to complain that their accounts were not accurate and after some investigation the store-owners discovered that Rasheed was responsible. Nirmeen advised her clients not to immediately report the theft to the police and instead to confront him personally; if they reported him, she reasoned, Rasheed would be imprisoned and it would become even harder to get their money back. She also advised them to make it clear to Rasheed that they could prove his theft in court if necessary, by using the log book as evidence and the witness accounts of customers. With this leverage they could force him to sign an honesty receipt to guarantee that he would repay the money, after which the matter would be finished. The store owners were also swayed to keep the matter out of the courts, they reported, by Rasheed's mother's plea for mercy (*raHma*) for her son. Although Nirmeen's clients took her advice a bit further and forced Rasheed to sign thirty-six honesty receipts rather than one, this course of action forestalled police involvement in the crime.

As a third example, honesty receipts are also used to pressure husbands into paying maintenance they are legally required to pay their wives for household needs.

One lawyer summed up the phenomenon like this:

Such cases (of men signing a document '*alā buyāD*' to reassure the wife and her family that he will begin to pay regular household maintenance) happen a lot. What happens is when there are many problems between the two people in court we try to finish the whole thing in a friendly way (*bishakl wadī*). In order for the wife to let go of the cases she's raised against him, he must do something to guarantee her rights. This guarantee could be a blank honesty receipt or a check so that if he does not fulfill his duties she can sue him again. Despite the fact that the woman could take her rights

through the court, they prefer to solve it in a friendly way for the sake of the children. However, there must be this kind of guarantee just to ensure her rights.

Informal mediation between spouses, their families, and a lawyer resulting in an agreement to sign, or the actual signing of, an honesty receipt or post-dated check, was something I observed periodically. This mode of securing a promise to repay maintenance owed or to begin payments that have stopped is noted by Brown (1997) and Zulficar (2008) as well. Importantly, honesty receipts can shift a dispute back out of the legal system by securing a resolution achieved through mediation or negotiation. As in Salma's description above, following mediation and the signing of a receipt, the plaintiff may drop pending litigation against the other party.

Honesty receipts here forestall or replace litigation or police involvement in a dispute. They are used as leverage in their capacity to invoke and threaten the force of law if a debt goes unpaid or a promise is broken. Notably, honesty receipts used in these ways do not disclose the true subject of an agreement, and as such are fundamentally legal fictions asserting 'as-if' scenarios (Riles 2009). Additionally, they often do not even disclose the amount of debt at stake. In many cases, these documents are signed *'alā buyāD* (on the white, or blank) – the sum is left undeclared, granting the bearer of the receipt full power to inscribe it for any amount.<sup>4</sup>

Through practices that deny the legal system the capacity to adjudicate the true subject matter of a dispute, Port Saidians assume the task of adjudication and use the law

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<sup>4</sup> I discuss the practice of signing 'on the white' in more depth elsewhere (Hegel 2009). In sum, the 'weaker' party to the document may agree to sign without a sum disclosed under pressure, in order to convey his trust in the other party, or to convey his willingness to take a risk. If used in litigation, the bearer of the document will typically inscribe it for a significant amount of money, for example a half million Egyptian pounds, even if the actual debt is rather small. This has the effect of procuring a harsher sentence for the party accused of breach of trust, as judges tend to hand down longer prison sentences for (what appears to be) the theft of a large sum of money.

to make resolutions and transactions binding and to force compliance; law becomes a “bargaining and regulatory power” (Galanter, 1981). Another way to think of this is that honesty receipts redirect law’s gaze away from the actual dispute toward a fictional misdemeanor. This can be seen as a hermeneutic act: in these instances the law is interpreted to be a productive source of violence and denied to be a source or site of fair and adequate adjudication of civil disputes. The use of honesty receipts is a practice through which interpretation of law’s meaning, capacity, and efficacy occurs.

Innovative uses of honesty receipts, I argue, reveal a sense of anxiety about law’s intervention into private disputes and agreements based in part, to be sure, on pragmatic concerns such as the time and money involved in litigation. But honesty receipts also allow parties to process a dispute or make an agreement binding while simultaneously producing positive social value through expressions of mercy, trust, patience and understanding, and by allowing agreements to retain a sense of flexibility.

This can also be seen in contracting practices whereby contracts are handwritten and minimal; I observed some instances where traders wrote up the terms of a transaction involving tens of thousands of Egyptian pounds without the aid of a lawyer, without the use of a standard contract, and without critical information disclosed. This may be seen as ignorance or negligence although in some cases it was clear that it was purposive and can be understood as contracting that both relied upon and sought to constitute a relationship between the parties.<sup>5</sup> Some aspects of an agreement remain undisclosed and consequently occur as promises, and as legal scholar Jonathan Yovel points out, “[P]romises are not ‘skeletal’ and legal language is not merely ‘about’ them...because

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<sup>5</sup> For further discussion of relational contract theory, see Bernstein (1992) and Macaulay (1963).

(legal language) shapes and transforms (promises)” (2000:960).<sup>6</sup> With formal contracts, law’s language inevitably interacts with and alters normative mediums such as promises. Verbal agreements prevent law’s language from altering a promise and create space – literal and figurative – like honesty receipts do, to rework the terms of an agreement later on. Weak legal documents that are animated by adjacent promises are not enclosed by law and rely in part on trust for fulfillment.

These uses of commercial documents make law’s intervention possible but not certain and allow parties to maintain greater control over the trajectory of their disputes and transactions. This can be seen in Mahmoud’s discussion of the appropriateness of procuring honesty receipts in credit transactions with friends and relatives. Mahmoud sold used cars on credit, for thousands of pounds, and often had significant lines of credit extended to different customers and family members:

Life taught me. I used to not write honesty receipts for friends and the like...I used to respect people I know. But in the end I was the one who lost. In the end I had no choice but to write honesty receipts whether this person is a relative or not. But I can’t file a complaint against a relative. Nevertheless, an honesty receipt is considered a kind of threat that makes him worried and makes him want to pay. But if he didn’t pay, I really couldn’t raise an action.

### *The Sons of Port Said and the Capitalist Parasites*

To some extent, anxiety about what legal recourse signifies is expressed by the

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<sup>6</sup> The intertwining of promise and contract can be seen most clearly in the practice of making false contracts. A false contract (*‘aqd al-Surī*) is to some extent structurally similar to an asset protection trust. It is generally a contract drawn up by a lawyer according to legal standards outlined in the civil and commercial codes. Yet it contains the unwritten stipulation that although it appears to represent a real offer and exchange, it won’t actually be honored or put into effect by either party. It is made ‘false’ by the two parties declaring verbally that it is false, giving rise to a verbal contract or promise and a written contract that contradict one another. In addition, false contracts are sometimes used in conjunction with an anti-contract document known as an inversion, or ‘against,’ paper (*waraqa al-Did*). False contracts are typically used to hide assets for tax purposes, to circumvent rules of inheritance or in the context of a divorce, although they were also used to misrepresent land ownership when Nasser’s land distribution laws took effect in the 1960’s.

use of the phrase *bishakl wadī* ‘ (in a friendly or peaceable way) to describe certain strategies or approaches to private law matters. The phrase has no definite referents, in that it implies a potentially diverse set of practices, yet it puts certain practices within a moral framework and denies other practices the same value. *Bishakl wadī* ‘ is commonly attached to ideas of civility, morality, and good upbringing. As Azza, an engineering professor at the local university, put it, it is one’s duty as a Muslim to resolve problems *bishakl wadī* ‘. Moreover, she noted, Muslims believe that all those through ‘the seventh house’ are like family and should be dealt with as kin, and it is particularly imperative to resolve all issues within the family *bishakl wadī* ‘ rather than through the courts. By contrast, those who can’t solve things *bishakl wadī* ‘ lack *tarbiya* (good upbringing), they are “among the wretched who swindle and do tricky things to get what they want,” as one older fisherman described it.

Abdel Kader, a neighbor, articulated the connection between *wadī* ‘ resolution strategies and Islamic values by pointing out “people here don’t want to go to court, they want to settle things quietly amongst themselves because that’s what our religion says. The Quran is like a manual for the VCR, it’s a manual for our lives, telling us what to do in all situations, and we follow it.” A good Muslim, in other words, resolves issues with others *bishakl wadī* ‘. An older man named Nabil who was often called upon by his neighbors and coworkers to mediate because of his reputation as a pious and patient man, pointed out that whether or not people “solve their problems in a friendly way, a customary way” (*yiHalū mashākl bishakl wadī* ‘, *bishakl ‘urfi*) depends on their behavior or manners (*sulūk*). He described his mediation efforts as both aiding others to resolve problems *bishakl wadī* ‘, and as convincing them “from a religious perspective” (*min*

*nāHayyat id-dīn*); as such, Nabil articulates a space of intersection between morality and avoiding legal recourse.

In discursive practices by which people describe their own or others dispute processing as *bishakl wadī* ‘oppositions are constituted and those who rely on ‘friendly’ strategies are positioned in contrast to those who don’t; in Port Said, such discursive practices also depict a social geography of the city. In certain neighborhoods, such as an area west of downtown near the sea known *al-Manakh* where fishermen and their families have clustered since the late 19<sup>th</sup> century, residents have a reputation for civility and a strong sense of community. People here know their neighbors and, I was told, know how to work things out *bishakl wadī*’. In contrast to *al-Manakh* or the *sha’bī* downtown quarter, *al-‘Arab*, where the indigenous populations were required to live in de Lesseps’ original city plan, are newer neighborhoods to the southwest of downtown such as *al-zuhūr*, which were built after the Free Zone was established. The majority of residents are families that arrived in the city from upper Egypt, the delta or elsewhere after 1974 and are often pointed to as people who don’t or can’t solve problems *bishakl wadī*’. Moreover, many claim that these peripheral, newer neighborhoods are where most petty crime in the city takes place. A court clerk showed me the stack of criminal case files for that district and noted: “You’ll find most crimes [in Port Said] happen in *az-zuhūr*...because most people who live there come from outside.” The objective truth of these claims is less important than the role they play in drawing a moral map of the city. Such sentiments assert distinctions between ‘old’ Port Saidians and newcomers, with law use or avoidance one modality by which ‘old’ Port Saidians distinguish themselves from others.

In 1974, the first of the *infitah* laws (Investment Law 43) was introduced, establishing a Duty Free Zone in Port Said and opening the country up to foreign investment. The original Free Zone laws, which included Law 24/1976 and Law 12/1977, were one component of the larger set of legal changes and economic incentives instituted as part of the Open Door policies.<sup>7</sup> The late 1970's through the early 1980's was a period of private investment and rapid growth in industry, import/export, real estate, and other economic sectors.

One cannot underestimate the degree to which the promulgation of Law 43 and subsequent related laws changed the economic and social climate of Port Said. While the new policies tended to benefit the existing propertied class, the late 1970's are also the period in which an Egyptian *nouveau riche* class came into being (Abaza 2006; Amin 2000). The Free Zone laws encouraged many farmers and small businessmen from outside the city to emigrate and take advantage of the open business environment available in Port Said.<sup>8</sup> As a result, the population almost doubled in the last quarter of the century, with most of the population growth occurring in the years immediately following the new law.<sup>9</sup> Relocating to Port Said to take up trading, and in particular petty retailing in domestic goods, was popular in part because it was a field that required little

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<sup>7</sup> Law 43/1976 established five free zones: Port Said, Nasr City, Alexandria, Suez, and Ismailiya. Port Said's free zone seems to have become the most successful because it encompassed the entire city and not just a designated section.

<sup>8</sup> The Free Zone law also gave Port Saidians particular privileges to which other Egyptians were not privy. For instance, they were able to purchase new cars without paying taxes on them, as long as the vehicles remained in Port Said a certain percentage of a given year. Port Said was one of the few places in Egypt where the 'black market' did not exist, because trade that occurred outside of the legal regulations in other parts of the country was legal in Port Said. The currency market is one example, as Iliya Harik notes (1998), and the value of the U.S. dollar in 1985 in Port Said ranged between \$1.60 and \$1.85, as compared with \$.70 through the Central Bank of Egypt.

<sup>9</sup> The population of Port Said was recently recorded at 529,684 (CAPMAS, 2004). For 1968, the population is estimated at 300,000 although this statistic does not reflect *al-hijra*, the migration, between 1967 and 1973. Most residents relocated to other cities between 1967 and 1973 in relation to concerns about safety because of the war with Israel and because of the closure of the Suez Canal, which severely stunted the local economy.



experience or capital to enter. The *infitah* policies radically contradicted the state-centered economy and protections Nasser had introduced and mark the growth of what locals term the ‘capitalist parasites’ (*al-Tufailiyya alr’asm ali*), or simply parasites, referencing both the rapid growth of privatization and those who flooded Port Said bent on financial gain.

Sameh and Zaki, two civil servants in their early 30’s with whom I’d become friends, were the first to introduce me to this term and I subsequently heard it used by others. Sameh and Zaki both live in Port Fouad, a suburb of Port Said across the canal, and emphasize that their own families were ‘original’ families of Port Said, with no roots elsewhere in the country. Both used the term *‘al-Tufailiyya* to describe the new traders who came to Port Said after 1976. These new traders were “not well-educated, but now they are rich” Sameh pointed out. The term is often accompanied by the sentiment that their presence has degraded the community and given rise to increasing social ills, as expressed to me by a retired importer named Galal. Galal’s family also has longevity in the city (“we’re one of the old families, like the Sarhans and the Lahetas”), and he and his family worked in pharmaceutical importing; it’s an open secret that he now makes his money in high-interest personal loans. He talked about how after 1976 the population grew and there was a rise in informal housing, crime, and youth delinquency. Moreover, housing prices rose, and new apartment buildings built in the 1980’s to accommodate the incoming migrants blocked views of the sea and its breezes. The children of these new wealthy traders, Galal suggested, do and sell drugs; like others, he pointed to an infamous group of high end apartment buildings near the canal known as *Hayy al-buDrā* (the powder district) widely considered to be the epicenter of this phenomenon. He added,

“Sadat should never have made the whole city a Free Zone. The only thing the Free Zone did was bring in a lot of criminals, and inspired people to abandon their traditional trades so that now they have nothing to fall back on.”<sup>10</sup>

The capitalist parasite was the topic of conversation one evening at the Banks Club (*nādī banūq*), where I often visited with a group of older men, most of whom worked in banking. One of them, Kareem, is an economist who regularly publishes articles on the maritime economy. He had this to say:

Egyptians are very tolerant, and kind-hearted. They are willing to sit and talk with one another and find a solution that works for everyone. Each one is not interested in simply taking his right. People have rights and they have duties towards one another in society, and they seek to find a balance between the two. This is true of everyone, it doesn't matter if you are educated or not. Especially in the Suez Canal area, people here are used to foreigners. There have always been foreigners here in Port Said, from Italy, Greece, France, Britain, and so forth. And even people of these different groups could sit down and work out a problem peacefully – in fact, they used to intermarry...Port Said was always a cosmopolitan city. Now it's less so, now there are few foreigners here, and few tourists, but historically it was very mixed. Traders could call [one another] and make a deal, no papers to sign. A man would call a wholesaler and order things and say he will pay him back in a week or two, no problem. They were good for their word. Wealthy, pioneering families like Hamza and Laheta, their whole families were involved in trading and they were very experienced in how to do business in a way that looked towards the future, towards building good relations and not just getting rich quick. They dealt with people in a very good way, wisely. With the Free Zone, the capitalist parasites appeared and these traders were not good at working things out in an intelligent and fair and calm way. They thought only of themselves and wanted to get rich right away. Many did, and they lost it just as quickly. It's not just because they are from outside, not the 'Sons of Port Said' – there are good and bad people everywhere, and some of these new traders were just not good people, not people who had good sense and a good heart.

Kareem, like many others I talked with in Port Said, notes a cultural shift directly related to the Free zone, a shift linked to emigration into the city from rural areas, to a

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<sup>10</sup> The head of the local branch of the lawyer's syndicate since 2005, Ahmed Qazamil, has written a number of monographs that address the rise in crime, youth delinquency and drug use attributed to the post-free zone consumerist climate and influx of new residents. One of these monographs, entitled “A Crime in the Powder District” (*jarīma fī Hayy al-buDra*, 1997) discusses a murder case in the mid-1990's linked to homosexuality and drug use in one of several apartment buildings close to the head of the canal. The moniker *Hayy albuDra* came into common parlance in relation to the newly-moneyed residents of the building, and their presumed drug use.

flood of new opportunities in trade and new wealth, to a disruption of an old social order in which the wealthy merchant class controlled the market on their own terms.

The market in Port Said has become relatively more anonymous over time, and the economy has weakened in relation to structural adjustments mandated by the IMF and the World Bank in the 1990's and the related reversal of most of the duty free privileges local traders once enjoyed (Awoud, 1999; Harik, 1998).<sup>11</sup> Throughout the late 1970's and 1980's, Port Saidians reaped the benefits of the flourishing import market, but now there is a sense of economic strain and at the same time, a sense that people are less trustworthy and transactions are riskier. An older lawyer, Mr. el-Sibay, pointed out, the notion that Port Said is still a small city where one can trust one's neighbors and business associates still lingers. But this trust is often betrayed: informally composed contracts are forged and falsified, debts go unpaid, and people face the possibility of having to go to court to claim their rights.

Well, people in Port Said are like one big family. For example a person (*fulān*) doesn't know me but he might have heard my name somewhere. In Cairo, it's bigger and hard to know people easily. Consequently, because people *almost* know each other [in Port Said], they tend to trust and give money to one another...But nowadays the pace of life does not allow people to know each other well.

### *Reconfigurations of Law*

To adequately address the specificity of practices of private law and innovative uses of commercial documents in Port Said requires reckoning with the broader legal

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<sup>11</sup> Structural adjustment policies reduced the special privileges for trade in imported goods in Port Said and some of other free zone areas. This meant that it became possible for traders in Cairo, Alexandria, and elsewhere to directly import goods such as European fabric and electronics that previously were only available in Port Said. As Al-Fadil shows, shipments entering Egypt through Free Zones like Port Said declined from 101.92 million Egyptian pounds in 1992 to 53.17 million EGP in 1997; that's a decrease of almost half in five years (2002:102). Thus began a decline in the local economy, exacerbated by the gradual phasing out of almost all Free Zone privileges except those promoting manufacturing (Law 5/2002) beginning in 2002 and culminating in December, 2009.

historical context in which they operate. In conjunction with the penetration of European capital into Egypt, urbanization and its refractory impact on communities, legal reforms have also played a role in producing new forms of tenuousness in matters of private law.

Reconfigurations of law that occurred in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries that established new codes and courts and institutionalized the legal profession in Egypt were also part and parcel of a more fundamental cultural shift. The reforms ushered in a new social and legal order, an important piece of which was reformers' efforts to narrow *shari'a* jurisdiction (Asad 200). Moreover, Asad suggests that this period is fundamentally marked by the European project of civilizing and establishing a new order in its colonies, including Egypt. This new order required "a new conception of what law can do and how it should do it (2003:240). Secular nationalists viewed the restriction of *shari'a* as an important component of the civilizing process and of the creation of a "modern autonomous life" (2003:253). Throughout this period as the scope of *shari'a* jurisdiction narrowed the scope of codified secular law expanded. Codification and court reform can thus be understood as a process of separation of the spheres of law and morality, public and private, through which morality was moved to the realm of personal responsibility.

In the shift to a new legal order based on European-derived codes, it is important to see as well a shift in legal personality and the correlation between cultural categories and status before the law. As Asad notes, individuals were to be equal before the law, regardless of Islamically defined 'necessary' inequalities, such as that between the genders and between Muslims and other religious minorities (2003:254). This is an example of how creating new separate spaces for both state law and Islamic religion and

morality forced the latter to mold itself around the new secular order, its legal authority usurped (215). Further, despite the fact that reformers, including Mohammad ‘Ali, Husayn Fakhri, Muhammad Abduh, and Ahmad Safwat, articulated a desire to adopt new laws in such a way as to create continuity with the past, the reforms were revolutionary and fundamentally forward-looking toward a vision of modernity.

In light of this understanding of legal reform, how might we reconsider analysis of ‘Abd al-Razzaq al-Sanhuri’s efforts to promote contractual justice in Egyptian civil law? Guy Bechor (2001) argues that in writing the New Egyptian Civil Code Sanhuri sought not only to regulate private legal relations between individuals, but also to create a wider social order. This was to be carried out through judicial discretion, based on the application of Article 135 of the New Code which states: “a contract is void if its object is contrary to public policy or morality” (Bechor 2001:197 n. 78). Further, the New Code introduced the ‘moral-altruistic doctrine’ of unforeseen circumstances, one point upon which it clearly diverges from the French Civil Code (upon which the Egyptian code is largely based) as well as previous Egyptian codes. This doctrine emphasizes the need to show compassion for a party to a contract facing difficulties or calamity. Although ultimately the scope of ‘unforeseen circumstances’ was narrowed to address only general rather than personal circumstances, Sanhuri insisted that the specifics of this doctrine should remain open to interpretation (194). Despite Bechor’s claim that Sanhuri’s work contained a ‘hidden’ agenda for the civil code to limit the liberal/individualistic tendency of its predecessors and to advocate for contractual justice based on compassion, forgiveness, and fairness, the civil code must necessarily be seen as an integral part of secularization processes by which legality and morality were further demarcated and

separated.<sup>12</sup> This was the ‘social ordering’ wrought by the code: it was constituting a secular society in which compassion, forgiveness, and fairness were to become matters of private morality and self-regulation.

Moreover, it is possible to see that reform processes and the 1948 Civil Code had implications for the constitution of new meanings of legal personality and for how citizens come to relate to law as authentic and legitimate. Armando Salvatore (2004) proposes that legal reform processes in the late nineteenth century in Egypt collapsed *ijtihād* (jurisprudential method in Islam), *ih̄tisāb* (primary binary instruction) and the law interpreting and activating institution of *iftā̄* (non-binding legal opinions). The result was what he terms an ‘imploded shari‘a’ that held more public-normative meaning than legal significance; this, he argues, is the status of shari‘a today. Furthermore:

Shari‘a thus defined has provided a soft and flexible background to the notion of legal personality either by constituting an ‘environmental noise’ for the operation of the legal system proper or by educating Muslim citizens into forms of personhood that conform to the impersonality of rule and are able to ease up their access to the higher formalization of legal personality within the system of positive law.” [Salvatore 2004:133]

He goes on to suggest that:

What I see here is not a dualistic normative and legal landscape, but mechanisms of translation between different levels of formalization of norms legitimized by different institutions or authorities. Within these mechanisms, the same imploded view of shari‘a plays a role in authorizing mechanisms of disputation and adjudication with varying degrees of formalization as well as of exposure to the procedures of law enforcement through state instances.” [134]

Salvatore posits the implosion of shari‘a as a meta-level phenomenon that provided the normative basis for the codification and positivization of law in Egypt generally and the emergence and acceptance of the new civil law framework in particular

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<sup>12</sup> See Shalakany (2001) for further discussion of the ‘identity’ of the civil code.

(127). One important mechanism of translation is *iftā'* (the giving of fatwas, or non-binding legal opinions by muftis) situated as a 'soft institution' that is socially important but formally autonomous from the state-centered legal system (132). In other words, *iftā'* is a mechanism by which the shari'a-related normative order is constituted in contemporary Egypt in the context of a civil law system largely unbound by Islamic principles.

Salvatore acknowledges that the implosion of *shari'a* has likely given rise to a modern legal subjectivity that is not well understood. He suggests: "[r]elocating research at this juncture on the dilemmas faced by legal actors might be highly beneficial" (133). While I concur that examining the dilemmas faced by lawyers, judges, and other legal actors is critical, it is likewise important to take account of the dilemmas faced by 'non-legal' actors. Citizens routinely face the challenge of determining what constitutes ethical or moral engagement with the law in relation to contracting, surety, and dispute processing, and many make such determinations without the guidance of legal actors.

### *Conclusion*

Although there are clear differences between the various types of commercial documents discussed above, including informal and false contracts, post-dated checks, and honesty receipts, they serve a similar purpose. As Kaufman-Winn notes in relation to the use of post-dated checks (PDCs) in Taiwan, "[u]sing PDCs to document commercial transactions thus helped maintain the viability of attenuated relationships without forcing the parties to assume the expense and inconvenience of completely converting the transaction from a relational to a legal basis by drawing up a contract that fully expressed

the parties' agreement" (1994:220). Beyond these pragmatic concerns, she also notes that there is a connection between the use of post-dated checks and a dominant cultural ideology rooted in Confucianism that prioritizes personal relationships over reliance on state institutions. Commercial documents used as legal fictions among traders and others in Port Said create leverage yet allow parties to avoid having to convert a transaction from a relational to a legal basis.<sup>13</sup>

Debates about capitalism and its potential to weaken the fabric of society feed into parallel concerns about private law as representative of a kind of individualizing justice and a potential threat to social solidarity and morally-guided modes of adjudication and compensation. As Charles Tripp notes:

Ideas of exchange form part of a complex web of imagining the world and evaluating it, producing particular business enterprises, legal systems and states to enforce the rules. This is directly relevant to Muslim responses, since rulings on fair exchange are central to all the major juristic schools of Islam. In fact, one can argue that many contemporary Islamic responses to capitalism stem from anxieties about unlicensed or unfair exchange, leading to various strategies devised to 'tame' the process and to make it authentically yet also productively part of an Islamic system, reinforcing rather than undermining, the solidarities and trust of transactions. [Tripp 2006:4].<sup>14</sup>

Perhaps in response to the failure of the courts to address perceived discrepancies between the civil code and *shari'a* on legitimate gain and profit, Islamic banking has

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<sup>13</sup> There may be a broad comparison to be made between these types of legal fictions and *Hiyal*. Under Islamic law, *Hiyal* (legal fictions or legal evasions) served important functions in commercial transactions to avoid the appearance of interest (*riba*) on transactions while simultaneously enabling it. The tradition of *Hiyal*, or legal fictions, can be understood as a way of making common practice and necessity in the marketplace conform to Islamic legal theory. In contemporary Port Said, commercial documents used to falsify the nature of a transaction are also practical responses to and ways of evading legal constraints. Yet unlike *Hiyal*, these legal fictions form an informal repertoire not related to a formal prescriptive literature (c.f. Horii 2002; Schacht 1964; Wakin 1972).

<sup>14</sup> Tripp also notes that concerns about capitalist penetration and its impact on social solidarity, materialism and competition were certain present among Christian Arabs as well, as evidenced in writings by Christian Arab scholars (2006:35)



emerged as a way to provide a structure for ethical exchange and investment practices.<sup>15</sup> Muslim intellectuals have tackled economic issues in order to delineate an ethical scope of practices that enable Muslims to effectively engage with capitalist modernity. As a result, Islamic banking provides a clear framework, parallel to a secular financial institutional framework, for international and smaller-scale transactions and investments to be carried out according to Islamic principles.<sup>16</sup> In contrast, what we find in examining contracting, crediting, surety, and dispute processing strategies in Port Said is that a similarly clear framework for ethical engagement with the law has not been delineated for this range of practices.

When Port Saidians frame strategies that avoid or limit legal intervention in transactions and disputes as ‘friendly’ strategies, they mark their own practices as ethical or moral. In so doing, they construe legal recourse as immoral or unethical, and in Port Said these discursive practices contribute to the remaking of a legible social order that has become disordered in the post-Free Zone era. In suggesting that newer residents, among them the many petty traders who ‘infested’ Port Said to get rich quick, are neither trustworthy nor capable of reasoned and peaceable dispute processing, locals who count themselves among the ‘sons of Port Said’ make claims to a higher moral ground.

Nirmeen’s clients take a risk by allowing their thieving employee to repay the money on

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<sup>15</sup> The tension over what commercial law allows and Islamic principles prohibit can be seen in a case from 1985 before the Egyptian Constitutional Court. This case was brought following Sadat’s amendment to the constitution, which declared that Islam was *the* principle source of law rather than simply *a* principle source of law, and on this basis the plaintiff claimed that article 226 of the Civil Code was unconstitutional. Article 226 stipulates that interest is allowed in cases of delayed payment, which is considered a form of *riba* in *shari’a*. The court rejected the complaint and ordered the plaintiff, the rector of Al Azhar University, to pay a fine and litigation fees (Tripp 2006).

<sup>16</sup> In Egypt, Islamic banking began in the 1960’s with the Mit Ghamr Savings Bank founded by Dr. Ahmed Al-Najjar in 1963 (Mayer 1985:36). The continued growth of Islamic banks in the 1970’s and 80’s through the present also coincides with, and is inextricable from, the opening of the country to foreign investment and market growth.

his own accord. But in so doing, Nirmeen pointed out, locals recognize that they are good men because they acted mercifully. Likewise, traders who secure installment plans with honesty receipts tend to give clients many chances to renegotiate their debt instead of turning the matter over to the police as a misdemeanor breach of trust. When they make a point of refusing signed honesty receipts as surety for credit, they build their reputation as a trader who is trusting and generous to his clientele. Legal intervention is invoked and mediated in such practices, and as leverage it counteracts the tenuousness of relationships in the market while allowing for agreements and dispute resolution processes to remain just outside of law's vision.

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