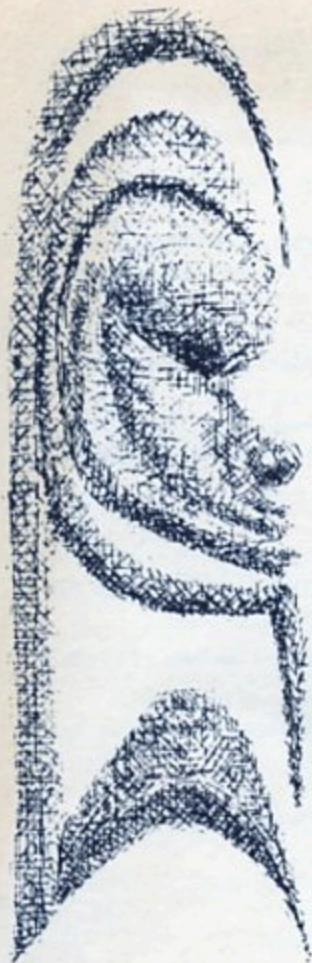


ANTHROPOS



Internationale Zeitschrift
für Völker- und Sprachkunde

International Review
of Ethnology and Linguistics

Revue Internationale
d'Ethnologie et de Linguistique

ANTHROPOS INSTITUT

83-1988-1/3

Trial Law and Tribal Solidarity in Sinai Bedouin Culture

"The Story of *Besha*"

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The mystery of what it is to be a Sinai Bedouin is not worn openly like a military badge. It lies beneath the clothing and beyond the obvious manifestations of nomadic life romanticized by Hollywood. The very term was developed by the *hadawi* or city folk to describe what the ancient Egyptians called *sand fleas*. Whatever they might have been thousands of years ago, I cannot say of course; but I can say with certainty today they are an interesting, complex people with all the aspects of what we call "modern civilization." As my good friend Sheik Barakat of the Alegat and other sheiks have mentioned over more than one camp fire, to be a bedouin "is to be both part of an ethnic group and believe in a group of ethics." It can't be just one or the other. It isn't wandering. Many don't. Nor is it camels or goats, or flowing robes. Some bedu have none of that. And there are plenty of people who are descendants of bedu, but are themselves not of that proud gathering. Some city Arabs fancy many bedu customs. But they aren't bedu either. Well, if *blood* is half of the story, what are the ethics? One of them, perhaps the most important, is *asabiyya*, tribal solidarity, the concept which contains within it the belief that justice for the whole is more important than for the individual.

Justice is of course also sought for the individual and, indeed, perhaps even more so than in western cultures, the victim is always taken care of by the society. It is a matter of tribal honor. And while fifty to sixty years ago a man might have lost his tongue or hand for obscene gestures or words, today it is different. Crimes are punished in the form of a fine, as opposed to physical mutilation as practiced by the bedouins of Arabia. If the criminal can't pay the fine, the society does, with the criminal then having the responsibility of paying the society back on a time basis. Should he fail to pay that fine, he is ostracized, having the same effect as shunning in Mennonite society.

There is one main exception to the rule; and it is an important one should you ever kill a bedouin, even by accident. With exceptions specific to certain individual tribal customs, under the legal concept of "blood vengeance," a murderer is sought out by the *humsa*, the victim's first five levels of male cousins, and then executed, usually by firing

squad. Otherwise, another male member of the murderer's family must be killed in order to restore balance between the families and tribal or inter-tribal *asabiyya*, as the case dictates. The death penalty is also frequently used for fornication and adultery in certain tribes; but for most other crimes the punishment is a fine.

But to return to the foundation of bedouin justice – *asabiyya* –: while it is important to understand that victims are taken care of, and they certainly are, it is not simply a matter of humanity. If the victim were not taken of or a "true balance struck," the whole suffers because a part has been weakened. Thus, anything that weakens the strength or *ardh* of society and thus the solidarity or *asabiyya* is evil. The procedures for handling all of this is called *orfi* law. Fair enough; but what about those situations when there are no witnesses? The Sinai bedouin link between *orfi* law (the legal mechanism that assures *asabiyya*) and tribal justice is *besh*, trial by ordeal, the focus of this article.

In order to prove one's innocence, the accused goes to a *mubasha* (Judge of the *besh*) and licks a red hot piece of metal or stone three times. Then, in the ancient classical form of "trial by ordeal," with the "assistance of Allah," guilt or innocence is determined by the *mubasha* as he examines the effect on the tongue. I must stress, therefore, lest western writers term the bedu barbarous, in American and European history, just as there have been traditions of blood vengeance, we have also had many examples of trial by ordeal. For example, many witches were tried by being dunked under water during the Salem witch trials. If they survived, they were innocent. If they died, they were guilty. The bedouin trial is less drastic, if perhaps more painful.

In my research I read the accounts of historians and talked to people who have undergone *besh*,¹ tribal officials, and then, finally, the Grand Mubasha of Egypt, the fellow who administers the procedure for nearly everyone in the peninsula, as well as for many in Egypt, Saudi Arabia, Jordan, and the Sudan. The procedure is fascinating, as is the history behind it. According to the *mubasha*, I am one of his first western witnesses.

I began my exploration on the Zagazig high-

1 One of my interviewees, an eighty year old Sawarka from Zaraniq, has done it eight times, amazingly without noticeable harm. Former British Governor Claude Scudamore Jarvis also saw a man go through the ordeal without harm. Indeed, the people I have seen, though burned, had fully functional tongues afterwards. Cf. Jarvis 1931, 1939; Kennett 1925; Murray 1935.

way² west of the French colonial Suez Canal town of Ismailiah in the dusty railroad village of Abu Suwer. Typically, most of my informants had not been very specific about exactly where to go; but had mentioned Abu Suwer as a source of information. And the town sported a bedouin market, always a good place to learn. Unfortunately, I was a day early; but I was still able to learn where the man lived and his name for the first time: Ayad Awad Gareeb.

The new trail took me south along the verdant fly infested banks of a sweet water canal. The address simply identified a farm, so I had to find a local to guide me the rest of the way, 18 miles south of Ismailiah in the district of Abu Sultan. I was led through a maze of farm roads and fields until I came to Mubasha Gareeb's farm. The flies had been terrible up until now; but as I closed, they grew worse, great armies of persistent creatures that invaded the car in floods whenever the door was opened.

In contrast to his surroundings, the Grand Mubasha was a well washed, elegant man of great gentility. His fellahin style clothes were immaculate, his fingernails manicured, his style very judicial. He was also willing to tell me anything I wanted to know, to include allowing me to photograph *besh* both with a regular SLR and a video camera, though I was restricted to the far side of the room. He said mine is the first video ever of the ceremony!

The instrument employed by the Grand Mubasha of Abu Sultan is a *tassa bil basha*, a long handled iron spoon usually reserved for roasting bedouin coffee, though apparently in 1920, bread with secret inscriptions was sometimes used as an alternative. During the years of the Israeli occupation, Sinai Bedouin could not go to Mubasha Gareeb and were frustrated by a lack of trust in traditional law. Therefore, other tools were used by different tribes: swords, knives, frying pans, branding irons, even stones; but the *tassa bil basha* is the traditional devise. How is it used?

If someone wants to undergo *besh* (it is never forced), he or she makes the appointment to see the *mubasha*, or is referred by the tribal *mukhtar* or even the local police. On average, Gareeb administers twenty to thirty cases a week, sometimes as many as ten on a Friday. When I arrived for my interview at 9 a.m. on Saturday, he had already done one, and had at least two more to conduct.

When the parties to a conflict arrive, they are

2 Zagazig is the town where the Biblical Exodus probably started.

seated on mats around a dirt rectangular floor under a bamboo roof facing each other in much the manner guests would be organized in the male portion of a bedouin tent, except that in this case women are welcome to participate in all activities. The *mubasha* sits at one end facing Mecca with a scribe on a mat between him and a fire circle at the center. The side of the rectangle facing the *mubasha* (the female room in a bedouin tent) is left open to the farm, as is the *mubasha*'s back. Behind is a small sandbox in which people sometimes pray prior to entering the ceremonial room. The east wall is bamboo and the west the concrete wall of the *mubasha*'s house, in which the *tassa bil basha* and the great book of the *mubasha* are stored when not in use.

Once both parties to the conflict have settled down and had their fill of tea, an aide begins to build a fire in the pit while someone pays the *mubasha* for his services, about E 18 per person undergoing the treatment. In the 1930s, the fee was ten pounds and in the 1920s, five to ten pounds depending on the level of trouble. But, unlike today, that fee went to a neutral third party called a *kafeel* or listener, who passed final sentence and made sure both parties paid any court costs. Most of my interviewees have indicated *mubashas* are honest men doing a difficult public service; however (though not confirmed by hard evidence), I have also heard many stories of under the table pre-payments. Gareebee seemed quite honest; but I was disturbed to see that he took the fee directly.

Concurrently with building the fire, the *tassa bil basha* is brought out and the ladle end stuck into the flames, convex side down. While the scribe takes careful notes, the participants tell their stories, interrupted only once in a while by questions. To the system's credit, only evidence directly relevant to the issue can be presented, no information about previous crimes, and nothing about a person's character. The later is left to the judgment of the fire. Indeed, in the ceremony we witnessed, a woman kept trying to bring in past crimes by one of the accused; but she was ruled out of order each time by the *mubasha*. He only wanted to hear about the issue at hand, nothing else, and eventually asked the girl's father to shut her up.

In addition to obtaining only basic, relevant facts, the *mubasha* must determine there are no witnesses and that the crime is truly serious; since *besha* is never used for witnessed crimes or misdemeanors. For example, a peasant once went to the *mubasha* asking that *besha* be administered to a youth who had stolen E 40. The *mubasha* didn't want to do it, as the crime was so small, and so

offered to recompense the victim, himself. It was only after the peasant indicated this crime was part of a long series of minor offenses that the *mubasha* agreed to investigate the theft. If the peasant were correct, then perhaps the very real threat of *besha* would serve as a deterrent to further crime. *Mubasha* Gareebee called this "acting as an intermediary."

The *intermediary* role effort in *besha* is not just a casual sideline. Rather, it is central to *asabiyya*. Most bedouin tribes are small, close unit mini-cultures. As a consequence, anything that diminishes the unity or strength (*ardh*) must be squashed. From that come the laws of sex and hospitality as well as the severity by which the crime of apostasy is treated. It's often a capital offense. Well, it follows then that feelings of ill will can't be allowed to fester, because if people don't trust each other in peace, will they when the chips are down? Not likely. And so *besha* is a system for final reconciliation (*asabiyya* again). If the *mubasha* turns out to be factually in error, that's o. k. God willed it. And since God is the true judge, simply acting through the intermediary, the decision can't be appealed. To do so would be to commit an apostasy. "God always has a reason for his actions."

Not everyone understands what it actually means to go through *besha*; so the *mubasha* spends part of his time making sure the parties understand the physical implications, that bare flesh will be applied to red hot metal. Fifty to sixty years ago an innocent tongue wasn't supposed to show any damage; but now it is a question of degree. An innocent tongue might suffer less damage than a guilty one because fear hadn't dried the skin; but in either case the victim will suffer a very serious, painful burn. In fact, each of the "treated" tongues I have seen bore a distinctive cherry red spot near the tip surrounded by gray flesh! The pain must have been terrific, not to mention the potential damage from infection in the coming weeks, so I was greatly surprised that no one cried out.

Once the preliminaries are completed, the parties swear to God the ceremony will finish the issue. In other words, there will be no appeal regardless of the physical outcome or their personal feelings about its correctness. Again, the ceremony is a physical manifestation of *asabiyya*, as well as the will of Allah. Then the scribe reads his notes aloud to the group. If all agree that they are accurate, the scribe copies the notes into the "great book of the *mubasha*," a large, green ledger. Then the ledger is signed by each participant at the bottom of the report, or his/her thumb print applied, if illiterate.

I knew that in the Armilat tribe of NW-Sinai and Gaza, accusers sometimes took *besha* to worry the accused; but the *mubasha* said that while this was the original form, the custom is now rare. What I didn't mention because I wasn't sure how it would be received, was that, as recently as the 1920s and 30s, the *mubasha* took the first three licks in order to prove the iron was not harmful to the innocent. In a case I saw in 1987, the accused and the accuser were the same people, two men and two women. On the one hand, some gold and E 4,000 had been stolen from Muhammad and his wife (the latter of whom was traveling at the time). They accused a couple of women with access to their apartment of theft, and went to the police. The others responded they had not stolen the money and accused Muhammad and an additional man of lying and covering up the real theft. Because of the lack of tangible evidence, all four were referred to the *mubasha* by the Abu Suwer police department. Since more than one accusation had to be settled, each of the four involved took an oath that he had not stolen the money and jewels, that he knew nothing of the theft and had not seen the stolen material. The oath would then be what the *mubasha*'s "polygraph of fire" would settle.

After the affidavit was signed and sworn to, the group waited thirty minutes longer for the *tassa bil basha* to heat up. During the discussion, gasoline had been poured over the spoon, which created a flame that almost hit the ceiling, already well scorched from previous "trials." When the spoon was ready, it was lava colored with bits of yellow, orange, and red embers attached. These were scrapped off and then the *mubasha* held the spoon out to be licked by the first man and on to the next and the two women last.

You are supposed to give the spoon three full licks, laying the full flat of the tongue on the convex side of the spoon. "The fire will release the spirit of the tongue, and the tongue knows the feelings of the heart." Muhammad did it exactly right; however, the second man had to give three extra licks, and the women five extra each until they did it properly! The spoon was then washed with water, and then the four washed out their mouths, spitting into a dirt basin next to the fire pit.

After about ten minutes while the *mubasha* counted worry beads and prayed quietly, he leaned over and looked at the tongues. Each victim was declared innocent, then a prayer was said and sentence pronounced. But the *mubasha* makes no decision, except as to innocence. Pronouncing judgement is done by a *kafeel* chosen by the two parties. His judgement was that the parties should forget

their differences and look for the thief elsewhere. They all agreed, and after a bevy of thanks and looking at tongues in a mirror, took off.

As the dust of their cars settled while the *mubasha*'s helper cleaned up, I sat back and wondered about what I just had seen, a slice of an obscure piece of a culture few know more about than what can be learned in movies. A westerner new to the Middle East and its ways would at once be both horrified and fascinated that people would allow themselves to endure such a hardship. After all, the burns were severe. Why do it? And who was this man who never advertised his talents? People sought him out like anthropologists seek the "missing link." Of course, that's what he is - or as some bedouins tell me, "a link between *asabiyya* and *orfi* justice."

The fellow I was talking to is of international reputation! I knew going in of course that other people conducted the ceremony, for example in the 1930s there was the sheik of the Amran tribe east of Akaba and another man in Medina. *Mubasha* Gareebee agreed; but indicated they died and left no heirs. As a consequence, those who would have used them or their children go to him, as well as a couple of lesser ones. He had already told me that both bedouins and city Arabs availed themselves of the ceremony, so what about Christians, I wondered. They too, he said. This means a remarkable change has taken place in only fifty years. From at least the turn of the century until the end of World War Two, this was strictly a Sinai bedouin custom. No one did it in mainland Egypt, certainly not city folk. And as for Sinai bedouins, my speciality, he enumerated cases for nearly all of the 34 major tribes, including the Maa'zeh, who as of the 1930s were the only bedouins not practicing *besha*.

I then asked him about the police. What did they think? Gareebee replied that his procedure was "informal" and that while the police sometimes caused minor hassles (unexplained), more often than not they referred cases. For proof, I was shown stamped referral slips from several police departments. And to strengthen his argument, he told us the story of a fat man who had been convicted of murder and sentenced to 35 years in prison. The wretch claimed he was innocent, demanded *besha*, and was allowed to see the *mubasha*. Gareebee declared him innocent! Indeed, it was later discovered that another member of the family had committed the murder, not the fat man. You can imagine what that has done for the *mubasha*'s reputation.

Well, what about the history? According to

British Occupation records in the 1930s, there was a *mubasha* named Sheik Amir Ayyad who inherited the job from his father Ayyad and his uncle Aweimir. Aweimir (or Oeimir), in 1906, largely because of the respect his tribe held for him and his knowledge of the border between Palestine and Egypt, provided evidence described as conclusive on behalf of the British at the Sinai boundary dispute, somewhat remarkable when one considers that the Ayyada tribe were one of the five tribes of the Nile that supported Araby in 1882 against the British, remarkable until one considers that the bedouin didn't like the Turks either. As for Amir Ayyad, Haweitah from Egypt sometimes went to him; but no one else in Egypt. So, as I said, the change is remarkable.

According to Gareeb, the concept was first developed much further back in an unknown past by a man of great powers named Weymer abu Ayad of the Sultani branch of the Ayayideh tribe in Saudi Arabia, a branch of the Qahtan, a confederation in southern Arabia. To this date, the Ayayideh is still the hereditary tribe primarily responsible for *beshah*. Weymer was a tracker until one day someone slipped into his home and stole something. He knew who it was; unfortunately, there were no witnesses. So he did what the Armilat still sometimes do. Weymer picked up a hot branding iron and said "I will lick it three times. You lick it three times. Whoever is guilty will be shown." The other man ran away and a legend was born. Even today, if someone agrees to *beshah* and runs, he is guilty.

Investigating *beshah* has brought many fascinating moments, the stories of bedouins who endured the ceremony, the very sight of the event. And there is the *tassa bil beshah*, that terrible finger of fire that must be licked in order to find truth. Many have found the procedure revolting and unscientific. Perhaps that is partly true, even though it operates on similar principles as the modern polygraph. The point is of course that the people who use it believe in it and its social role. Right or wrong decisions are at least final ones. Life goes on. Perhaps there is some value in just such a mechanism in a society wherein if grievances were allowed to fester, the strength of the civilization would weaken. If there is one thing that is central to bedouin culture, it is *asabiyyah*, tribal solidarity, togetherness, all of that. Therefore, for all its faults, in a very real sense, *beshah* is central to *asabiyyah* and *orfi* law and therefore it is one of the keys to what it is to be a bedouin, and even an Egyptian peasant.