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Gender, family law and citizenship in Syria

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This paper explores the impact of family law on the structuring of gendered citizenship in Syria where the state's family law accords male and female citizens different legal status, thus ordering the distribution of basic rights and duties along gendered lines. Partial centralization and fragmented secularization of judicial authority relates to the accommodation of religious groups, a policy which was continued after the establishment of territorial states in the 1920s. Family law maintained its religious tenets and was included as part of the state's jurisdiction. The impact of family law on citizenship is exacerbated in that membership in religious groups is mandated and monitored by the state. Citizenship is thus mediated through a citizen's membership in a religious group where the religiously based family law applies as state law. Seen in theoretical terms, family law plays a crucial role in structuring gendered citizenship in ways that limit the legal authority of female citizens as full members of the polity. Two questions are addressed: First, how and why does family law premise gendered citizenship in Syria? Second, what characterizes the debates regarding changes within family law that surfaced after 2003 following the political regime's liberalization efforts?

Keywords: gender; citizenship; Syria; family law

1. Introduction

The past decade has seen researchers as well as activists who question the legitimacy of the religiously based family laws that define the personal status of citizens in Arab states (Joseph 2000, Moors 2003, Welchman 2004). Family law regulates legal issues that are linked to the kinship structure and what is often termed a person's 'private sphere', such as marriage, divorce, custody over children, maintenance and adoption.

Concerned parties argue that the state's family law accords male and female citizens different legal status. The conferred status structures in turn the legal capacity and authority of the sexes in ways that bestow on them dissimilar rights and duties distributed along gendered lines. Family law is perceived as gendered because it includes patriarchal notions of differences between the sexes as interpreted through religious laws and jurisprudence found in Islamic shari'a laws, Christian church laws and Jewish halacha laws. To different degrees, religious laws encompass ideals of male dominance over subordinate women and children, and reflect gender roles regarding obedience and

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sexuality, freedom of movement in the public sphere and the distribution of wealth within the household economy (Buskens 2003, p. 75).

Proponents of changes that strengthen the legal position of women within family law on an equal footing with men point out that all citizens are regarded as equal in the state's corpus of public laws. Nevertheless, because family law has judicial primacy in defining women's personal status, the constitutional rights of female citizens are rendered invalid. Constitutional law asserts, for instance, that the coming of age is 18 years for males and females. However, the principle of male guardianship over female citizens is manifest in several articles of the state's family law. These articles restrict the legal authority of married as well as non-married female citizens when it comes to moving in public space and managing legal and financial matters related to marriage and divorce. Family law thus nullifies constitutional law and *premises* the membership of citizens in the state according to their sex in ways that have an impact on the terms of their citizenship.

Kymlicka and Norman define citizenship as comprising two compatible but separate concepts: 'citizenship-as-legal-status' denotes 'full membership in a particular political community' and 'citizenship-as-desirable-activity' reflects a process 'where the extent and quality of one's citizenship is a function of one's participation in that community' (1995, p. 284). The distinction between citizenship seen as a legal status and as political activity is important for an understanding of the impact of family law on citizenship in Syria. Family law plays a structural role in limiting the boundaries within which female citizens can participate in the political community because a female citizen's membership in the state is restricted by family law which does not grant female citizens' full membership in the polity.

This article explores two sets of questions: First, how can we understand the relationship between family law and the gendering of citizenship in Syria? Second, what characterizes debates regarding changes within family law that have surfaced after 2003 following the political regime's liberalization efforts? Who participates, which aims are sought and what has been the regime's response towards efforts to demand reform within family law?¹

In part one, gendered citizenship as reflected in Syrian law is examined, followed by a presentation of the structuring of legal status in the public and private spheres which delineates the legal boundaries of family law. In part two, some issues and participants related to changes within family law are presented. In part three, I argue that the debates regarding family law include considerations on the part of the regime regarding minority and majority populations. The regime agreed to a new Catholic family law in 2006 in which the legal authority of Catholic female citizens was improved, while it is reluctant to incorporate 'women-friendly' interpretations of shari'a principles in the 1953 Syrian family law that would bolster the legal authority of the majority Muslim population of Syrian female citizens.

1.1 *The law and gendered citizenship in Syria*

Law can be seen from two distinct but mutually related perspectives. On the one hand, law shapes and is applied to control social behaviour, on the other hand law is a reflection of that social order (Mir-Hosseini 2000, p. 14). How and why does family law premise membership in the state along gendered lines in Syria?

Although the ruling Baath party, which came to power in 1963, has a secularist socialist ideology, Islam holds a prominent place in the 1973 Constitution. Article 3 states that the president has to be a Muslim and that Islamic jurisprudence is a main source of

legislation. The constitution guarantees equal rights to both male and female citizens. This is specified in Article 45:

The state guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life. The state removes the restrictions that prevent women's development and participation in building the socialist Arab society. (ICL 2010)

Gender equality is reflected in other parts of the law where women enjoy equal civil liberties as men; the coming of age for both sexes is 18. In trade law, women have the right to act as economically independent subjects, and in the constitution, the testimony of a woman is equal to a man's.

Constitutional and civil rights are, however, in practice abrogated by three laws which have a gendered bias: citizenship law, criminal law and family law. In the Syrian citizenship law (§3), a Syrian woman cannot pass Syrian citizenship to her children if married to a non-Syrian, while a Syrian man has this right if married to a non-Syrian. In criminal law, Article 548 allows mild jail sentences of two to four months for 'honour killings', i.e. the murder of a female by male members of the family under the alleged pretext of having broken sexual norms, including marrying men from outside their religious group. In comparison, the penalty for manslaughter is up to 15 years' imprisonment (Shammat 2006).

Within family law, the principle of male guardianship is manifest in many articles. A woman is required to have a male guardian when contracting her marriage (the father, brother or another male relative), a wife is compelled to travel with her husband unless she states otherwise in her marriage contract, and a husband has the right to prevent his wife from moving freely if he does not agree. For the majority population of Muslim Syrians, family law grants the husband the right to have four wives, unilateral divorce and allows the practice of repudiation.² A wife is required to raise a case in court if she demands divorce. While the legal marriage age is set at 18 for a boy and 17 for a girl, youngsters are allowed to marry at the age of 15 for a boy and 13 for a girl provided that a male guardian agrees. In case of divorce, a woman has custody until a son reaches 13 and daughter 15 years, but she is seldom able to live in the marital home during the custody period. The patrilineal family is empowered to take charge of the financial rights of children if the father is dead, although the mother may have custody rights to the upbringing of her children. Article 12 stipulates that the testimony of a woman counts half that of a man's. In matters of inheritance, daughters inherit half the share of sons (Ittri 2006).

In sum, while equal rights are guaranteed for both male and female citizens in one part of the Syrian state's legal corpus of laws such as the Constitution and civil laws, the empowerment of male citizens and female legal subordination are manifest in other parts of the state's legislation such as citizenship law, criminal law and family law. Of these gendered laws, family law has the strongest impact on citizenship because it systemizes the personal legal status of *all* Syrian citizens in ways which accord male and female citizens with differentiated legal authority and thereby disparate legal status as members of the state. We have to look into the distinction between public and private legal status in Syrian law in order to grasp the legal basis of gendered citizenship.

1.2 Family law and the structuring of legal status in the public and private spheres

Contemporary Western legal systems do not distinguish between the legal status of a person in the public and private spheres, i.e. an individual's legal and social position

within or outside the realm of the family as a kinship system. In most Arab legal systems, however, this distinction is central; an individual's rights and obligations in the public sphere are regulated by civil law, while a person's relationship within the family is regulated by personal status law – more commonly known as 'family law' (al-Siba'i 2001, p. 11).

In the private sphere, family law regulates the 'private legal affairs' of citizens in matters such as marriage, divorce, custody over children, maintenance, inheritance and adoption. In the public sphere, civil law regulates the constitutional, political and social rights of citizens regarding waged labour, education, political representation, freedom of speech and organization in civil societies, political parties and labour unions.

The judicial division regarding a person's legal status in the public and private spheres is related to the partial secularization of the legal system in most Arab states following the establishment of territorial states after 1920. While all legal fields in the state incorporated Western legal standards, family law maintained religious laws and tenets as principal sources of legislation during the codification process of family law whereby rules and norms were explicitly recorded as state laws (Sfeir 2004).³ As a result, the legal and judicial systems are not secularized, and there exist a plurality of incongruent and – at times – competing legal sources that are perceived as authoritative laws within the state, a phenomenon which has been termed 'legal pluralism' within the Arab world (Berger *et al.* 1999).

1.3 Family law and the accommodation of religious groups in a multireligious state

Fragmented secularization of the legal system takes different forms in each Arab state. In Syria, the granting of autonomous jurisdiction in the field of education and family law to religious groups can be seen as state measures that aim to facilitate the preservation of group identities in a multireligious state (Shachar 2001, p. 17). Although Syria stopped releasing statistics on the distribution of the population according to ethnic and religious identity in 1956, rough estimates indicate that the Syrian population comprises 74% Sunni Muslims, 16% Alawite, Druze and other Muslim sects and 10% various Christian denominations (The World Factbook 2008).

The state's accommodation of religious groups in terms of granting autonomy in family law supports religious pluralism which the political regime takes pride in professing (Nome 2006). However, the autonomy of religious groups in family law is complicated by state-mandated membership in religious groups and the compulsory registration of the religious identity of citizens in personal status registries. As a result, a secular civil legal status is a non-option for citizens in Syria.⁴ Having the civil status of a citizen implicitly includes the rights and duties that define personal status as specified in the religiously anchored family law.

For female citizens, the state's inclusion of religious law as part of the state's family law has legal and political consequences in two ways. First, Syrian women's citizenship rights are abrogated and nullified by family law because religious tenets implicitly include patriarchal notions of gender differences between citizens. Second, the religious group's definition of norms and practices as reflected in family law are supported and sustained by the state which thereby bolsters patriarchal family models that violate women's citizen rights compared to male citizens. By administering family law, the state thus solidifies 'a system of unequal power relations which subordinate women' (Shachar 2000, p. 203) and perpetuates gendered citizenship in the polity.⁵

1.4 The codification of the Syrian family law: the 1953 Syrian Law of Personal Status

The 1953 Syrian family law, more precisely known as the Syrian Law of Personal Status, is influenced by Islamic shari'a laws and applies to all Syrian citizens. However, the Druze, Jewish and Christian denominations have their own family laws that grant them autonomy in matters related to marriage and divorce through Articles 307 and 308. In all other matters, such as inheritance, guardianship, kinship and adoption, Syrian family law applies (Berger 1997, p. 127).⁶

As in other Arab states where Islam is dominant, Syria shaped its family law out of nationally and politically defined mixtures of shari'a principles and profane civil laws. Current Syrian family law was prepared by a government commission which included both Muslim religious scholars, civil lawyers and political representatives who codified the Syrian family law on the basis of five sources: (1) the 1917 Ottoman family law, (2) the unofficial code prepared by the Egyptian jurist Qudri Pasha, (3) various Egyptian laws enacted between 1920 and 1946, (4) a treatise on personal status law drafted by the Damascene judge Ali al-Tantawi, based on his choices among different law schools according to principles most suitable to changing conditions, and (5) the choice of the committee members of various Islamic jurisprudence regulations in accordance with the Hanafi school (Shafaqa 1998).

The codification of Syrian family law implies choosing between alternative interpretations and sources, a process which is therefore political in nature. Although many segments of Syrian family law are based on religious tenets such as the shari'a and Christian religious laws, the state's coded law is secular and subject to change because the very terms in which the law was formalized and regulated under the auspices and influence of state authorities allow reinterpretation and ultimately reform of religious tenets (Vikør 2000, p. 232, 2005).

Seen from a gendered perspective, the debate about changes in current family law in Syria is about whether these laws shall maintain a patriarchal family model which is ideologically inherent in classical Islamic jurisprudence, or whether models of the family can incorporate notions of justice and equality between the sexes (Mir-Hosseini 2006).

2. Debates on family law issues in Syria: participants and issues

Syria is still defined as a 'total autocracy' where the political and civil rights of citizens are restricted by a repressive apparatus and the exclusive position of the socialist pan-Arab Baath party since 1963 (Brumberg 2003, p. 37). However, there exist increasing, but still restricted, opportunities for raising social and political claims that are part of the economic and social liberalization policies initiated in 2003 following Bashar al-Asad's ascendancy to power in 2000 (Perthes 2004, pp. 13–19).

The plurality of voices and demands is perhaps the most noticeable feature of debates and social initiatives regarding changes in family law. Proponents of changing parts of existing family law include feminists, human rights activists, union representatives, professionals, conservative believers and radical Islamist revivalists. Family law is seen as the 'last bastion' of sacred laws that protects the most important social institution in society – the family. During the past two decades, the religious tone has been reinforced and debates regarding family law have been 'a keystone of the state's commitment to Islam' (Moors 1999, p. 150) and have acquired a 'sharp political edge' (Mir-Hosseini 2000, pp. 12–13). Most debates regarding family law in Arab states are conducted within an Islamic framework. In Syria, however, debates on family law are influenced by minority and majority considerations due to the existence of a plurality of religious groups.

The striking impression regarding debates on family law issues is that they do not translate into discussions or demands about establishing an optional non-religiously based civil family law where contracting civil marriages and divorces is a feasible alternative. Few Syrians, including women activists, advocate such reforms which are perceived as too radical for Syrian society. Rather, the Muslim majority and the religious minorities 'today share the same fear of a truly secular civil identity' (Rabo 2005, p. 85). What proponents for change in family law seek are – in their words – 'improvements' and 'refinements' of existing laws, and their application in ways that strengthen women's contractual position in marriage and divorce.

Dr Kinda Shammat, lecturer at the Faculty of Law at Damascus University and a participant in governmental and non-governmental expert groups on legal issues related to family law, maintains that the different religious groups have much in common in terms of cultural habits, customs and traditional gender roles. She points out that women face mutual obstacles related to educational opportunities, wage labour and social hardships following divorce:

Our society is based on the primacy of the family and religion. We do not need new laws, what we really need is the application of *existing* laws which already equip women with rights that are religiously sanctioned but which are not in common use. An existing prerogative is the [Muslim] woman's right to coin her own conditional terms in a marriage contract regarding financial matters, the right to travel alone, insisting on a monogamous marriage, or having the right to divorce. Customary and traditional norms of decency are, however, extremely strong if a [Muslim] woman wishes to put certain terms into her marriage contract. 'This woman is starting her new life by setting premises. What kind of woman is that?', people would exclaim. Not even highly educated well-off families are yet confident enough to use the existing channels which the shari'a allows in the marriage contract to protect the future interests of their daughters. Another obstacle within the existing legal situation is the updating of laws in ways that reflect the social reality of women in waged labour and divorcees. (Interview, 19 November 2006).

Shammat indicates that Syrian women across the spectrum of religious groups share 'everyday social problems'.

2.1 Family law and social hardships: abandonment and divorce

Perhaps nowhere is women's vulnerable legal and financial position in family law more apparent than in crisis situations portrayed in cases of divorce which involve custody rights over children and maintenance. Contrary to what one might have expected of the lenient rules for divorce which Syrian family law grants Muslim men, few divorces are initiated by males. Divorce appears to be a male prerogative if one takes legal texts at face value. Social practice reveals that it is women who call on lawyers to file cases for divorce, and who go to court in order to obtain custody and maintenance rights. They do so because there is a tendency for men – across all religious groups – to evade their financial obligations to their ex-wife and children. Interviewed civil lawyers and religious judges who deal with cases of divorce estimate that approximately 80–90% of the cases regarding divorce, custody and maintenance are raised by women against husbands or ex-husbands who evade paying their financial obligations as laid down in family law. Financial evasion occurs in different ways: by pleading poverty and financial inability, abandonment (leaving the house without divorcing the wife) and remarriage. 'Conversions of convenience' are particular to multireligious states where Christian men evade the long period of divorce in Christian family laws by converting to Islam where divorce rules are more lenient. Social hardships related to divorce and custody are among the issues that are transforming into voiced demands when gender roles are put on the political agenda.

2.2 *Internal and external impetus for change*

While the codification of family law in 1953 in Syria involved hand-picked legal experts in Islamic jurisprudence in collaboration with state authorities, the current quest for and opposition to reforms in family law come from two main sources. On the one hand, international and regional conventions are advocated by women's interest groups and various civil rights groups. On the other hand, they derive from social workers, lawyers and women who are involved parties in legal disputes regarding divorce, child custody, men's abandonment of women without divorcing them, maintenance, cross-religious marriages and violence against women.

Although the international context can be seen as 'external' input for change in family law, while the efforts of women and human rights activists as well as opponents of change can be viewed as 'internal', the two influences are linked in an 'upward' and 'downward' axis for change which include a mixture of internal and external forces. The entanglement of internal and external forces is apparent in three ways which can serve as an empirical framework for an analysis of family law debates in Syria. First, petitions are presented by civil society groups such as The Association of Social Initiative and the Catholic Churches who have worked for changes in their family law since 2001. Second, there is an intensified cooperation between international, regional and governmental organizations in putting gendered issues on the political agenda. Third, some religious scholars endorse reformist interpretations of shari'a tenets in ways that emphasize women's rights within family law.

2.2.1 *Two impetuses from below: (a) the Association for Social Initiative*

Among the non-governmental groups that have addressed the question of family law most actively is the Association for Social Initiative (ASI) which was central in allowing divorced mothers to prolong the custody period following divorce. Established in 2001 as a study circle, it received an official licence to operate as a civil organization in 2004. Under the previous family law, a mother had custody for a son until he was 11 years old and of a daughter until she was 13. In October 2003, Law 18 was passed. It allows girls to stay with their mothers until they are 15 and boys until they are 13 (Rabo 2003, p. 13). The amendment was publicly praised as an improvement because divorced women were able to live with their children longer, and the ASI was given credit for getting it approved.

The ASI continued its work proposing changes within family law by making a questionnaire and carrying out a survey which was responded to by 2764 heads of households and women at health clinics in seven of the country's 14 provinces between March and September 2005. The survey poses questions regarding mandatory male guardianship when a female marries, men's right to unilateral divorce, women's right to initiate divorce, polygyny,⁷ custody, a Syrian mother's right to gain citizenship for offspring if married to a non-Syrian, gendered inheritance rules, witness proof rules and maternal domicile upon divorce.⁸

The questionnaire caused quite a stir in the media, most actively instigated by Abdelaziz al-Khatib, a conservative cleric at the al-Darwishiyya mosque in central Damascus. In 10 Friday speeches, he accused women's rights activists in general and ASI members in particular of imitating the West in their demands for reform in family law. Commenting on the survey he proclaimed that:

[this survey] calls for the destruction of morals and religion in the name of the victory of women against men. It seeks to destroy the last citadel of Muslim citadels [...] through the abolition of laws that are based on the Islamic *shari'a* [...] They want to erase Quranic

verses, or in other words, to put them on a shelf. Who are they who fumble with the country's sacred [laws] from the inside [...] Who has mandated these women protagonists to change Syrian laws? [...] They want to change [family laws] to start a war between the people and the state in addition to the war that has been started against the family. [...] Women proponents want to alter sanctified legislation, they do not say we do not want the Koran because they would be very stupid if they did, so what do they do, they take some of the legislation and ask people their opinion, they want to create chaos, because chaos is created out of laws that are based on interest and not on what is right.⁹

Two worldviews are reflected in these two voices in the debate on family law. The sheikh represents an orthodox perspective in which shari'a principles are seen as eternal principles, sacred and not open to change. For their part, ASI activists question the patriarchal interpretations of existing laws and maintain their right to readdress the implementation of shari'a-based principles by raising public awareness and calling for changes. Al-Hafeth of the ASI comments on the sheikh's protest:

We did not hear anything while we were conducting the survey, the stir started long after we finished. What we suggest is family law that is more in line with civil law. [...] Our current family law is a masculine law, it is not necessarily Islamic. We are still interpreting all laws from a masculine point of view, and [family laws] have achieved a sacred position, but they empower men who give them this sanctified aura so that no one is permitted to question their premises by warning: 'Do not approach the shari'a!'. (Interview, 25 November 2006)

The results of the survey were to be analysed by two sociologists at the University of Damascus, but in February 2007 the Ministry of Social Affairs withdrew the ASI's licence to operate as a civil society organization and banned the researchers at Damascus University from processing the findings.¹⁰ Apparently, the government chose to abstain from stirring up further dissension and sided with the orthodox sheikh and his followers against the ASI's proposals to review segments of Syrian family law.

Although the ASI's initiatives were aborted by the regime, the Syrian parliament accepted a draft proposal for a new family law in July 2006 which implied extensive changes for six Catholic churches in Syria.

2.2.2 *The 2006 family law for Catholic churches*

In a historic development born out of the effort of the Catholic Council of Churches in Syria, the Catholic denominations united in issuing a new family law. The new law allows the Catholic churches to adopt their own religious laws in matters such as inheritance, wills, adoption and filiation previously regulated by Islamic jurisprudence since the 1953 Syrian Law of Personal Status.

Proposals for changes started in 2003, when the Catholic Council of Churches that represents six Catholic churches in Syria endowed Bishop Antun Mosleh of Damascus and two experienced lawyers in family law affairs with the task of drafting a new law. The proposal for a new law was eventually accepted by the Syrian parliament on 13 June 2006 (Law 31, *Official Gazette*, 5 July 2006). According to Mosleh, the drafters took into consideration the Law of Oriental Churches dated 18 October 1990, international conventions on the rights of women and children, and social cases within a Syrian context that required adjustments in the law:

There was a need to ease people's problems, in custody cases and the annulment of marriages, and there were some 'holes' in the old law that we sought to amend in the new law. [...] We did not gain new distinctions, we regained our original rights that were taken away from us by the introduction of the Syrian family law in 1953. (Interview, 20 November 2006)

Among the major changes introduced by the law is the principle of equality between daughters and sons in matters of inheritance. In general, the financial rights of women have been strengthened. In cases of divorce, the wife preserves an independent right to retain material or financial resources brought to the matrimonial home upon her marriage or what is recorded as the produce of her own labour during marriage. The law establishes the principle of equality between the mother and the father in the custody of children, in contrast to the previous shari'a-based rules which ordained that the father gained formal custody.¹¹

Despite favourable results seen from the perspective of the Catholic churches, Bishop Mousleh admits that the multiplicity of family laws constitutes a structural problem that divides citizens in Syrian society. He claims that the Constitution unites Syrian citizens, while family law divides them because some religious communities give more rights to women than others. These legal disparities trouble the citizens, according to Mousleh (2005, pp. 3–4). He therefore proposes organizational measures that could reduce the negative impact of legal pluralism in the country and suggests the creation of family courts specialized in family law. At the present time, family law suits are handled in regular courts where judges are not specialists in family law.

We need a more unified family law that applies to all the religious denominations. My experience in the [Catholic] religious court is that issues related to family laws have much in common, especially in matters concerning social hardships such as abandonment, custody and maintenance. We could wisely initiate measures to unify our family law by establishing a common court system for all religious groups in Syria. (Interview, 20 November 2006)

The Bishop suggests the establishment of a common court which is divided into a section that administers religious affairs and another section that administers civil affairs, such as custody and maintenance. At present, there is a tendency for one group to dominate at the expense of another because each religious group has its own 'special' laws, in his opinion. He is willing to relinquish some prerogatives for the sake of gaining more equality between citizens across religious groups (*ibid.*). Mousleh thus displays a pragmatic approach towards changing elements of Syrian family law. On the one hand, he is concerned with improving the status of women and children within the existing law. On the other hand, he wishes to see the introduction of some 'civil principles', such as a common family court as a guarantee for the maintenance of Christian minority rights vis-à-vis the Muslim majority.

At the time of the interview, the Bishop was unaware that his suggestions regarding family courts are in accord with projects that were being discussed by different state actors.

2.3 The impetus from above: (a) international and regional conventions as channelled through official institutions

Two state organizations are particularly engaged in issues related to women's legal position within family law. The first is the country's largest women union *The Syrian Women General Union* (SWGU). Established in 1967, the SWGU represents 114 women's unions in all social and economic fields. It is registered under the Ministry of Social Affairs and Labour and is by and large the government's 'woman branch'. The second is the *Syrian Commission for Family Affairs* (SCFA). Established in 2003, it coordinates the work of international organizations¹² and has as its mandate to raise national consciousness with regard to concepts such as women's and children's rights in order to 'bridge the gender gap and attain gender equity, equality and empowerment of women'

(National Report 2004, *Beijing + 10*, p. 47). Both organizations focus on legal aspects of social justice and welfare rights' issues, and seek to adapt their policies to a Syrian national context in which the viewpoints of religious authorities are particularly sought after in order to legitimize their work.

2.4 *The SWGU and family law*

'There is a tremendous need for change at the legal level because times have changed, and the laws have to be altered in order to respond to the social and economic needs of women', says Summaya al-Ghanem, leader of the Division of Legal Affairs at the SWGU (Interview, 23 November 2006). According to Ghanem, the commitment of the largest women's union in the Arab world *The General Union of Arab Women* to concentrate on amending existing family laws in the Arab countries has been an important determinant in putting the question of changing segments within family law on the political agenda in Syria. The SWGU established a working group in 2005 consisting of representatives from the Faculty of Law, the Faculty of Shari'a from the Damascus and Aleppo universities, legal advisors from the Ministry of Justice, the Ministry of Social Affairs and Labour and the Commission for Family Affairs (SCFA). An expert group worked on three drafts of laws: a proposal for a state-supervised maintenance fund which is envisioned as channelling custody and maintenance fees to divorced women and children through the state, rather than through the ex-husband. A second proposal regards the housing of divorced mothers who live with their kin during the period in which they have custody over their children. The third aims at establishing family courts in line with Bishop Mosleh's ideas delineated above.

Asked whether the suggested law proposals are in accordance with common Islamic interpretations of family law, Ghanem responds in the following way:

Islamic jurisprudence differs widely between conservative and more liberal interpretations. Different Islamic schools either support or oppose changes. Before starting to work on the three draft laws we had two meetings with shari'a scholars from the Faculty of Shari'a as well as the Faculty of Law at the universities of Damascus and Aleppo, representatives from the Ministry of Justice, the government and the parliament. We explained to them that our work is social and humanist, and at the same time legal in character. The scholars told us that 'among the Islamic principles is the just treatment of women' and we got a clear signal that the projects we are working on are legitimate. (ibid.)

The effort to include the religious establishment is complemented by the SCFA's effort to document the wealth of interpretations embedded in Islamic jurisprudence when it comes to adapting international norms of human rights to a national context.

3. 'Syrifying' the Cedaw: the SCFA as coordinator

In 2002, Syria signed the Convention on the Elimination of all forms of Discrimination Against Women (Cedaw) (Legislative Decree 330). Cedaw is the most significant convention on women's rights, and was adopted by the United Nations in 1979. The Syrian government has, like most Arab states, set reservations mainly related to family law. The state's Commission for Family Affairs (SCFA) has, however, opted the revocation of these reservations as one of its objectives. In 2004 and 2005, it organized workshops and seminars in which politicians, intellectuals and representatives from unions and civil society groups, religious leaders and experts in Islamic jurisprudence were given the opportunity to discuss Syria's reservations. Following these meetings, the SCFA requested that the reservations be lifted, referring to the opinions of men of religion who suggest that

'these reservations do not disturb the spirit of the shari'a, nor do they oppose our social customs, nor the Syrian constitution' (Letter sent to the Council of Ministers, 5 April 2005).

A closer look at the interpretations of the Cedaw reservations from an Islamic jurisprudence perspective indicates that the SCFA's conclusions are rather optimistic when it comes to the verdict of various representatives within the religious establishment regarding the strengthening of female citizens' legal position in matters related to marriage and divorce.

4. Interpreting women's rights from Islamic jurisprudence perspectives

The call for renewal and reinterpretation of the shari'a has started a new gender discourse that argues for equality between men and women within an Islamic framework (Mir-Hosseini 2006). In Syria, this debate arose following the publication of two books, one by Dr Mohammad Shahrour entitled *Towards New Principles in Islamic Jurisprudence – Jurisprudence Regarding Woman* (2000), and a second by Islamic scholar Dr Mohammad al-Habash entitled *The Woman Between the Shari'a and Life* (2001). Public response from Islamic scholarly circles has been harshest towards Habash's writings, which have been considered 'too liberal' (Az-Zein 2002, Wardeh 2003).

Because he is profiled as a 'liberal Islamic scholar', it comes as no surprise that the SCFA commissioned Habash, who has an education within classical Islam studies, to comment on Syria's reservations to Cedaw from an Islamic jurisprudence perspective. In his study, Habash – a member of parliament since 2003 and re-elected in April 2007 – has a style of argument consistent with his reformist project of religious renewal (Heck 2003). He translates the text of the convention, which includes 30 articles, and examines each of the six particular articles about which Syria has made reservations. He offers lenient Islamic interpretations that can improve the civil rights of Syrian women. Habash points out that there are no substantial grounds for lifting all reservations except for one, Article 16 Section 1 regarding marriage, divorce and polygyny. He makes his stance clear on the importance of maintaining gender roles and differences within the family, and that female citizens cannot have the same legal authority as men in matters regarding marriage and divorce:

Absolute equity in rights and responsibilities in marriage and divorce is not conceivable because the wife's responsibilities in pregnancy, breastfeeding and custody differ from the husband's duties in economic maintenance. Islamic law states a man's right to polygyny, but a woman can never be granted the same right. The article grants a woman unilateral divorce on an equal footing with men. This is out of the question in terms of Islamic jurisprudence. The shari'a grants a woman the right to abolish a marriage through court and not by individual will. I believe reservation on this article is necessary and absolute. (Habash 2005, p. 22)

Habash's reservation and clarification illustrates that, although the style of argument is new, he maintains a patriarchal understanding of gender roles.

The current Grand Mufti of Syria, Ahmad Hassoun, who can be seen as a conservative religious scholar, comes to roughly the same conclusions as Habash with regard to the Cedaw reservations. In addition to the reservations which Habash deems necessary, the Mufti supports reservations on establishing a minimum age for a legitimate marriage, and reservations against external intervention by the International Court of Justice (*Tishrin*, 8 January 2005 reprinted in SCFA 2006, pp. 14–17).

The Cedaw reservations can be understood as general and widespread sceptical views of external interference in internal Syrian affairs. Imad id-Din ar-Rashid at the Faculty of Shari'a in Damascus University explains:

We are governed by a set of religious laws that cannot be abrogated without taking into consideration our cultural heritage which has put great financial obligations on the man as head of household. We welcome changes, but in a way that preserves our Muslim identity. [...] We are against globalization in the cultural and legal spheres. We have to take care of the social aspects of any changes within segments of family law in our society. (Interview, 26 November 2007)

Interpretations by Islamic scholars regarding Syria's Cedaw reservations indicate that what are professed as liberal views by Habash and SCFA do not deviate much from conservative interpretations as presented by the Mufti and other scholars in Islamic jurisprudence regarding the maintenance of male prerogatives in matters concerning marriage, divorce and polygyny. What are portrayed as 'liberal views' in public debates are, all in all, in line with patriarchal norms regarding the gendered distribution of rights and duties within the family. Islamic interpretations of Cedaw reflect attempts at renewing the religious language in ways which open up for alternative understandings regarding the legal status and position of women as reflected in legal texts. However, the changes suggested are meagre in terms of providing Syrian women with a status that grants them a legal empowerment unmediated by male guardianship as regulated by family law.

5. Debates on family law and the context for change in Syria: sustaining family law as a bargain between 'men of politics' and 'men of religion'?

Kandiyoti introduces an analytical framework for women's different coping strategies within male-dominated households and describes these as different forms of 'patriarchal bargains' which indicate 'the existence of set rules and scripts regulating relations, to which both genders accommodate and acquiesce, yet which may nonetheless be contested, redefined, and renegotiated' (1988, p. 286).

There are limits to using an individual level of analysis and applying it to a more complex and comprehensive national level. The parallel of various forms of 'patriarchal bargains' is, however, fruitful as an approach when analysing the different bargaining positions of social groups in relation to the ruling regime in societies where attempts are made to change or maintain patriarchal family models.

In Syria, official commitment towards bolstering the legal position of Syrian women within family law is severely hampered by minority and majority considerations in a multireligious polity. Legal pluralism within family law serves not only as a means of maintaining and regulating the internal affairs of religious groups. Family law also defines the dividing lines *between* the different religious groups, with state authorities as gatekeepers who maintain and monitor intra-group boundaries through the state's personal status registries.

Rabo indicates that 'a top-down push to change family law would be met with great resistance, especially from Sunni Muslims since the regime is perceived to be controlled by minorities, especially [an Alawite] Shi'a minority' (2005, p. 87). As such, family law can be seen as an important bargaining issue for the regime in terms of placating different demands in internal Syrian affairs.

Seen from the state level, civil society groups on the one hand, and religious groups on the other, are in different bargaining positions in relation to the regime when it comes to demands regarding the renegotiation of the current gendered family laws. While some civil society groups and state organizations support changes that strengthen the legal authority of women within family law, the regime is eager to maintain its support from religious groups under the aegis of religious pluralism.

Lawyer Daad Moussa is sceptical of the 2006 Catholic family law which improves the position of Catholic women. She sees the widening of autonomy of some groups as further underlining the segmentary orientation of the regime towards its citizens. The legal difference *between* citizens is extended, although the status and position of *some* women is improved. She comments further:

The religious fundament that our society builds upon is a bargain between men of religion and the present regime. Our most important rights as Syrian women and citizens were achieved in the 1950s and 1960s. We got the right to vote, the right to get an education and to partake in the labour market. These rights are written in the Constitution. What have we achieved since that time in the field of family law? Two minimal details: In 1975 divorced mother's custody right was raised from 9 to 11 years for boys, and from 11 to 13 years for girls. In 2003 custody was prolonged to 13 for boys and 15 for girls. Nearly three decades of hard labour for women, and all we get is a lousy two years' 'pay-raise'!. (Interview, 18 November 2006, see also Moussa 2005)

It is apparently easier for Christian denominations in Syria to improve the legal and economic status of female members because Christian groups are perceived and treated as minorities by the authorities, who find that they encounter fewer obstacles to granting more autonomy in matters related to family law. The small size of the Christian groups in Syria, no more than at most 10% of the population, has proved to be an asset in negotiating with the ruling majority. The centralist regime, eager to accommodate religious pluralism, supported internal changes within the family law of a minority group. The new Catholic family law illustrates this. With structural changes in inheritance laws, custody, maintenance and marital financial assets, the legal status of women has been radically improved.

The relationship between the ruling Ba'th regime and the Muslim majority is more complex and politically explosive. The regime is eager to show a political willingness to implement reform which is in line with the modernist project of an aspiring young president. It has strengthened its commitment to the civil rights of women by establishing the SCFA, by complying to parts of Cedaw, and by putting subjects previously deemed as sensitive such as honour crimes and violence against women on the political agenda.¹³

However, by withdrawing a civil society's licence and forbidding the processing of the survey findings, the regime has discredited efforts that articulate dissent towards established interpretations of religious tenets and instigate political mobilization. Although the uproar against the family law survey was instigated by an Islamist cleric with orthodox standpoints, the views of al-Khatib are in line with viewpoints reflected by the religious establishment of both the moderately conservative, such as the Grand Mufti, and those publicly regarded as liberal Islamic thinkers such as Habash regarding the strengthening of the legal authority of female citizens. The political regime is able to discredit efforts that focus on what are publicly deemed 'sensitive issues', and can at the same time underpin conservative opinions and standpoints which signal distrust of the strengthening of the legal status of women within Syrian family law. This policy also applies to the sustaining of Syria's reservations to Cedaw, helping to maintain what can be seen as a patriarchal bargain between the political regime and the conservative religious establishment at the expense of bolstering women's civil and citizenship rights.

Islamic scholarly interpretations regarding potential reforms within family law indicates that the ruling Syrian regime is comfortably in line with the conservative religious establishment. This alliance between the men of politics and men of religion may well prove to be too comfortable for the authoritarian regime to risk destabilizing for the

sake of what are seen too 'drastic' efforts to improve women's legal rights and status through amendments to the existing gendered family law.

Notes

1. The information presented in this article was gathered during a total of six weeks' fieldwork in Damascus in November 2006 and April 2007. Prior to the fieldwork, the Syrian Internet portal *Nisa' Suriyya* (NS) [Syrian Women] (www.nesasy.com) which publishes in Arabic gave valuable access to the situation of women in contemporary Syria. I systematically read articles that comment on issues related to family law under six entries: 'women's affairs', 'violence against women', 'family affairs', 'male affairs', 'legal studies' and 'laws and treaties'. The articles date from March 2006 to 2007, many are written by freelance journalists, but most are excerpts from Syrian daily newspapers and magazines.
2. 'Repudiation' is the technical word for the accepted religious ritual that grants a husband the right to divorce by citing 'I divorce you' three times which can be done without the presence of the wife. In Syria, an amendment in 1975 requires that the husband registers divorce after repudiation, but this law does not render a husband's right to practise repudiation illegal.
3. Arab states include the 22 members of the Arab League.
4. Compulsory membership in religious groups is also a state policy in Lebanon, Israel and Jordan.
5. An extreme state policy of non-compliance with shari'a-based rules is the non-registration of children born out of mixed marriages between a Muslim woman and a non-Muslim man who does not convert to Islam. In cases where a Syrian Muslim woman and a Syrian non-Muslim man give birth to children, the 'penalty of non-compliance' with the shari'a tenet that prohibits such mixed marriages is to deny the registration of these children in Syrian personal registries and deprive them of Syrian citizenship (Interview, lawyer Rukniya Schahdeh, 26 November 2006).
6. The Muslim majority of the population in Syria includes the Sunni, the Shi'a and the Alawite communities who share a common family law. The Druze and the Jewish communities each have their own family law. The remaining 11 Christian minority communities are regulated by five different family laws: (1) Greek Orthodox; (2) Syrian Orthodox; (3) Armenian Orthodox; (4) Evangelist and (5) Catholic family law applying to Greek Catholics (Melchites), Armenian Catholics, Syrian Catholics, Maronites, Chaldeans and Latins (Berger 1997, pp. 118–119).
7. 'Polygamy' refers to the practice of a person having several mates irrespective of gender. 'Polygyny' refers more precisely to the practice of a male who has more than one female mate.
8. The questionnaire is entitled 'Investigation on the opinion of changing laws that are unfair towards the rights of women' [*isti'tla' ra'y hawl dururat taghyir al-qawanin al-mujhafa bihaqq al-mar'a*].
9. The precise dates for al-Khatib's sermons are unknown, but they were already recorded and circulated in Damascus and its suburbs on cassette-tapes and in a booklet in January and February 2006, three months after the survey had been conducted. Bassam al-Qadi presented the speeches on the nesasy-website on 17 March 2006. *Rudud 'ala abatil fil-ahwal ash-shakhsiyya lilmar'a, alhalqa 1–10* [Reactions to the atrocities on women in family law, part 1–10].
10. See May Al-Rahbi's *limaslahat man al-hujum 'ala al-tajammu'at an-nisa'iyya?* [Who profits from the assault on women's organizations?], 4 March 2007, <http://www.nesasy.org/content/view/4397/257/>.
11. Suleiman Qubti *al-jadid fi qanun al-ahwal al-shakhsiyya liltawa'if al-kathulikiyya* [What is New in the Personal Status Laws of the Catholic Churches]. [online]. Available from: <http://www.nesasy.org/content/view/3778/89/> [Accessed 10 Nov 2006].
12. These include the United Nations Development Fund for Women (Unifem), the United Nations Development Programme (UNDP), The United Nations Children Fund (Unicef) and the United Nations Population Fund (UNFPA).
13. See *dirasat midaniyya hawl al-unf al-waqi' al-mar'a* [Fieldwork study on violence against women], a joint report by the Syrian Central Bureau of Statistics (CBS), Unifem, The Syrian Commission for Family Affairs (SCFA) and The Syrian Women General Union (SWGU) issued in 2005.

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