Eligibility of Working Married Lebanese Women for Social Benefits

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Article 7 of the Lebanese Constitution, which was drafted in 1926, calls for equality between men and women in rights and duties without any discrimination. Article 12 also asserts the right of every Lebanese person, man or woman, to employment in the public sector.

In spite of this reality and the series of improvements and ammendments aimed at giving Lebanese women their rights, some laws still discriminate between genders.

From a historical perspective, the progress of women's rights in Lebanon is marked by the following legal events:
- 1953: Women attained suffrage rights and the right to run for elections.
- 1959: The inheritance law for non-Muhammadis was passed, giving equal rights to males and females.

In addition, Legislative Decree 112, the 'employee guidebook,' which was issued on June 11, 1959 and was based on the principle of equality in rights and duties, as stated in the Constitution, opened the way for women to work in any public administrative office.

The Lebanese Labor Law, ratified in 1946, did not discriminate between the female and the male employee except when it tried to protect the female employee. For example, Chapter 8 of the Law entitled "Employing Women and Children" and Article 52 forbid the employer from threatening to dismiss a female employee who is on maternity leave.

- 1960: Lebanese women were given the option to keep their Lebanese nationality, in case of marriage to a foreigner.
- 1974: Lebanese women were given the right to freedom of movement after the annulment of the statute that required husbands' permission prior to issuing passports to their wives.
- 1983: Punishments for the use of contraceptives were annulled.
- 1987: The age for being subjected to end of service indemnities, as per the Social Security Law, was changed to 64 years for men and women, both having the option to collect indemnities at age 60.[1]
- 1993: Articles 11, 12 and 13 of the Trade Law were repealed and women were given the full competence to venture into commercial businesses, enter a joint liability company, and become authorizers in commandites.[2]
- 1995: Article 97, which used to forbid a third party from entering into a life insurance contract for a married woman without her husband's permission was amended and restricted to the supervision of the judiciary, thus restoring legal competence, in this respect, to married women.[3]

Income Tax:
Article 34 of the Budget Law for the year 1999 covers this issue on the following basis:
- If the wife of a taxpayer is employed in a taxable employment the wife is subject to tax reduction similar to that of an unmarried woman. If the married couple has children in their custody, the father is given an additional reduction for the children, which conforms to the general principle that a couple only benefit from one tax reduction.
- In case the father dies, or if he develops a debilitating or chronically paralyzing sickness and is no longer capable of securing an income, the mother benefits from the extra tax reduction for their children.
- If the husband reaches retirement age and his wife proves that he has no source of income, the situation of the husband is considered by the income tax department as similar to that mentioned in the preceding clause and so the wife also benefits from tax reduction, even though it is not expressly mentioned in the law.

Thus, there is no discrimination against the married woman in income tax policy, except in cases where the husband, who has not yet reached retirement age, does not have any income and is not debilitated.

This essay examines an extremely important matter, one that most people are not aware of, causing a lot of women to bypass a right that the law concedes to them. But, this law is often not applied. It explains conditions for the married working woman to receive social benefits (family indemnities, sickness and maternity benefits). It also surveys the stages that led to the amendment of the provisions that deal with this issue. In the first part, the situation of the married female public servant is presented, and in the second part the situation of the female employee is presented.

Part One: The Situation of the Married Female Public Servant
In the wake of the increase in the number of female employees in the public sector in the past ten years, especially in realms that were traditionally considered to be male dominated, such as the judiciary and general security, women have begun to demand their fair share of social benefits. These benefits that include family indemnities, sickness benefits for family members of the employee and education allowances are stated in the employment guidebook[4] and the Government Employee's Coop law, of which only the male employee used to be the beneficiary for his family, despite the female employee paying the subscriptions required of all employees by the social security fund.

Based on these revisions, in 1992 the collaborative fund for judges (*sandooq el-ta'adud*) repealed all gender discrimination for benefiting from contributions in the judiciary.

Next, and after consultations with the legislations and consultations panel, the legislature amended Article 149 of the law issued on October 30, 1999 which relates to benefits allocated to female employees who are members of the Government Employees Coop.[5] The amended article states the following:

> Unlike any other provision, the female employee, just as the male employee and without any discrimination, benefits from the contributions of the Government Employees' Coop as per the benefits and services program as well as the education allowances program, for herself and the members of her family (her husband and children) whether she benefits from family indemnities or not. She also receives benefits for anyone in her custody including her parents and siblings according to the percentages used by the Coop as dictated by the following conditions:
> 1. In case both spouses are members of the Coop, benefits for the spouse and children are given to the one with the higher rank or grade and with the same hospitalization classes whether he/she is the recipient of the family indemnities or not.
> 2. In case only one of the two spouses is a member of the Coop and the other receives benefits from another official source, the benefits of the Coop are only given to complement the benefits of the other official source.
> 3. An employee receives all the benefits offered by the Coop for his spouse and children (only the first five children are eligible) in case his/her spouse is not a member of the Coop and does not receive benefits from another source.
> 4. In case an education scholarship of a value lower than that offered by the Coop was issued, the employee must present a signed statement from the employee showing the exact amount of the scholarship paid. Only then would the Coop pay the difference.
> 5. In case of the divorce or separation of the couple, and also in case of dispute or desertion, benefits are given to the spouse who has the custody of the children, in accordance with the amounts stated in the bylaws of the Coop regardless of the alimony paid.

This proves the absence of any gender discrimination in public employment concerning the social benefits offered to employees.

Part Two: The Situation of the Married Female Employee or Wage Earner
The Social Security Law, specifically Articles 14 and 46 specify the individuals who have the right to receive health and maternity benefits and family indemnities. The health and maternity benefits cover the insured workers and members of their families who live under their roofs and are/or are in their custody.[6]

Family indemnities are offered to the workers and the insured members mentioned in the first provision of the first paragraph of Article 9 of the Social Security Law.

The conditions for the benefiting of the workers' children from these indemnities are specified in provisions A and B of the second paragraph of Article 46 of the afore-mentioned law.

A dispute usually arises over alimony and child support based on who the specified benefactors from the above-mentioned benefits are.

The general principle mentioned in the first paragraph of Article 47 of the Social Security Law states that a child has the right to only one family indemnity, if more than one parent receives it. And according to the provisions of Article 46 of the same law, the father receives the familial and educational benefits if the father and the mother satisfy the afore-mentioned conditions, except if the children are in the custody of the mother alone.

In implementation of this principle, and according to memorandum 112 dated January 18, 1972, the female employee is not legally or practically considered the head of the family and therefore is not eligible to benefit from family indemnities for her children except in the following cases:
1. If she is widowed, divorced, or is legally considered to have deserted her husband.
2. If her husband ceases to work for one of the following reasons:

a. He has reached the age of 60 and in this case it should be proven that the children are living with their mother and in her custody.
b. He is afflicted with a physical or mental disability.
c. He is serving a jail sentence.

Starting in 1996, after the revision of several decrees or rulings presented by female workers to the arbitrational labor councils, many court decisions that recognize the right of the mother to family indemnities for her children were issued. I have chosen only two such pieces of legislation numbered 210 and 202/96, which were issued by the Arbitrational Labor Council in Beirut, Chairperson Choukhaiby, and which became a permanent interpretation after Decision 200/6, dated February 21, 2006, of the General Jury of the Supreme Court. I shall mention below the most important points of these two decisions.

First: The Two Decisions of the Arbitrational Labor Council in Beirut

In general, the two decisions describe a situation in which the female worker's husband does not work in either the private or the public sectors. Therefore, he has no right to any of the social security benefits. So, the children of the female, and according to the previous procedures of the Social Security Fund, are not eligible to benefit in any way from social security, even though her employer is paying all the subscriptions to the various branches of the social security, and she is paying subscriptions for health and maternity benefits, as per the laws and procedures of the institution. This clearly shows an injustice against the female worker's rights. So the Arbitrational Labor Council based its decision on the following principles:
- The fundamental purpose on which the Social Security Law and its institutions and benefits are based is undeniably the guaranteeing that the insured has a minimum sense of assurance through the offerings that it provides, most importantly healthcare and the meager familial aid.
- Adopting any interpretation or jurisprudence that conflicts with this rule of procedure will undermine the provisions of the international treaties to which Lebanon is a signatory, especially the International Labor Office Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation which warns against discrimination based on gender, religion or race.
- The social security Fund's claim that the defendant's (female worker) request cannot be answered on the basis of the laws and habits of our society – specifically, the general belief that the father is the head of the family and the one responsible for its sustenance – must be dismissed. This is because such beliefs lack seriousness and veracity and because of their clash with modern social fundamentals which consider the wife to be her husband's equal in rights and duties, and which consider her to be equally responsible for the upbringing and protection of the interests of the family. Hence, the aforementioned two decisions (201+202/96) require the social security fund to:
1. Pay her family indemnities
2. Allow her to receive health benefits for her children

Second: The Decision of the General Committee of the Supreme Court

The afore-mentioned decision of the general jury of the Supreme Court reiterated the provisions of the international treaties which discuss this subject, and the provisions include:
- Articles 2 and 26 of the Convention on the Rights of the Child (CRC).[7]
- Article 1 of the International Labor Office Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.[8]
- Article 3 of the International Covenant on Social, Economic and Cultural Rights (CSECR).

Then general principles for the resolution of the issue were drafted:
- The rulings on alimony and child support are usually the responsibility of the relevant sects. Thus, the social security fund's decisions in these matters do not reflect the will of the Lebanese legislation to relegate such matters to the appropriate religious authorities. For instance, in Article 14 the word 'alimony' is mentioned and in Article 46 the phrase 'the supported child,' and in Article 47 the phrase 'child custody.' Those expressions simply mean that one of the parents handles the expenses of the children. However, the level, conditions and legal framework of this expenditure are not specified.
- When the mother and father of a child are employed, it is not possible to objectively determine beforehand what ought to be the contribution of each to child support. This, because of the variety of social, economic, and living conditions that prevail in each family.
- In light of what has been presented thus far, and in line with the principle of equality in rights and duties, the logical interpretation of the Social Security Law should be that the mother, who is a member of the Social Security Fund, should receive benefits for her children as long as they are proven to be in her legal custody (according to the afore-mentioned conditions) and as long as her husband does not receive such benefits.

The importance of continuous jurisprudence on the discrimination between the male and the female insured workers regarding legal child benefits (health and maternity benefits and family indemnities) is apparent from the issuance of memorandum number 283, dated January 19, 2004. The memorandum was issued by the general director of the Social Security Fund, repealing all previously issued memorandums that contradict it. The memorandum included the following provisions:

1. The intendment of alimony or child support mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so.
2. Requesting all concerned units in the Fund to adhere to the following procedures: For the insured female to receive health and maternity benefits and indemnities for her children she must satisfy the following conditions, as per the Articles 14/2 and 46/2 of the Social Security Law:
a. The father must not be a recipient of any Social Security Fund benefits or any other similar sources for the same children.
b. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.

It has, however, been made apparent to me through inquiries I have made in some public administrations, that some of these administrations still do not abide by the provisions of this memorandum. They rather require the female worker to resort to the Arbitrational Labor Council for a decision to guarantee her right to these social benefits, even in cases where some other women within the same department previously obtained similar decisions.

Conclusion:

Based on what has been examined above, the following could be deduced:
1. When the social fundamentals change as a result of alterations in social, economic and living conditions, the laws guiding these fundamentals need to be modified.
2. Amendments are usually undertaken by judges and are considered a natural process, since those judges are part and parcel of this society and are affected by its changes and developments.
3. It is the undertaking of court jurisprudence to modify, interpret, and sometimes disrupt, under the justification of interpretations, any laws that become antiquated and discriminatory. In all countries, the legislator has undertaken the responsibility of amending laws that do not keep up with societal developments.

The above-mentioned scenario is currently repeating itself with what is known in Criminal Law as 'honor crimes,' and for the same reasons. In recent years, jurisprudence in the courts has been moving towards implementing the rulings on such crimes in a way which in effect undermines its effectiveness because the judges are convinced that these rulings are not in line with the development in the collective mentality of Lebanese society.

And finally, it should be mentioned that even though the situation of Lebanese women has changed in the past decade in all respects, the legislature should be pressured into amending or repealing discriminatory rulings against women especially with respect to:
1. What is known as honor crimes and adultery in Criminal Law;
2. Lebanese nationality: the right of the Lebanese woman to give her nationality to her foreign husband, as happens in developed countries;
3. Personal affairs: instating civil marriage and enforcing a unified civil law on all Lebanese citizens, based on the principle of gender equality in rights and duties.

Day after day, Lebanese women are playing an effective role in the educational, economic, social, and political fields. This entitles them to being dealt with fairly and to their being given their basic constitutional rights.

Endnotes

1. Law 82/7, January 6, 1987.
2. Law 380, November 14, 1994
3. The Law of December 8, 1995.
4. Decree 112/1959
5. According to Article 47 of Law 179/2000, amended by Law 324 dated April 21, 2001 and Article 2 of Law 343 dated August 6, 2001, amended in the single article of Law 387 dated December 14, 2001.
6. As per the provisions of Paragraph II of Article 14 of the above-mentioned law
7. Lebanon adopted CRC through Law 20/1991
8. Lebanon ratified this convention through Legislative Decree 70 dated June 25, 1977.

Appendix

Bill for the Amendment of Articles 11, 12 and 13 of the Legislative Decree 304, Dated December 24,1942 (The Land Trade Law) and its Amendments

Article 1:
The provision of Article 11 of the Land Trade Law were repealed and replaced with the following provision: 'The married woman has the full merit to practice land trade.'
Article 2:
The provision of Article 12 of the Land Trade Law was repealed and replaced with the following provision: 'When in a trading business, the married woman has the right to undertake any job required by her commercial enterprise.'
Article 3:
The provision of Article 13 of the Land Trade Law was repealed and replaced with the following provision: 'The married woman has the right to enter a joint liability company or become a commissioner at a commandite.'
Article 4:
The law shall be operative as soon as it is published in the official gazette.

The Law of Obligations and Contracts
Decree 383- August 15, 1995 repealed Article 997 of the Law of Obligations and Contracts and replaced it with the following provision:
Article 997- 'No third party is allowed to enter a warrant depending on the death of a person who has been put under judicial supervision without the permission of the supervisor. This permission does not supersede the consent of the incapacitated person when required. In case neither the permission nor the consent is at hand, the contract could be repealed under the request of the supervisor, or the signatory to the conditions list or the insurer, as the circumstance requires.'

Law 87/2
Article 1
1. The insured's submission to the end of service indemnity division ends and the indemnity is liquidated when the age of 64 is completed. He has the right for his indemnity to be liquidated when he completes the age of 60 and when the stated maximum level for submission is reached.

Social Security
Family Indemnities
Article 46
A fund for family indemnities is to be established the organization of which is specified in this section and its resources are specified in Chapter 3, Section 1, Volume III, of this law.
1. Family indemnities are issued to the workers mentioned in Paragraph 1 of Article 9 and Article 10 of this law and to the recipients of health, maternity and work emergencies insurance if the incapacitation level exceeds 50 percent.
2. The claimants for family indemnities include the following:
a. Every supported child, as per Clause J of Paragraph 2 of Article 14.
b. Every supported child with a physical disability, irrespective of the age, and every single and unwaged girl who has not yet reached the age of 15.
c. The legal wife living in the house if she does not have a paying job.

Social Security
Article 14
1. Social security covers both the insured and their family members. The following is added to Paragraph 1 of Article 14, as per Law 283 - December 12, 2002:
The word 'insured' as mentioned in this article is understood as both the male or female applicant without any discrimination.
2. The family members of the insured individual are those living under the same roof of this individual and under his expense.
a. The father and mother who have at least completed the age of 60 or who are incapable of providing for oneself because of a physical or mental disabilities.
b. The legal wife of the insured (in case of multiple wives only the first one receives benefits).
c. The husband of the insured individual who has at least completed 60 or who is incapable of providing for himself because of a physical or mental disability.

Paragraph D of Article 14 of the Social Security Law is annulled and replaced with the following provision (as per Article 80 of Law 220- May 29, 2000):
d. The legal natural and adopted children of the insured individual and until they complete the age of 18. If the children are incapable of providing for themselves owing to educational commitments, they receive benefits until they complete the age of 25.
- If the children are handicapped and are holders of a personal disability card, and if they are incapable of providing for themselves because of their disability, they receive benefits irrespective of an age limit.
- The aforementioned benefits stop being issued in case the handicapped individual receives unemployment indemnities, as specified in the law.

The provisions of Paragraph E Article 14 are annulled as per Law 483 - December 12, 2002, and as annexed by Article 81 of Law 220- May 29, 2000.
3. The benefits which the female insured applicant receives for her children are considered - as per the interpretation provided by the National Fund for Social Security for the aforementioned provisions of Paragraph D - an recognized right of the woman and her children, and therefore it cannot be retracted.

Article 47
1. A child is not given the right to more than one family indemnity, as per the previous article. If the conditions mentioned in the previous article are satisfied in more than one person then the family and educational benefits are issued to:
a. the father, if the aforementioned conditions are satisfied by the father and mother, unless the mother is the sole provider for the children.
b. to the adoptive parents, or guardians when those, as the parents, satisfy the mentioned conditions.

Convention on the Rights of the Child
Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

International Labor Convention
Article 1
The phrase "equal pay for men and women for work of equal value" refers to the specified average wages which are specified without discrimination based on sex.

International Covenant on Economic, Social and Cultural Rights
Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Press Memorandum 283
January 19, 2001

Topic: The extent of benefits from the social security for children on their mother's name

In line with the Social Security Law, especially Articles 14 and 46 which relate to the right of children to receive health and maternity benefits and family indemnities.

And since health and maternity benefits include the insured individuals and the members of their families, as specified in Paragraph 2 of Article 14 of the abovementioned law, i.e., those living under the roof of the insured individual and under his maintenance,

And since family indemnities are offered for workers and the rest of the insured individuals as per the first provision of the first paragraph of Article 9 of the Social Security Law,

And since the alimony or maintenance mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so,

And since the mentioned law does not discriminate between the reception of benefits between the male and the female individual with regards to the children registered under the name of one of them for benefits,

And since jurisprudence has recently not discriminated between the male and the female insured individuals with regards to the children who have the right to receive from the maternity and health benefits of social security, as well as family indemnities, in case the conditions for the entitlement for these benefits are satisfied (Resolution 6/2000 issued on February 21, 2000 by the Supreme Court),

And since in case both parents are eligible for receiving health and maternity benefits for their children, the benefits receive those benefits from their father, (Article 72 of the sixth manual – the medical manual),

And since in case both parents satisfy the legal conditions to the entitlement for family indemnities for their children, the indemnities are paid for the father, unless their legal custody is in the hands of their mother alone (Article 47-1-a of the Social Security Law),

The following has been decided:
All concerned units of the social security fund must abide by the following:
Firstly, for the insured female employee to receive health and maternity benefits and family indemnities for her children, as per the Articles 14/2 and 46/2 of the Social Security Law, she must satisfy the following:

1. The father must not be eligible for receiving any of the benefits of the Social Security Fund or from any other similar sources for the same children.
2. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.[1]

Secondly, all provisions issued by the general director of the fund which contradict the content of this memorandum are to be repealed, especially article 2 of resolution 77 dated March 19, 1970 (the internal plan to execute social security family indemnities), and press memorandum 112 dated January 18, 1972 which relates to the right of the female worker to family indemnities. In addition to the third paragraph of the labor conduct number 1 (which was annexed to memorandum 30 dated November 23, 1981) which relates to the right of the married female worker to family indemnities.

General Director,
Khalil Majid

Endnotes

1. Added to Paragraph 2 of Article 14 of the Social Security Law, as per Law 220 dated May 29, 2000, is provision E which states the following:
E- The legal natural and adopted children of the insured worker if she has the responsibility of maintaining them due to the incapacity of the husband and according to the conditions stated in Article D of the Social Security Law. This provision expressly distinguishes between the male and female insured worker with respect to the receiving healthcare benefits for children, whereby they could receive benefits from their mother when she maintains them i.e. provides for them because of the incapacity of their father. Therefore, if the father is below 60 years of age, they do not receive the mentioned benefits whether or not he has a job.
If he completes the aforementioned age limit and the mother provides for them, they receive benefits so long as the father receives the same benefits on the name of the mother (Article 14/2/D of the Social Security Law).
Unlike the clear statutory provisions, the fund's administration considers that the children have the right to receive benefits on the name of their mother if their father does not receive similar benefits through another mandatory system.
It must be mentioned that the addition of provision D presented above, to Paragraph 2 of Article 14 of the Social Security Law does not modify the conditions for the entitlement of family indemnities, and therefore, there is no discrimination in area between the male and the female insured individual as reached by canonical and juridical jurisprudence.

Translated by Ahmad Ghaddar

Working Women in Lebanon

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Social legislation in Lebanon does not date back a long time. It is contemporaneous with the industrial development just prior to and after World War II.

Clauses 624-656 of the Law of Obligations and Contracts are the only ones that deal with workers and labor, since economic activity used to be restricted to agriculture. But due to economic prosperity, economic openness, commercial exchange, and the mainstream economic ideas that advocate economic justice and industrial advancement, the need to adopt new laws to organize the conditions of workers and labor emerged.

Thus, labor legislation and the legislations supplementing it have come into existence: These are:
- The Lebanese Labor Law issued on September 23, 1946 with its seven chapters, two supplements, and preliminary provisions which designate the employer, the hired individual (employee or worker), the intern, the syndicate, and the institution.
- The Law of the Organization of Syndicates under Decree 7993 issued on April 3, 1952.
- The Law of Social Security issued on September 26, 1963 under Decree 13955 and its attempt to provide communal and social security.

It should be pointed out that labor, social security, and syndicate organization laws are restricted to work within the private sector and some public institutions, and do not include government employees and the public sector. If we were to discuss the status of women under the 1946 Lebanese Labor Law — whose provisions do not clearly distinguish between men and women as the presence of women in the labor force back then was meager – we find that its provisions adopted the principle of gender equality in case of equivalence of employment. And when the minimum wage was adopted in the years 1941, 1942, and 1943, the law made equal the remunerations of women and men whenever they were undertaking the same employment.

The decree issued in this respect in 1965 clearly calls for the application of the law to all employees (male and female) when women undertake the same job as men.

The Labor Law has put into action specific measures that legally protect workers of both genders and specific measures that protect female workers only (Articles 21-30).

We have the following remarks about this:
Protective measures for female workers were taken, alongside protective measures for juveniles. This is an indication that the law views females, even when of adult age, as minors:
- The law prohibited employing women at night.
- The law allows a woman to leave her job due to marriage without specifying her period of absence. This confirms the legislator's view that her job is unnecessary and that her household duties take precedence over her work outside the home.
- The law prohibits employing women in certain industries (first supplement to Article 43).
- The employer must provide a minimum one-hour break at noon whenever the work hours exceed five hours a day for women and six hours a day for men. We contend that this provision should include all workers and not just women.
- The requirement to sit down during breaks for female employees whose work requires their being in a standing position.
- Fully paid maternity leave — regardless of the worker's contract type — that lasts for at least 40 days, 30 of which must be postnatal. This leave is independent of the annual and other vacations.

It must be mentioned that the Labor Law excludes domestic and agricultural workers.

The Lebanese government has ratified the Convention on the Elimination of all Forms of Discrimination Against Women which states in Article 11, about which there are no reservations whatsoever, that:

> States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
> 1. The right to work, the right to the same employment opportunities, to equal remuneration including benefits, the right to social security, and to protection of health...
> 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
> - To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status
> - To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances
> - To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities
> - To provide special protection to women during pregnancy in types of work proved to be harmful to them.
> 3. Protective legislation relating to matters covered in this article are to be reviewed periodically.

In 2005, as part of the implementation of this treaty in Lebanon, and as a result of the request of civil society to amend the Labor Law to correspond with the provisions of this convention and other international labor treaties that Lebanon has ratified, a number of amendments were made through Law 207. Although these amendments are not sufficient, they constitute commendable progress. The amendments include the following:
- The provision of Article 26, which forbade women from working at night in the industrial sector, was annulled. It was replaced by a provision that clearly prohibits any gender discrimination between workers concerning employment type, remuneration, employment, promotions and advancements, vocational training and attire.
- Article 29 was amended to extend the maternity leave from 40 days to seven fully paid weeks. This includes the pre- and post-natal periods, but still falls short of the maternity leave of the female employee that reaches two months in countries like Yemen. It also falls short of the period specified by the Fifth Arab Labor Treaty which is at least ten weeks. The period is also shorter than the period specified by the 103rd International Labor Treaty, which Lebanon has not ratified to date, and which specifies a period of at least 12 weeks, no less than six weeks of which is after birth.
- Article 52 of the Labor Law, used to prohibit the issuance of a dismissal warning to a pregnant working female until she is five months into her pregnancy. This prohibition now covers the period falling between the beginning of the pregnancy and the worker's return from her maternity leave.

Although we welcome these amendments, we insist that they be coupled with certain follow-up procedures and amendments including:
- Ratifying all Arab and international labor treaties pertaining to the rights of female workers (for example: The Fifth Arab Labor Treaty and the International Labor Organization 103rd Convention.)
- Raising the work age of male and female juveniles so that it is forbidden to employ them before they are of age
- Separating between the rulings for women and for juveniles, due to the difference between the needs for protection for each
- Reducing the protective measures not relating to maternity, because exaggerated protection may become counter-productive to women's interests, especially when employers stop making use of their services
- Unifying protective measures to include both males and females
- Allowing part-time shifts for both genders
- Taking punitive action against sexual harassment by superiors and co-workers
- Considering maternity a social duty whereby renewal of generations is necessary for the existence of a society and its continuation. The government and the social security fund should bear the cost of women's wages during their maternity leaves. This would encourage employers to hire them.
- Encouraging women to take part in syndicates through enacting a quota system in the executive councils of those syndicates.

We are aware that gender discrimination used to take place during the implementation of laws and that it still does. Even if no anti-discrimination provisions exists, what is required is changing the mentality of society on one hand, and women's efforts exerted in proving their capabilities and qualifications in the work field, on the other hand.

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The Implementation of a Women's Quota System in Lebanese Legislation

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Lebanon was among the first Arab countries to grant women suffrage rights in 1953. Its Constitution clearly stipulates that all its citizens have equal rights (Article 7)[1] and enjoy equal opportunities in all spheres of life (Article 12).[2] Yet after half a century of alleged political rights, it is surprising to find that female representation in the Lebanese parliament is still at a minimum. In the 2005 legislative elections, only six women out of the 128 members made it to parliament (4.7 percent), thus ranking Lebanon 125th (out of 138) on the IPU list.[3] For a country that prides itself on being among the pioneer Middle Eastern countries in the high proportion of women college graduates the above grading is quite 'degrading.' The late women's rights activist, Laure Moghaizel,[4] once exclaimed that all Lebanese women who enter parliament do so wearing black since they always run for a seat vacated by a deceased father or spouse.

Why has women's participation in Lebanese politics been so slow? Although analysis of its causes is beyond the scope of this article, suffice it to mention here that some attribute this lack of participation to the country's confessional system of representation, while others believe that in spite of its avant-garde profile, Lebanon is still cocooned in an extremely parochial and patriarchal system. Furthermore, a recent study on post-conflict societies has noted that since men are usually the warmongers, peace negotiations consequently further exclude women in post-war parliaments.[5] However, poor female representation in decision-making positions is not restricted to the Lebanese scene and is quite an international phenomenon since the actual global rate of female representation in national parliaments stands at an average of nearly 17.7 percent to date.[6]

Given this 'under-representation' of women in legislative circles, various international positive action measures have been proposed or implemented to address the present gender issue. To cite a few: The International Bill of Human Rights (1948) followed by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), culminating with Beijing 1995, all advocate equal political rights for women and the development of a mechanism that will ensure that women's voices are heard on decision-making platforms. One of the most powerful vehicles to ensure this is the 'quota system.'[7]

This article analyzes whether a quota system should be implemented in the Lebanese electoral law and whether such a step would be viewed as unconstitutional and undemocratic or as enforced 'positive discrimination.'[8]

What is the Quota System?
The core idea behind quota systems is to recruit women into political positions and to ensure that women are not isolated from political life. They usually set a target or minimum threshold for women and aim at ensuring that women constitute at least a 'critical minority' of 30 or 40 per cent in decision-making positions.

There are several types of quota systems[9] that may be enforced either through a constitutional quota for national parliaments, as election law quotas, or in the internal structures of political parties. To date 92 countries have implemented the quota system constitutionally, in legislative mandates or through voluntary political party quotas.[10]

When the Lebanese cabinet created a commission to propose a new electoral law in August 2005,[11] one of the commission's primary tasks included the study of the possibility of introducing the women's quota system. To get an objective viewpoint about all aspects of the electoral system, political parties, organizations, NGOs, and individuals were invited to present their proposals and to fill in a questionnaire with 18 points. Point 6 specifically asked: 'Are you in favor of introducing a women's quota system: a) as reserved seats in parliament (10-30 percent), b) on electoral lists c) against d) no opinion?' Of the 121 proposals presented, only 6 were by female organizations[12] or individual females. The results were as follows:

- 16.3 percent were in favor of implementing a 30 percent quota system in parliament as stipulated by Beijing and signed by Lebanon.
- 5.4 percent were in favor of a quota of 10-20 percent of seats in parliament.
- 23.9 percent were in favor of introducing a quota system on the electoral lists.
- 35.9 percent were categorically against any form of quota.
- 5.8 percent had no opinion on the matter.

In short, 46.5 percent were in favor of insuring some form of female representation either at the candidacy level or at the parliament level, for a temporary transitional period.

To further clarify the proposal with the questionnaire's multiple questions, the commission was invited to an open two-day discussion to debate all the proposals. One of the items on the agenda was specifically the issue of a women's quota. After a general introduction on the history, pros and cons of the quota system,[13] the discussion that ensued raised some of the following concerns:

The majority of those opposing any system of a women's quota argued that the Lebanese Constitution very clearly grants equal rights to all its citizens and hence the introduction of 'special favors' is highly unconstitutional and undemocratic.

Others argued that while the law grants women political rights, any substantial progress is hampered by the patriarchal confessional system, in addition to the financial constraints that make it impossible for women to pay the registration, campaigning and advertisement costs. In short, unless a quota system was imposed, women would never have a say in decision-making and Lebanon would never be able to honor its being a signatory of Beijing and CEDAW.

Would Introduction of a Quota System be Viewed as Unconstitutional and Undemocratic?
At the outset, it is important to revisit the concept of democracy and its modes of application in the twenty-first century. Although the ancient traditional Greek word defines democracy as the rule of the demos or the people, i.e. the majority, women in Athens were excluded from the right to vote. To Athenians, the principle of equality was only applicable in the public sphere of the polis and women formed part of the private sector (oikos).[14] During its work on a new electoral law for France, the Vedel Commission[15] stated that it is imperative to find a system that ensures parliamentary seats to groups that normally would not be capable of securing a majority. In systems like Lebanon where democracy is consensual, the rights and aspirations of permanent structural minorities,[16] including 'women,' have to be insured. It may, however, be argued that the female population of Lebanon constitutes 52 per cent of Lebanese population, and hence cannot be classified as a minority. Moreover, the Constitution does not bar women from their civil rights. While the Constitution in theory clearly grants women 'civil rights' and the right to political representation, in practice their civic status remains far from what is desired. Furthermore, it is simply not enough to have the right to vote. A mechanism should also be defined to designate the potential candidates and to facilitate the procedure by which they may be elected.[17] Why is it important that women participate in politics? Why should nations artificially accelerate the process and not wait for the natural course of time?

In the course of half a century of Lebanese parliamentary history, the number of women deputies has not exceeded six, with one exception at the ministerial level[18] and an almost total absence in the polit bureaux of political parties. This implies that the wait for a natural process and selection may be quite a long and frustrating experience. Thus there is a dire need for artificial intervention and acceleration, a step that will simply launch the process for a limited period, namely the enforcement of a quota sys-

tem, "for gender quotas are not the end, but the beginning of a process."[19]

Quota systems, a priori presume the existence of an imbalance in the legislative political structure. They are, therefore, an 'expression of impatience' for gender equity in the political sphere and a tool that provides a jump-start to begin correcting these imbalances. Furthermore, no country can claim to be truly democratic when 52 per cent of its population is marginalized. The UN report, *Women and Elections*,[20] clearly states: "Only when institutions are democratic and representative of all groups in society – women as well as men, minorities as well as majorities, the dispossessed as well as the affluent – are stable peace and national prosperity likely to be achieved."[21]

Furthermore, as previously mentioned, electoral rights mean much more than simply the right to vote. They also include freedom of expression, of assembly and association, freedom to take part in the conduct of public affairs, to hold office at all levels of government, etc… 'United Nations international human rights instruments affirm that women are entitled to enjoy all these rights and freedoms on the same level as men. Women's equal participation is therefore essential to the conduct of democratic elections.[22]

Because of all the above and because: "One of the most effective ways to ensure that women are elected to office is to require that party candidate lists be gender balanced or include a certain proportion of women,"[23] the Lebanese Commission proposed imposing a 30 per cent quota on all electoral lists for a temporary period of three electoral rounds (12 years). In other words, no electoral list will be registered unless it includes a minimum of one woman's name out of each three candidates. Furthermore, being aware that "more women tend to be elected under the proportional representation system,"[24] the Commission introduced a partial proportional system of voting alongside the conventional majority system that has so far been proven to be unfair to women's representation.

Women in National Parliaments

World Classification

			Lower or single House		
Rank	**Country**	**Elections**	**Seats***	**Women**	**% W**
1	Rwanda	09 2003	80	39	48.8
2	Sweden	09 2002	349	158	45.3
3	Norway	09 2005	169	64	37.9
4	Finland	03 2003	200	75	37.5
5	Denmark	02 2005	179	66	36.9
10	Belgium	05 2003	150	52	34.7
16	Iraq	01 2005	273	86	31.5
34	Tunisia	10 2004	189	43	22.8
63	Cyprus	05 2001	56	9	16.1
66	USA	11 2004	435	66	15.2
67	Israel	01 2003	120	18	15
81	France	06 2002	574	70	12.2
83	Syria	03 2003	250	30	12
90	Morocco	09 2002	325	35	10.8
98	Sudan	12 2000	360	35	9.7
118	Algeria	05 2002	389	24	6.2
121	Jordan	06 2003	110	6	5.5
125	Lebanon	05 2005	128	6	4.7
"	Libya	03 1997	760	36	4.7
126	Turkey	11 2002	550	24	4.4
127	Iran	02 2004	290	12	4.1
133	Egypt	11 2000	454	13	2.9
134	Oman	10 2003	83	2	2.4
135	Kuwait	07 2003	65	1	1.5
137	Yemen	04 2003	301	1	0.3
138	Bahrain	10 2002	40	0	0
"	Saudi Arabia	04 2005	150	0	0
"	UAE	02 2003	40	0	0

* Figures correspond to the number of seats currently filled in Parliament
Source: http://www.ipu.org/wmn-e/classif.htm

Could the Adoption of a Quota System be Dismissed by Parliament as Unconstitutional?

It is true that the Lebanese law stipulates in theory that all its citizens are equal, but in practice this equality has never been implemented. It may be argued, therefore, that any election that does not provide the opportunity for full and equal participation by women fails to comply with international obligations and standards[25] and any step that artificially and temporarily accelerates this process and realizes the Constitution should, therefore, be viewed as right and democratic.

Furthermore, Lebanon has ratified the CEDAW and Beijing conventions and these clearly state:[26]

> Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The question to be asked here is: "If parliament ratifies the quota system, will this ratification and its implementation lead to the desired goals?" And is the Lebanese public ready for the change that insues? A recent study conducted by the Lebanese Women's Association[27] on the role of women in Lebanese elections clearly showed that 81 percent of respondents encouraged a women's quota system in parliament and 76 percent favored the nomination of women deputies to office.

Finally, although the quota system provides an official tool to facilitate women's participation in politics, the main responsibility for making use of it and using it efficiently remains the responsibility of women themselves. Unless full advantage is taken of these 'temporary measures,' and unless Lebanese women assume their active role in the political arena, Lebanon may soon lose its 125th position to get pushed further towards the bottom of the list alongside nations with the smallest number of women parliamentarians in the world.

Endnotes

* Arda A. Ekmekji is the only female member of the recently appointed Commission for a New Lebanese Electoral Law.
1. Article 7: All the Lebanese are equal before the law. They enjoy equal civil and political rights and are equally subjected to public charges and duties, without any distinction whatever.
2. Article 12: All Lebanese citizens are equally admitted to all public functions without any other cause for preference except their merit and competence and according to the conditions set by law. A special statute shall govern civil servants according to the administrations to which they belong.
3. International List of Women in Parliament (IPU, November 2005).
4. Laure Moghaizel, 1929-1997, lawyer and activist, author of *Women in the Lebanese Legislative System*, [Arabic], IWSAW, LAU, Beirut, 1985.
5. United Nations. March 2005. *Women & Elections. Guide to Promoting the Participation of Women in Elections*. p.8.
6. Inter-Parliamentary Union (www.ipu.org).
7. IDEA - International Institute for Democracy and Electoral Assistance (www.idea.int/).
8. See also Bunagan, Melanie Reyes, Ma. Dashell Yancha, "The Quota System: Women's Boon or Bane ?", in *Women Around the World*, (Editor: Sheila Espine-Villaluz)) A quarterly Publication of the Center for Legislative Development , April 2000, Vol. 1, No. 3.
9. Dahlerup, D. 1988. "From a small to a large minority: Women in Scandinavian politics," *Scandinavian Political Studies*, 11, pp. 275-98.
10. Global Database of Quotas for Women, A joint project of International IDEA and Stockholm University (www.idea.int/)
11.Cabinet Decision No 58 dated August 8, 2005.
12. It is important to note that two of these proposals were made by women's organizations that include at least 166 other organizations.
13. Session chaired by author of this article.
14. Marques-Pereira, B. 2003. *La Citoyenneté Politique des Femmes*. Armand Colin : Paris, p.15.
15. Extract from *Rapport sur le Problème de la réforme du mode de scrutin pour l'élection des députes*. (Report of the George Vedel Commission) February 1993.
16. Gérard, P. 1995. *Droit et Démocratie*, Publications des facultés universitaires Saint-Louis, Bruxelles, p. 212.
17. Martin, P. 1994. *Les Systèmes électoraux et les modes de Scrutin*. Montchrestien, Paris, p. 9.
18. The cabinet of Omar Karame in September 2004 included for the first time two women ministers.
19. See Women's Quotas in IDEA - International Institute for Democracy and Electoral Assistance (www.idea.int/)
20. Op. cit. United Nations.
21. ibid. p. 5.
22. ibid. p.10.
23. ibid. p. 36.
24. ibid. p. 24.
25. ibid. p. 10.
26. http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4 clause 1
27. Maa Data (www.maadata.org) Report, January 2006.

Family Laws: The Changing and the Pseudo-Eternal

■ Najla Hamadeh

Dictates of Practical Efficiency and its Justification

Laws are a basic necessity of civilized living. They organize the various functions in society, ensure property rights, and aim to restrain transgression by stipulating to punish or rehabilitate transgressors. Laws also define the rights and responsibilities of each person vis-à-vis the state and with respect to other people. This is why they are an integral part, indeed a justification, of any theory of social contract.

But despite the crucial importance of regulating families, which constitute the basic building blocks of society, the law faces more difficulties in gaining access to the family than it does in acceding to other bigger more conspicuous social units. This is because the family's vigil to guard its privacy and its comparative smallness of size make it much more elusive and harder to control. Hence, ideologies that are very much into control, such as those of Plato's *Republic* and George Orwell's *1984* see the family as undesirable or 'ungood.'

Historically, the mode that societies chose for regulating or controlling the family took the form of giving dominance within it to the father/husband, so that he is held responsible for it in the eyes of society, while urging the family to regard him as its leader and primary decision maker. This form of organization or delegation of control by society was often enforced by family legislation.

But as law includes aspects other than the organizational that seek to control, family status laws are enmeshed in several practical and ethical problems that are ignored by the above one-sided consideration.

In the first place, as with all laws, family law is supposed to have a judicial or quasi-judicial function in accordance with the traditional role of courts as guardians of the weak and unprotected. By giving additional status to the physically stronger member of the family (father/husband), family status law further weakens the position of the weaker members of the family and exposes them to possible tyranny or cruelty.

In the second place, the justification of a law is frequently based on ethics (Tullock, p.4). Thus, critics and discussants of the law, as opposed to legal positivists who argue that the law is simply what is decreed by legislators, argue for, or critique, a law on the basis of how far it conforms to, or deviates from, ethical standards. If the moral stance is the one that leads to treating all human beings as equally entitled to happiness, dignity and freedom, then it would be difficult to justify the discrepancy in status between family members, especially between adults. Such discrepancy is opposed by believers in human rights, feminists and others who adopt trends of post-modernity. Others try to justify the traditional unegalitarian laws by supplying theories of philosophical anthropology that justify male superiority. Such theories overlook the practical aim behind giving precedence to men, essentializing male superiority and overlooking individual variation and any evidence of lived experience contrary to such theories. The history of civilization abounds with such theories from the time of Aristotle, whose enthusiasm for proving male superiority led him to blunders such as the claim that men have more teeth than women, to the modern times with Rousseau, Kant, Hegel, Freud, and many others.

For example, Freud considers women to be lacking in conscience (weaker super-ego) and in the power to sublimate. He also finds a difference in men's and women's emotional involvement with others, claiming that men are capable of loving the other as an other and women's love remains fixated in the narcissistic; i.e. that it is usually an extension of their self-love. Both of these Freudian differentiations between men and women are capable of justifying that men and not women should be in command of the family, as their superior conscience makes them better guardians of justice (rationality, fairness), and as their comparatively selfless love makes them more fit to be entrusted with the well-being of others.

Indeed the justification of existing forms of organization and of power have swayed common-sense beliefs about the difference between men and women so far, that even recent researchers could not evade its impact. For example, Garai and Scheinfeld (1968) describe a collection of measures on which women performed better than men as 'clerical abilities' rather than, say, 'superior ability at organization;' and Gray (1971) describes another category of activities on which women got higher scores than men as 'fearfulness' rather than, say, 'higher alertness' or 'quicker reflex.' Male superiority is taken so much for granted that the evidence of any female superiority is seen as a propensity towards excelling in subordination or towards the need to be protected.

It is to be remarked, however, that while some philosophical and other high-handed theories divest women of mental, moral and emotional equality with men, literature, even from ancient times, recognized women's full human stature, creating characters such as Antigone, Lady MacBeth, and Shehrazade.

The Law: Eternal or Modifiable

In the philosophy of law, we find two large groupings of positions concerning the actual and desired origin of, and rationale for, the law:

Some hold that law is, and ought to be, rationally or authoritatively construed and/or divinely revealed so that it may mould, or create or recreate society in a certain desired fashion. Others maintain that it is social norms and opinions that do, and should, create laws; and that laws must, and will, get changed and revised when society outgrows them.

1. Authoritarian views sometimes spring from ideologies and sometimes from religious beliefs. The champions of authoritarianism include Plato, St. Augustine, Peter the Great, Mustafa Kemal (Atatürk), as well as regimes like those of Saudi Arabia and of the recently dismantled Taliban of Afghanistan. These individuals and schools of thought and regimes believe that a system ought to be imposed on society in order to steer it towards an envisaged end. This end could be the 'eternal good,' an idealized 'Europeanization,' the kingdom of heaven on earth or the Garden of Eden in the afterlife as the one goal of this life.

The English philosopher and legislator Jeremy Bentham, and his disciples, have a philosophy of law that believes that reason, guided by the principle of universal and impartial utility, is the best legislator. Their philosophy was highly influential for some time, although the codes of law that Bentham drafted, whether for Tsarist Russia or for emerging Latin American republics, did not prove, upon application, to be very successful. The recently deceased American philosopher John Rawls proposes another rationalistic (Kantian) philosophy of law, setting a standard of Justice as Fairness based on two principles of justice, governing rights and opportunities as well as the distribution of wealth. His theory is claimed to constitute a standard that measures fairness analogous to the standard that measures ethics described in Kant's *Foundation (or Grounding) of the Metaphysics of Morals*.

Parallel to this trust in reason, there is the belief of many Islamic jurists that shari'a is the proper and the best ground of legislation. They consider shari'a as law par excellence and as an authoritative blueprint based on revelation (Anderson, p.3). Indeed religious bases of legislation tend, in general, to resist change. Thus, even Christianity, which has comparatively left 'what's Caesar's to Caesar' is still resisting changing the vow of obedience by the wife to her husband, despite the prevalence of an ideology of equality in Christendom.

2. Believers in Change: In criticizing the blind belief of some jurists in reason, Oliphant draws attention to the inevitable need to consider legal questions from the prag-

matic point of view, whenever "general principles lead to shockingly unfair results" (Oliphant, pp. 20-1). Justice Holmes attributes such a belief to an innate desire for a deceptive sense of mathematical exactitude that flatters the mind's longing for certainty and repose; and Dewy refers the rational or idealistic position to an aesthetic quality of the mind which responds to the form of symmetry of the syllogism and is cold to the apparent disorder of experimental thinking. He adds that the symmetrical is also favored because it involves less work.

Several critics of basing legislation on the authority of the absolute fixed dictates of reason insist that words, including concepts that are crucial to legislation, should always be understood in their context, since in different contexts they may have different meanings. Thus, terms like 'law,' 'right' and 'status' are ambiguous, having a commonsense meaning that is known but not understood, and a practical significance that derives from how much power the one whose 'right' or 'status' is being mentioned has, and from whether or not the one in charge of a law has the intention of, and the means to, implement it.

In criticizing those who profess commitment to an immutable *shari'a*, Anderson mentions that jurists of early Islam were perfectly free to go back to the basic sources and make their own deductions. He also points out that *shari'a* was never fully enforced, that a great deal of it is moral rather than legal and that a great deal of it has, from the beginning, been intermingled with local customs and modified by them (Anderson, pp. 2-5). Hassan Al-Turabi claims that while pretending to guard things as 'God's Word' intends them, men in charge of Islamic schools of jurisprudence (*madhaheb*) have been gradually taking away from women the rights that Islam gave to them (Al-Turabi, pp. 182-3). Hocking points out the interesting fact that although most codes were originally propounded by mystics and prophets, and although the mystic vision is an essential component of a life within the natural world, pure mystic vision vanishes out into meaninglessness and total impracticality (Hocking, pp. 270-1). This is perhaps why Christ instructed to separate what is Caesar's from what is God's. This also could be why Islam gave such weight to *shura* (discussion) and *ijma'* (consensus), as leeway to introducing the worldly dimension into divinely revealed law.

Nowadays, those who uphold the empirical and essentially democratic position include Sanigny, Ehrlich, Oliphant, Hart, and others, including some earlier and present-day Islamists. The Tunisian regime of Burghibah implicitly holds such a view regarding *shari'a* as is evidenced by its considering laws that permit polygyny to be no longer suitable for Muslim communities. Similarly, Inamullah Khan advises Muslims to follow the prophet's instruction when he says: "Knowledge is the property of the Muslim; seek for it wherever you find it" (Malik, p.3). Khan believes that the nineteenth and twentieth centuries witnessed the rediscovery of *ijtihad*, *ijma'* and *shura*, and that all those who obey the prophet should pursue these trends in legislating for their respective societies.

Freud considers women to be lacking in conscience (weaker super-ego) & in the power to sublimate

Those who believe that law ought to be the offspring of evolving social reality form the prominent and the largest trend among legislators in the industrial world. But in the so-called developing world, sometimes the opposite trend, which upholds the immutability of the law, still predominates, especially where family law is concerned. Friedmann observes that although some countries in the Islamic world have introduced changes in family law, changes in commercial and civil laws have evolved at a much faster pace (Friedmann, p.12). Indeed, even the clear dictates of the Qur'anic text, such as the prohibition of taking interest on money lent, have generally been ignored in most Islamic countries, where corporate law has long been secularized. Moreover, family jurisdiction is the only legal function still left to religious judges (*qadis*) and the only domain in which the older words and procedures in legislation and ruling are still preserved (Anderson, pp. 3-5).

Is this surprising in a world in which men and their interests rule? Isn't it a natural ruling of the interests and desires of patriarchy that allows men to have access to interest on their money and stay sole rulers of their families? Clearly, it is not because religion is more keen on restricting women than bankers and businessmen, but because bankers are powerful in policy making and women lack power and access to decision making that the desires and sometimes whims of the former are accommodated, while the latter are denied equity (see works of Aziza Al-Hibri, Mona Zulfikar, Mona Haddad-Yakan, and many other Islamist feminists).

Family Law and Change

Those who study the course of history recognize change as the norm in human development across time. Indeed the very notion of 'history' presupposes change in time and recognizes that it is only in the human context that events can happen not according to cyclic or accidental factors, but either according to purposeful planning or in the course of ongoing social or economic or other forms of change or development that leave earlier stages behind.

Since the family is the material of which society is made, no social change can happen without touching the family or being touched by it. Among those in charge of family laws, some want to guide change towards certain values and/or religious ideals and others want change either to keep up with scientific and other forms of progress, which is bound to create new situations and conditions, or for reasons having to do with ethics and equity. Often, those who oppose change do so for selfish ends having to do with their holding on to power. But, sometimes, when the pace of change is too fast, people fear it lest it obliterates their specific characteristics or causes them to lose their identity. Perhaps some like to leave decision making to some authority, whether political, religious or posing as the embodiment of reason. Why they opt to do so is another intricate question that may lead to probing psychological propensities, such as the desire to stay in the role of the cared-for child or the obedient soldier. But this discussion is not within the present scope.

It has often been the case, of old and currently, that rulers, especially totalitarian ones, tend to oppose change, for fear that it will lead to their loss of power or their being replaced. Friedmann observes, in this context, that modern dictatorships resemble older absolutism in their hostility to the separation of powers and in the concentration of as many functions of government in as few hands as possible (Friedmann, p.7). He goes on to say that authoritarian rule not only keeps the same faces [and pictures?] in power, but it also seeks to control education so as to inculcate in the rising generations the attitudes and beliefs of the older ones. Thus, the people may continue to, meekly or even enthusiastically, accept what the rulers, whose continuation in their positions rests on their posing as guardians of tradition or revelation, want them to accept.

Each Lebanese citizen finds himself / herself forced to be born, to get married & to die within a religious sect.

Women and Change (for better or worse)

It is important to note, however, that it is not just any change that is desirable, nor is change always one towards justice and equity. Recently some changes in family law were in the direction of giving women rights equal to those of men, but others were in the opposite direction. For example, what happened in Afghanistan during the rule of the Taliban was change in the direction of preventing girls from attending schools and forbidding women from working outside the house. In the Arab world, women yearn for equitable changes in family laws, but sometimes we fear changes that may set us further back. Thus, when in a lecture delivered in the context of seminars held in celebration of the centennial of The American University of Beirut (AUB), Ahmad Zaki Yamani claimed that *shari'a* = the Qur'an + what is true and valid of the sunna + "consensus of the community represented by its scholars and learned men," some women present, including myself, feared that the last item of the equation (in Yamani's Saudi society context) may become the source of more injustice to women. Other jurists' recommendations to instigate change, in that same conference, were conducive to more hopeful projections towards the future. Among these last were the above-mentioned contribution of Inamullah Khan and most markedly the progressive and perspicuous recommendation of Musa Al-Sadr. For, Al-Sadr said, in the context of expounding God's elevation of human beings: "Islam sanctifies all the human needs. It considers fulfilling such needs a form of worship and is displeased by neglecting or ignoring them" (Malik, p.161). The implication of this saying that everyone (including women) is required by God to attend to their needs and desires and to work for self-fulfillment and not just to serve family members, which is the traditional view, especially of religious authorities, fell on us women as a breath of fresh air and as an exhilarating promise of religious reform.

At the level of actual changes in family legislation, change towards more equity in family laws is taking place in many countries of the Arab and Islamic worlds, albeit at a far slower pace than it should. In Pakistan, a wife can now obtain a judicial divorce on the grounds of incompatibility. In Tunisia, the proclamation of Burghibah that polygyny, as well as slavery, were suited to the past times, but have grown to be obsolete, useless and unacceptable, inspired his party of Neo-Dastur to introduce various progressive modifications of family law. Law 44, known in Egypt as Jihan's law, was a step forward, which gave a booster and a horizon of hope to women's activism in seeking reform in family legislation.

A positive sign in the direction of procedural efficiency and higher professionalism is the unification of civil and religious courts, which took place in Egypt and Tunisia; for a qadi trained in modern law schools is more likely to have responsive and progressive ideas and is more capable of applying codified law than one researching some medieval texts could ever be (see some opinions in Round Table in this issue of *Al-Raida*; also Anderson, p.28).

In Lebanon

In Lebanon, changes in the laws of inheritance (1959) for non-Mohammedan sects and in custody 1991 (for Catholics) and 2003 (for Orthodox) in some Christian sects have taken place. Yet, other civil (e.g. nationality) and family laws (polygyny, custody and divorce, for Muslim sects) are lagging behind some other Arab and Islamic countries.

Resistance to change in family laws, in Lebanon, seems to derive from two basic reasons:
- On the side of those in power: Self interest prevailing over public interest and even over the cause of the very survival of society and of the country.
- On the side of the public: The lack of strong allegiance to, and belief in, Lebanon as a unified and integrated country, like any other.

Those Vested with Power

Entrusting the religious authorities of the various sects with family legislation is a practice that Lebanon inherited from the Ottoman Empire. But whereas the Ottomans, at the time, applied the millet system only to minority groups, and kept legislation for the mainstream Sunni Islam in the hands of the state, in Lebanon all are minorities falling under an outdated millet system. The millet system of the Ottomans was a major reason behind the crumbling of the empire, as it led to outside interference and to rifts between the interests of the minorities and those of the mainstream Sunni civil society. Similarly, the sectarian system in Lebanon has hitherto led to several civil wars and continued interference from outside, and, more dangerously, to the interests and allegiances of the Lebanese people going in various, often conflicting, directions.

Turkey learnt from its mistakes and installed civil family laws as far back as 1926, but Lebanon does not seem to want to learn this obvious lesson, either from others' experience or from its own!

Since the family is the material of which society is made, no social change can happen without touching the family or being touched by it

It is impossible to claim that politicians and religious authorities in Lebanon fail to be cognizant of the great risk to the country inherent in such a division-engendering and progress-preventing practice as that of subjecting the numerous sects to varied laws, kept under the jurisdiction of sheikhs and priests. But it seems that often those in charge are more concerned about their selfish aims of reaching power, or keeping it by the most immediately accessible means (emotional appeal to the masses and to self-serving religious authority) than about their responsibility for the viability, peace and unification of the country.

Moreover, the sectarian politics, that cause politicians to vie for the favor of constituencies divided along sectarian lines, cause them to uphold the existing laws of the sect, no matter what their beliefs are or what common sense clearly dictates. This is why almost everyone holding religious or political power posts opposed the optional civil law marriage proposed by President Hrawi in 1996. Even leading women's NGOs, whose very raison d'être is fighting for women's rights, did not dare to openly support Hrawi's proposed law for fear of loss of popularity with powerful leaders of the sects, religious as well as political.

It is well known that the masses are more easily swayed by emotional reasons having to do with their sense of identity and with their inherited beliefs and traditions than by ideas that seek progress and preempt civil wars and fragmentation. This is probably why, till now, the predominant trend among politicians seems to have been the choice of the easier access to popularity and votes by each embracing his/her respective sect rather than working to educate, and truly lead, constituencies towards what gives the country stability and allows it to move on, on the road of progress.

More understandably, the predominant trend among religious authorities has been to encourage adherence to the small religious and sectarian differences, thus to enhancing their own power and to making themselves indispensable. There are, of course, exceptions. Those exceptions make one wonder why Abdallah Al-Alayli was prevented from acceding to the position of mufti, and his books disappeared from the bookstores. Why was Gregoire Haddad bypassed by church promotions; and why did Musa Al-Sadr disappear? Was it simply coincidence that removed from the arena of religious power these three figures distinguished by rationality, tolerance and openness to change and to other religions and sects?

The General Public

Each Lebanese citizen finds himself/herself forced to be born, to get married and to die within a religious sect. Moreover, most Lebanese citizens need the support of the leader (*za'im*) of their respective sects in order to get a job in the government or in most other sectors. During the recent civil war many used such clientalism to free their imprisoned husbands or children or to liberate their occupied homes or to get their fair share of indemnity to restore their war-damaged property. Maybe some citizens do not know better than to adhere to their sect and nothing beyond it, but even those who know better are forced to pretend to have a narrow-minded view of their religious belief and to adhere to every command of the religious authority or party or *za'im* in order to get by in this highly sectarian set up.

This situation, between political leaders who espouse the stance of religious prejudice and pose as defenders and champions of their own religious sects, and citizens who need religious leaders or political representatives of their sects in order to get by, is a chicken-egg situation. It is hard to tell how things will be made to change (since change they must, unless we are living outside history).

Will the leaders start to do their ethico-political duty? Or will the people, or some from among them, start working to raise the level of popular consciousness in order to liberate the country from sectarian division and liberate the family from archaic judgments that create a lot of senseless suffering and humiliation?

If family laws derive originally from a practical aim towards efficiency, the Lebanese situation of having 18 different forms of family laws that often clash with civil laws and international ratified agreements is the acme of impracticality and inefficiency. And if laws in general need to be changed in order to accommodate changing circumstances and to get cleansed from injustice and other breeches of the currently recognized moral standards, the ones to change them are rarely other than those who suffer the injustice. This is because power strategy often interferes with legislation and with the theoretical justification of legislation. Thus, family law cannot be expected to become fair to women until women take part in law-making and in the coining of anthropological theories that support legislation, including religious jurisprudence and the interpretation or reinterpretation of religious texts.

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Reforming Family Laws to Promote Progress in the Middle East and North Africa

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The issue of women's rights is gaining prominence in policy debates, as pressure for democracy in the Middle East and North Africa region (MENA) continues to grow. Area experts contend that a larger role for women in the economy and society is vital to the region's progress. But women in MENA still face gender discrimination that prevents them from reaching their potential, despite their impressive gains in education and health.

To varying degrees across MENA countries, discrimination against women is built into the culture, government policies, and legal frameworks. In particular, the region's family laws codify discrimination against women and girls, placing them in a subordinate position to men within the family – a position then replicated in the economy and society.

This brief highlights recent trends in women's activism and family law reform in the MENA region, with a spotlight on Morocco, which recently adopted an entirely new family law. The new Moroccan law is consistent with the spirit of Islam, yet based on equal rights for both men and women. That a feminist campaign succeeded in altering family law in a MENA country where laws are based on the *shari'a*, or Islamic law, shows how effective coalitions can be built in MENA countries by linking social and economic development to women's rights.

The Costs of Discrimination

Academic and policy-oriented studies have identified chronic gender inequalities in the MENA region as major obstacles to progress in economic and human development. A decade ago, researchers argued that the low participation of women in the labor force hindered both economic development and women's participation in society. A more recent study found that women's underrepresentation in the workforce explains why MENA countries lack the capacity to meet the challenges of globalization.[1]

The *2002 Arab Human Development Report*, the first in a landmark series prepared entirely by Arab scholars, concluded that the region suffered from fundamental deficits in three areas: knowledge, political rights, and women's rights. The *2004 Arab Human Development Report* warns that laws and practices doubly exclude women. While governments have made some efforts to raise women's status, success remains limited, according to the report.[2]

A recent report by the World Economic Forum argued that countries that do not fully take advantage of one-half the talent in their populations are misallocating human resources. The report ranked Egypt at the bottom (58th) and Jordan 55th, based on an analysis of gender gaps in economic and political participation, educational attainment, and health and well-being in 58 countries around the world. Egypt and Jordan were the only MENA countries included in the study.[3]

A World Bank report on gender and development in the Middle East points out that not only are young women in MENA healthier and more educated than their mothers, but the generational improvement has been greater than that in any other major world region. Still, women in MENA face greater obstacles finding jobs and playing active public roles in their society than women elsewhere.[4]

Some scholars link women's relatively low levels of employment to the oil economy and relatively high wages, while others have emphasized state policies, culture, and social institutions such as the region's family laws. As noted in the UN report on the progress of Arab women 2004, many women have no option but to accept patriarchal family structures that limit their ability to participate in both the economic and political realms.[5]

The Global Agenda for Empowering Women

Gender discrimination in the MENA region also prevents women from attaining the standards set by the global women's rights agenda (see Box 1). The 'empowerment of women' and the realization of women's human rights were centerpieces of the Beijing Platform for Action, the official document adopted at the United Nations Fourth World Conference on Women in 1995.

The 1995 conference spawned much research and debate on women's empowerment: According to one perspective, women's empowerment is a process that challenges and transforms the patriarchal beliefs and institutions that reinforce and perpetuate women's inequality.[6] Another study sees empowerment as a broader process aimed at achieving legal rights and participation in key social, economic, political, and cultural domains.[7] Thus, women's empowerment is not confined to gains in access to education and employment. It may also encompass progress in political participation, cultural expression, and equitable legal rights.

In 2000, gender equality and women's empowerment were adopted by the United Nations as the third of eight Millennium Development Goals (MDGs) aimed at combating poverty and enhancing human development. One measure of progress for this goal is the proportion of seats in national parliaments held by women. The MENA region lags well behind other regions by this measure, despite some progress.[8]

Gender discrimination is hardly specific to the Middle East; it can be found across the globe. But the gap between men's and women's rights is most visible in MENA countries, where there is greater resistance to closing that gap. The resistance stems in large part from the distinctive way that MENA countries have institutionalized gender discrimination, subjecting women to legal forms of discrimination in addition to patriarchal attitudes and practices.

Family Laws in Need of Reform

Discrimination against women is built into the region's family laws, also known as personal status laws, and in the penal codes of some of the region's countries. Family laws govern marriage, divorce, maintenance, paternity, custody of children, and inheritance. With the exception of Turkey and Tunisia, where family laws are drawn from mostly secular sources, family laws in MENA countries are mainly or solely based on the *shari'a*. The traditional interpretations of the *sharia* differentiate between men and women in the allocation of rights and responsibilities and typically place women in the position of minor and dependent.[9]

Besides patriarchal attitudes, codified restrictions limit women's mobility and privileges granted to male kin, notably 'guardianship' over women. Men's guardianship over women in the family is then replicated in male authority over women in all areas of decision making in the public sphere. Women's interactions with the state and society are thus often determined and mediated through their husbands, fathers, brothers, or other male relatives.

A woman's position as a dependent of her male guardian is used to justify her second-class citizenship. Traditional interpretations of Muslim family law require a woman to obtain the permission from her father, husband, or other male guardian not only to marry, but also to seek employment, a business, travel, or open a bank account for a child. In Iran and Jordan, for example, a husband has the legal right to forbid his wife or unmarried daughter to seek employment or stay in a job. While wives who are educated and politically aware may stipulate in their marriage contracts that they be allowed to work, many wives make no such stipulations. And if the issue is contested, courts often side with the husband.[10]

Traditional Muslim family law seeks to treat husbands and wives equitably. For example, because the law gives men the right to unilateral divorce, the groom must pay the bride a sum of money, or *mahr*, that both families agree to. While part or all of it can be paid at the time of the marriage, the *mahr* is generally deferred and paid only in the event of divorce. A husband is also legally and culturally obligated to provide for his wife and children. Indeed, a husband's failure to support his wife is grounds for divorce. In return for *nafaqa*, or the husband's economic support, the wife has to obey her husband (*tamkin*). A wife is under no obligation to share any wealth or earnings with her husband or contribute to the family economy. She is not even required to perform household labor or childcare. In principle, she must be paid for what are considered services rendered to her husband.

Such practices and norms may have been progressive in the medieval era, but today they symbolize women's economic dependence on their male relatives and inequality in economic and legal affairs. In making women dependents of men and minors within the family, the traditional interpretations of the *shari'a* that form the basis of family laws have strengthened the male breadwinner/female homemaker ideal.

For example, the Jordanian Civil Status Law requires that all official transactions be recorded in a *daftar*, or 'family book.' Nearly all contact with the government must be recorded in the *daftar*, including voting, registering children for school or university, acquiring civil service jobs, or receiving social services such as food assistance. A woman remains in her father's family book until she is married. Then she is transferred into her husband's family book. Recent legislation has modified the law in Jordan to allow women to start their own *daftar* if they are divorced or widowed.

Guardianship, a man's exclusive right to polygamy, unilateral divorce, and a woman's smaller share of inheritance are all inscribed in the family laws. For many in the region, these practices do not conform to twenty-first century sensibilities and realities. But others consider the family laws divinely inspired and therefore fiercely contest any changes.

Reform Efforts

Inspired by international human rights conventions, MENA women activists and their supporters are now also looking to the Qur'an and the Sunnah, the sayings and deeds of the Prophet Mohammad and his Companions, in order to develop new interpretations of the family law. These activists believe that Islam is at heart egalitarian, and that parts of the *shari'a* codified in family laws were interpretations by men whose views were rooted in the patriarchal traditions of the time.

Throughout the region, women's organizations have placed priority on changing personal status laws to grant women more rights and equality within the family. They also have campaigned for the criminalization of domestic violence (including 'honor crimes'), equality of nationality rights, and greater opportunities for political and economic participation. Their research, advocacy, and lobbying efforts are directed at their governments, clergy, the media, and international organizations. And their arguments are based on principles related to human rights, international conventions, the global women's rights agenda, and a kind of 'Islamic feminist' rereading of the religious sources. They also have appealed to governments to make their domestic policies conform to international conventions, such as the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW - see Box 2) and the Beijing Platform for Action.

The reform of family law is therefore important for several reasons:

- It is a central element in the modernization of religious institutions and norms in Muslim societies.
- It establishes women's human rights and their equality within the family and vis-à-vis male kin.
- It has implications for women's wider citizenship rights and their social participation, including economic rights.

Box 1 Where MENA Countries Stand on Women's Rights

In a recent review of women's rights in Arab countries of the MENA region, Tunisia ranked at the top, followed by Morocco. The findings are the result of an intensive 20-month-long research process by a team of 40 leading scholars, analysts, and women's rights experts, including those from the region. After a committee of specialists on the Middle East, human rights, and Islamic laws and norms developed the methods for the study, Freedom House, a non-profit organization that promotes democracy and freedom, commissioned the country studies in 2003.

The researchers assessed how women fared in each country in terms of nondiscrimination and access to justice; autonomy, security and freedom of the person; economic rights and equal opportunity; political rights and civic voice; and social and cultural rights. These indicators of women's citizenship and rights are consistent with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action, as well as with the Universal Declaration of Human Rights and other international human rights conventions.

The study produced individual country reports and a summary report providing a comparative review of women's rights across the region (see table). The countries were rated on a scale of 1 to 5, with 1 signifying the weakest performance and 5 the strongest. The study does not provide a comparison with countries outside the region.

Country	Nondiscrimination and access to Justice	Autonomy security, and freedom of the person	Economic rights and equal opportunity	Political rights and civic voice	Social and cultural rights
Algeria	3.0	2.4	2.8	3.0	2.9
Bahrain	2.2	2.3	2.9	2.1	2.8
Egypt	3.0	2.8	2.8	2.7	2.4
Iraq	2.7	2.6	2.8	2.2	2.1
Jordan	2.4	2.4	2.8	2.8	2.5
Kuwait	1.9	2.2	2.9	1.4	2.8
Lebanon	2.8	2.9	2.8	2.9	2.9
Libya	2.3	2.1	2.3	1.2	1.8
Morocco*	3.2	3.2	3.1	3.0	3.0
Oman	2.0	2.1	2.7	1.2	2.1
Palestine**	2.6	2.7	2.8	2.6	2.9
Qatar	2.0	2.1	2.8	1.7	2.5
Saudi Arabia	1.2	1.1	1.4	1.0	1.6
Syria	2.7	2.2	2.8	2.2	2.3
Tunisia	3.6	3.4	3.1	2.8	3.3
UAE	1.7	2.1	2.8	1.2	2.3
Yemen	2.4	2.3	2.3	2.6	2.1

* The study covers development up through the end of 2003. It does not take into account the new developments in Moroccan family law reforms.
** Refers to the Palestinian population living in Gaza and the West Bank (including East Jerusalem).
Source: Freedom House, "Women's Rights in the Middle East and North Africa: Citizenship and Justice" (www.freedomhouse.org, accessed September 23, 2005).

Box 2 An International Bill of Rights for Women

The United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), known as the international bill of rights for women, is the cornerstone of international efforts to advance the status of women. CEDAW establishes a framework for national actions that promote equal rights for men and women. The convention is based on international human rights agreements.

CEDAW was adopted by the UN General Assembly in 1979 and became a binding treaty in 1981. Countries that have signed it commit to undertake a series of measures to end all forms of discrimination against women, including:

- Incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws, and adopting laws prohibiting discrimination against women;
- Establishing tribunals and other public institutions to ensure women are effectively protected against discrimination; and
- Ensuring the elimination of all acts of discrimination against women by persons, organizations, or enterprises.

Aside from civil rights issues, the convention also devotes major attention to women's reproductive rights. The preamble sets the tone by stating that 'the role of women in procreation should not be a basis for discrimination.'

As of March 2005, about 90 percent of the UN member states had joined the treaty. In 1981, Egypt was the first MENA country to do so and the United Arab Emirates became the last to join in 2004 (see table). All MENA countries joining the treaty, however, had reservations to some important articles. As a result, they refused to recognize their duty to implement them, thereby undermining the power and universal validity of the Convention. Most of the reservations pertain to articles that deal with family laws, particularly those related to women's rights within the family and women's nationality rights. Saudi Arabia signed with a blanket statement that it would not observe any article that in their view contradicted the *shari'a*.

REFERENCE: United Nations High Commissioner on Human Rights, Declaration on the Elimination of Discrimination Against Women, accessed online at www.unhchr.ch, on July 15, 2004.

	Year Joined CEDAW
Algeria	1996
Bahrain	2002
Egypt	1981
Iraq	1986
Jordan	1992
Lebanon	1997
Libya	1989
Morocco	1993
Saudi Arabia	2000
Syria	2003
Tunisia	1985
United Arab Emirates	2004
Yemen	1984

• It brings the MENA region in line with international norms and codes enshrined in such conventions as the Universal Declaration on Human Rights, the CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Beijing Declaration and Platform for Action.

The numbers and types of women's organizations that support these changes are increasing. At least seven types of women's groups have emerged in MENA countries. They include service or charitable organizations, official or state-affiliated women's organizations, professional associations, women's studies centers, women's rights or feminist organizations, nongovernmental organizations working on women's and development issues, and worker-based or grassroots women's groups.[11]

A Major Step Forward in Morocco

The Moroccan *mudawana*, or family code, was drafted in 1957, based mainly on the Maliki School of Islamic jurisprudence. Despite major resistance, a few amendments were enacted in 1993 – demonstrating that the *mudawana* was not fixed and could be changed. The amendments limited the guardian's control and emphasized that a woman should give her consent and sign her marriage contract; allowed women over age 21 who did not have a father to contract their own marriage without a guardian; and stipulated that before taking a second wife, a husband needs to inform his first wife. The mother was given the right to legally represent her children if their father died, but she still could not dispose of the children's property.

However, the *mudawana* continued to treat women as subordinate to men: There were double standards in child custody and divorce, for example. And with social change in Morocco, including women's rising employment, the *mudawana* increasingly became outdated. What is more, violence and harassment against women seemed to be increasing and needed to be addressed.

As Moroccan civil society became increasingly organized and more women's associations were formed, a movement began to raise awareness about women's rights. The appointment in 1998 of a progressive prime minister and a minister of women and family affairs who was committed to women's rights led to the formulation of the National Action Plan for the Integration of Women in Development, which called for reforming the *mudawana*. Sustained hostility from religious fundamentalist groups put the plan on the back burner, but the women's organizations and their allies in government pressed ahead. In the 2002 elections, 35 women entered the Moroccan parliament, assisted by a new quota system adopted by the political parties.

Meanwhile, King Mohammad VI, who was personally committed to women's rights, appointed a royal commission to advise him on the family law. Women's rights organizations organized a series of workshops, roundtables, and discussion groups to analyze the details of the draft legislation, renew their efforts to educate the public, and lobby the Parliament for what they argued would be reforms to promote the well-being of women, children, and the family.

Box 3 **Features of the New Family Law in Morocco**

The campaign to reform the Moroccan family code, or *mudawana*, has been the work of more than a decade. The reforms reflect a new path between traditionalists and women's rights activists. The main features of the new Moroccan family law are:

• Husband and wife share joint responsibility for the family.
• The wife is no longer legally obliged to obey her husband.
• The adult woman is entitled to self-guardianship and may exercise it freely and independently.
• The right to divorce is a prerogative of both men and women, exercised under judicial supervision.
• The principle of divorce by mutual consent is established.
• The woman has the right to impose a condition in the marriage contract requiring that her husband refrain from taking other wives.
• If there is no pre-established condition in their marriage contract, the first wife must be informed of her husband's intention to remarry, the second wife must be informed that her husband-to-be is already married, and the first wife can ask for divorce due to harm suffered.
• Polygamy is subject to the judge's authorization and to stringent legal conditions (no objection by the first wife) that make the practice nearly impossible.
• In the case of divorce, the woman is given the possibility of retaining custody of her child even upon remarrying or moving out of the area where her ex-husband lives.
• The child's right to acknowledgment of paternity is protected in cases where the marriage has not been officially registered.
• For both men and women, the minimum legal age of marriage is 18 years.

REFERENCE: Women's Learning Partnership, "Morocco Adopts Landmark Family Law Supporting Women's Equality," accessed online at www.learningpartnership.org, on July 13, 2004.

In October 2003, in his capacity as Commander of the Faithful, the King announced a new family code, which he asserted was consistent with the spirit of the *shari'a*, and then sent it to the parliament. This code, which parliament passed in January 2004, has been heralded as not only a giant leap in women's rights, but also a huge advance in children's rights (see Box 3).[12]

The Moroccan case is a striking example of how women's rights advocates can build coalitions to generate social dialogue, affect key policy debates, help reform laws, and change public policy. Morocco now joins Tunisia and Turkey as the only countries in the MENA region where the husband and wife share responsibility for the family.[13]

Whether this new law makes a real difference depends on how far and how well it can be translated into practice. Will average women become aware of their new rights? And will they be sufficiently empowered to take action if the need arises? Is the country's judiciary system ready for the change? Many challenges remain, not least of which is religious fundamentalists' resistance to implementing the new family code.

Both the state and civil society must now actively raise awareness about the new law and women's new rights through education, media campaigns, and other activities, which could take years. Efforts are already beginning to address some of these challenges and support the reformed family code in Morocco: New family courts have been established, training for the judiciary has been improved, and women can be appointed as family judges.

Morocco's case is remarkable, because a feminist campaign succeeded in breaking the long taboo against touching the *mudawana* – and this in a very conservative culture. The success of women's rights organizations derived partly from their strategic use of Islamic sources to defend their case for a more contemporary interpretation of *shari'a* to frame the new family law. Arguments about the need to fully involve women in all aspects of public life in order to further socioeconomic development also helped advance their cause.

The Moroccan experience shows that change is possible. Through collective action involving civil society and progressive government, even the most entrenched laws can be revised to improve the lives of women and to advance society as a whole.

In Morocco, the long campaign to improve women's status has been an entirely domestic matter. While Moroccan women's rights groups clearly benefited from a global environment conducive to women's rights, their decade-long struggle was carried out and won through their own efforts. The Moroccan success story certainly can be replicated in other countries, though not in exactly the same way. Moroccan women had the advantage of a sympathetic and supportive political leadership, a factor not present in all the countries in the region.

Other Countries Take Smaller Steps

While the pressure to reform family law has been felt across the region, other countries' efforts to remove discriminatory laws against women have been largely piecemeal. In 2000, after much national debate, the Egyptian parliament passed a new law that changed procedures associated with the personal status law. The law – known as *khul'* – gives a woman the equal right to seek a divorce without the consent of her spouse, but only if she gives up some of her financial rights. Opposition groups contested the legality of the *khul'* claiming that it violated the *shari'a*, but in 2002 the Supreme Constitutional Court issued an important judgment confirming that *khul'* is constitutional.[14]

Forfeiting financial rights in exchange for the right to seek divorce can be especially hard on low-income women or those without any employment experience. For that reason, some women's rights advocates remain critical of the new law. However, supporters of *khul'* see the new procedure as a rational interpretation of Islam. They argue that it provides an opening for those women whose divorce cases have dragged on for years in the court system or whose suits could be denied.

Because they are less sensitive than issues of divorce, child custody, or inheritance, laws related to a child's right to inherit his or her mothers' nationality are generally among the first family laws that women and child advocates seek to reform. In 2004, Egypt and Algeria gave women the right to pass on their citizenship to their children regardless of the father's nationality. These changes related to nationality rights are part of a regional campaign to allow mothers to pass on their citizenship to their children. With the backing of not only local advocacy groups, but also non-governmental organizations and government officials, other countries, such as Bahrain, Jordan, Lebanon, Palestine, and Yemen, are participating in the campaign, making reforms more likely in the near future.[15]

Conclusion

Societies pay a price for discriminating against women, and social and economic development is best served by the

active participation of both sexes. To reach that goal in MENA, governments need to reform a number of policies and laws, including the family laws. Women's rights advocates are calling for the reform of family laws because the laws give men privileges, while discriminating against women. The laws are anachronistic at a time when women's roles are expanding in the family and in society. Because Muslim family law is said to derive from the *sharia*, any reform process requires strong political support, sensitivity to religious sentiments, and assurances to the public that the changes are in accord with family values and Islamic norms of justice. This is the strategy that was adopted in Morocco's successful reform of its *mudawana* – a pioneering move for an Islamic country that could spark change throughout the region and beyond.

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Forthcoming:
Female Criminality in the Arab World

Round Table
Personal Status Laws

■ Myriam Sfeir
Assistant Editor, Al-Raida

Personal Status Laws were the subject of a round table discussion held at the Institute for Women's Studies in the Arab World in January 2005. The participants were Dr. Bechir Bilani, Attorney at law, Mohammad Matar, Attorney at law, Ahmad El-Zein, Attorney at law, Judge Arlette Juraysati, and Dr. Ibrahim Najjar. The moderator was Dr. Najla Hamadeh. Also present were Dr. Dima Dabbous-Sensenig, Acting Director of the Institute for Women's Studies in the Arab World, and Myriam Sfeir, Assistant Editor of *Al-Raida*.

Questions:

1. Bearing in mind the rigidity of religious laws and the domination of government or official authority over civil legislation, which of the two types of law would yield fairer family laws? Which of the two types is in the interest of the general public?
2. In a society where the authority of the state and its institutions is weak in comparison with that of religious figures, is it better to keep the implementation of laws in the hands of religious courts rather than in those of civil courts?
3. Which courts are more susceptible to corruption and more compliant with the dominant forces, the religious or the civil?
4. What are the implications of the existence of different personal status codes on citizenship and national unity?
5. How does the discrimination between men and women in legislation affect each of men, women and children?

Answers:

Arlete Juraysati: The answer to your questions is evident: We need to impose a civil law in Lebanon. I believe it is the only solution. Family laws are very biased. I have come across very many cases of abuse and discrimination against women during the past 30 years. Being a judge, people trusted and confided in me, and with time I realized that discrimination against women is not a class issue, it is as widespread among the rich as among the poor. Based on my experience, I can assure you that all discriminatory laws against women will disappear upon imposing a civil law. Civil laws are egalitarian in nature. They equate between men and women. Let's face it, Muslim as well as Christian religious personal status codes regard women as the property of the husband and treat them as minors. For instance, if a woman's husband passes away, her in-laws and brother-in-law are considered legal guardians over her children. Not only are personal status codes very unfair, but also religious courts are very corrupt. I am not saying that civil courts are perfect or ideal, but they are comparatively more knowledgeable in justice procedures and less biased.

Mohammad Matar: In answer to the first question, I believe civil courts rather than religious courts ought to oversee family matters for several reasons. First of all, if we are eager to bring about a legitimate and correct civil society in Lebanon, and if we are to abide by the Lebanese Constitution which categorizes Lebanon as a civil rather than a religious country, then we must relegate all matters related to family law to civil courts. In this context, it is important to observe that the revised Constitution of 1990 declares Lebanon a republic with a multiparty system based on multiple religious groups. Moreover, the Taif Accord stipulates that all sects in Lebanon ought to respect each other. However, the taif and other Lebanese legislation failed to prioritize personal and individual freedom over religious laws. I am a firm believer in personal freedom and choice. Hence, given that Lebanon is a civil country, it must adopt a positive law rather than a religious one. There is no harm in having religious laws and consulting Muslim and Christian sources of legislation. However, laws ought to be civil and lawyers should be trained in civil matters, though I believe they have to be knowledgeable in religious laws as well. The advantage of having positive laws is that civil laws can be amended, whereas religious laws are immutable and unchangeable. The inheritance laws for Muslims are a good example of the impracticality of applying fixed laws to changing social dynamics. In general, codes of personal status rarely change despite changes in circumstances and conditions. Yet, here I would like to give an example that proves otherwise. During the Ottoman Empire reforms were suggested and there were amendments in the law that governs Amiri lands (crown lands). The law was modified so that women could inherit equally to men.

If there is one society in Lebanon then there should be one unified law that governs family matters. For example, custody issues are general societal concerns that should be unified and not associated with religion. As it is, the laws that govern custody matters differ among the various religious sects in Lebanon.

AJ: This limits individual liberty which is recognized and sanctioned by the Lebanese Constitution. Why am I obliged to abide by religious laws? Why should the personal status laws formulated by my sect govern me? Where is my freedom of thought? Why are my human rights curtailed? Why should I be stigmatized or labeled since birth as belonging to a specific sect? Why am I obliged to lead my life in accordance with the rulings of my sect? Let us face it, religion-based personal status laws are the laws that mostly emphasize inequalities between men and women. Hence, alternative laws should be drafted.

Ibrahim Najjar: It is important to define what we mean by family laws. They are laws that govern marriage, alimony, divorce, custody, filiation (*bounoue)* and, inheritance, for Muslims. Religious laws differ between Christians and Muslims. It is very difficult to change or modernize (*noutawir*) Islamic *shari'a* and jurisprudence because the laws that govern the family are mostly related to faith. Islamic shari'a originates from a sacred text that is supposed to govern all time. *Shari'a* law aims at regulating religion as well as all aspects of social and political life.

Because of their 'sacred' origins very many family laws are immutable and no matter how hard legislators try to reform them, they can't change them much. The Jaafari school of law, however, is more liberal than the Hanafi one because the former didn't "close the door of exegesis (*ijtihad*) or interpretation."[1] Jaafari jurisprudence is subject to reform where new *fatwas*[2] or religious edicts are constantly introduced. If it is possible to amend *shari'a* law, the problem remains "who has the right to reform these laws?" Unfortunately, there is no uniform method to determine who can issue a valid *fatwa* and who cannot, and upon whom such *fatwas* are binding. Is a *fatwa* from Al-Azhar binding?

Among Christians one can modernize theology and religious ordinance. Yet, who is allowed to do that? The Vatican can do it only for Catholics. However, this proved very tricky in Lebanon. When the Vatican, in 1991, issued the rules and regulations that apply to Catholics, the Catholics in Lebanon started applying these laws. Yet, the government had no notion that the laws were amended and they were being applied!

In 1951 the Lebanese government asked the different sects to submit a draft law regarding personal status laws. All the sects complied and submitted drafts. But, the proposals contained very many inconsistencies and gaps. This impelled the Lebanese government to disregard them. Also, in 1993, the Orthodox Church presented a new personal status law. This, also was so full of errors and discrepancies that the courts were – and still are – unable to apply it. For instance, they amended the custody law by raising the custody age to 14 years for both sexes. However, applying the newly amended law was problematic because of certain ambiguities: Is the law relevant to the present only or does it have a retroactive effect? Does it apply to divorce cases settled prior to the amendment of the law? Unfortunately, there are very many problems that were not addressed when the laws were amended.

NH: From the general trend of things, one suspects that what impeded implementation of this modernized law

was more its being favorable to women than its being 'ambiguous.'

IN: I believe that Islamic *shari'a* is immaculate in its drafting. There is excellence in drafting laws within Islam to an extent that Christians, for the past four decades, adopted and applied Islamic *shari'a* in matters related to inheritance.

NH: They did because it favored men.

IN: We need to recognize that laws are not promulgated from nil. They are the result of historical development. Prior to the advent of Islam, female infanticide was the norm. Hence, the teachings of Islam were very revolutionary. Islam introduced guidelines that regulated one's whole life. Yet, with the passage of time these rules and regulations were no longer capable of accommodating new contexts and changing needs and conditions.

Ahmad El-Zein: One should keep in mind and adopt the 'general principle rule' or *al-qa'ida el kulliya*.[3]

IN: I would propose creating a new sect, i.e. 'the non-religious sect' that is governed by civil laws. It is a secular sect that is governed by implications of previous solutions to the conflicts arising from ambiguous laws. Hence, the same rules that apply to the different sects in Lebanon apply to it.

We live this schizophrenia in laws daily in Lebanon and that is why I am raising this issue. Before we say let's see if civil laws are better than religious laws, we have to see where we can modernize gradually in order to cope with changing trends and new situations.

Let me give you an example: I recently handled a divorce case where a husband divorced his wife without her knowledge. The wife had no notion of the divorce and was not informed of the ruling (*hikm*) in order to be able to appeal. This divorce case was considered as a regular divorce although she was divorced in absentia. The divorce was finalized in a single session, and within one hour the registry bureau (*qalam*) gave the husband a copy of the ruling permitting enforcement (*sourat salihat lil tanfeez*). The husband took the paper to the personal status registries and registered the divorce. He then took the kids and refused to let the mother see them. Even though she appealed, my client – who is an American citizen married to a Lebanese Muslim – was not allowed to see her children. The Muslim religious courts claimed that they have no authority to allow her to see her children and the civil courts stated that they are unfit to supervise the case. Between the two, my client is still suffering. Such problems can be avoided when a civil law is adopted.

AZ: The issues being discussed are very delicate given that they are related to personal beliefs and religious creeds. Article 9 of the Lebanese Constitution stipulates the respect of religion and honoring family laws that correspond to the different sects in Lebanon.[4] I agree with what has been said – especially in a religiously pluralistic society like Lebanon. An optional unified civil law could be the solution. It is a law that might appeal to many Lebanese citizens. This law is worth fighting for because it embodies a very important and very useful development. As it is, Muslims are faced with two obstacles: The unyielding, obstinate and narrow-minded stance of religious men, and the difficulty of Islamic reform (*al-ijtihad*). It is true that there is a rule that says that "it cannot be denied that texts may change with the shifting of times and places," yet no one dares change laws pertaining to personal status. The existing religious codes are considered divine, and their source is God, not society. Hence, laws and rules regulating personal status and inheritance (specifically for Muslims) are seen as absolute and eternal.

IN: This is true, though there are exceptions to the rule. For instance, there is a law in Lebanon that was issued in 1974 and re-issued in 1983 that is related to inheritance of the end of service indemnity. Legislators found a ruse (*hilat shar'iyya*) to include indemnity as inheritance by saying that when the Qur'an came about there was no end of service indemnity and so we can apply new laws regarding this matter. The laws that were accordingly implemented had nothing to do with Islamic *shari'a*, yet the justification given was that necessities permit the forbidden (*al darourat toubeeh al mahzourat*). Another similar example relates to civil marriages contracted abroad and then registered in Lebanon.

Bechir Bilani: Problems stem not only from religious laws but also from the way/s we interpret and apply these laws. In Egypt the rank of sheikh was refused to any religious man without civil law education alongside his qualification in religious legislation. Often, problems stem from incorrect rulings by religious men and not from the religious texts themselves. Errors often are the result of misapplication of religious texts. During the times of the Prophet when people used to ask him for advice he sometimes refused to give them an answer, stating: "You are more knowledgeable about your affairs." The Prophet wanted to avoid answering so as not to make a rule of things. Problems are often in the understanding or the application of laws rather than in the text itself.

NH: Our aim is not to import laws but to come up with fairer ways of dealing with issues of divorce, for example.

BB: Civil marriage is not the solution. I believe that religious marriages are the best form of union. I agree, however, that non-religious people should have their separate laws. Concerning inheritance for instance, according to Islamic *shari'a*, men incur all expenses. I believe that civil marriages lead to bad results. Evil is innate and you need an innate thing like faith to stop evil. I refuse to fight faith, religion is very important. Without faith we will act like savages.

MM: In answer to the second question, until we acquire an optional civil law that deals with personal status issues, I would rather see laws implemented by civil judges just like in Egypt, Tunisia, and Syria. Corruption prevails in Lebanon and religious courts are not immune. Court rulings are biased and unfair unless one is well connected. Groups belonging to the same sect side with each other and religious figures support members of their sect. The advantage of adopting a positive (civil) law is that under it one is no longer subject to the whims of religious judges and how fair or unfair they happen to be. There is a due process that has to take place.

AJ: With all due respect to the various religions, we are incapable of building a country when citizens pledge allegiance to a sect rather than a country. We should adopt one law and one court system that oversees all matters related to personal status issues. As judges we are taught that laws are mirrors of society and they progress or stagnate with it. Judges in Lebanon have managed to modernize laws extensively, thus improving the situation of women. Faith is a personal matter that cannot be imposed. With regard to corruption, I agree that there is corruption, but I believe that the situation can be salvaged.

BB: What you are calling for is the creation of a civil law for all, or an optional one. Yet, in doing so you didn't solve the problem of confessionalism and the ills that result from it.

IN: I disagree with Dr. Bachir. If we don't leave any leeway for the formulation of a secular sect that is governed by secular laws this would imply that once a person is born he/she is trapped and becomes the victim of the laws that govern his/her sect. It is true that one can change his/her religion but one has to still choose from within the different sects and religions recognized in Lebanon. Buddhism is not a recognized religion in Lebanon. We are in a very closed society.

NH: We live in a caste system, as Safiyah Saadeh claims.

MM: I have two brief comments to make. When I was still a university student in London I was amazed at how well behaved the English were in terms of queuing. One would be waiting at a bus stop and everyone would queue. So I thought it stemmed from their sense of social courteousness. Yet, after several years, and to be specific, in 1998 I found out that there was a queuing law that was imposed in 1905 and was cancelled several decades later. The justification for changing the law was that it became redundant. People got used to queuing. As a result of the 1905 law, the English learned to queue, and with time it became an act of civility and politeness and not a legal obligation. Hence, laws are interactive and are capable of changing behavior. Another point is concerning positive law: There is an outcome consequent to authority's imposition of laws. What Dr. Billani was saying was that even if you have the non-secular sect, namely the 18th sect, confessionalism will remain. There is a famous saying by [John Maynard] Keynes to the effect that good money chases bad money. So if someone wants to marry from a different religion he/she is free, and so is another who wants to marry from the same religion and opt for a civil marriage, but if he/she finds that religious marriage is better then it is ok too. The operation is not mutually exclusive. There should be room for freedom of the individual. Discrimination is prevalent among all religions and sects and so we have to broaden our horizons. We are not born with a manual. Religions try to take away the freedom of their followers.

AJ: Religion is a private matter. It is a personal relation between the individual and God. There is no reason why should we live at the mercy of religious laws. Had I been given the choice I would have contracted a civil marriage.

AZ: Concerning questions 2 and 3, I disagree that religious authorities, especially among Muslims, are not revered or respected. It depends on which laws these courts are implementing. If you want to allow civil courts to implement religious and *shari'a* laws, the courts need to be rehabilitated. *Shari'a* judges are more knowledgeable and capable of dealing with these problems. The whole issue revolves around which text should be applied. Until we have a unified law I would rather see the laws in the hands of the religious courts. These courts are less expensive and more efficient. There, having a lawyer is not obligatory. Also, appointing someone (*tawkil*) is easier and the sentencing is quicker. In principle, I am a secular person so I am in favor of an optional civil law with civil courts overseeing the rulings. Concerning corruption, it is everywhere. There are ethical and corrupt Christian and Muslim religious figures.

NH: Do you think there is more control in civil courts?

AZ: I disagree. In religious courts one can appeal and there is a complaint and inspection process.

AJ: I believe that the solution is in adopting a unified

obligatory civil law and civil marriage law for all sects and an optional religious law for each sect.

AZ: I personally believe that true religiosity is nonexistent in Lebanon. People are fanatic and pledge allegiance to their religion or sect without understanding the true meaning of faith. Had the judge who handled the case Dr. Najjar mentioned earlier been a pious and true believer he wouldn't have made such a ruling. Even though divorce is an acceptable practice in Islam it is still considered the most hated of lawful practices (*akrah al-halal*), and mothers can never be denied seeing their children. Usually in divorce cases the religious judges have to try and make amends between the couple. If the judge fails he tries involving parents and if, after all that, they are still adamant about getting a divorce, then a divorce will be granted.

IN: Religious courts are paternalistic in nature and religious judges believe that they are implementing justice that comes from God. Corruption is very prevalent in religious courts. Politics and political power, wealth, donations, as well as the right connections play an important role in resolving personal status issues.

MM: Christian and Muslim religious courts look down upon women. Anything given to women is regarded as charity. If you see how women are treated in religious courts you will be horrified. Women have no existence in religious courts, whereas in positive courts there is no such thing.

IN: Religious judges are not knowledgeable and lack the proper legal training. We should abolish all religious courts. What is happening in religious courts is horrifying.

AZ: Before abolishing religious laws or courts, let us first try to change the electoral law.

BB: I have no objection to adopting an optional civil law that oversees matters related to personal status, upon one condition: The law should contain a text that considers all individuals who adopt the civil law to have renounced their religious and confessional identity. This prerequisite prevents individuals from taking advantage of their religion and sectarian affiliations to secure jobs and top ranking positions within the government. In the case of couples who have contracted civil marriages abroad – in countries where civil marriages are a necessity – they should, upon returning to Lebanon, be required to either renounce their religious status, if they are willing to abide by the rules and regulations that govern their civil marriage, or else they should contract a religious marriage.

MM: (Answer to questions 4 and 5) This creates a schizophrenic situation. The confessional system is based on a multiplicity of positions and often ambiguity of solutions. In personal status issues one has to act in a certain manner. This schizophrenic situation is partly caused by the multi-colored confessional system.

BB: I believe that the many laws applied are not the problem given that people are never united. They will always argue over politics, belong to various political parties, etc.

AJ: People disagree on programs. This confessional system prevents one from fighting corruption and punishing individuals, because they are protected by their affiliation to a sect or religion.

MM: Any contract that is lop-sided, where one party has very many privileges over the other, leads to discrimination. I disagree that divorces are easily granted when the marriage is a civil one. However, religious divorces are more difficult and problematic because they are not egalitarian.

BB: Adopting a law for civil marriage will not solve the problem of sectarianism.

AZ: The problems the citizens are facing, in my opinion, are not the result of the variety in personal status codes governing sects in Lebanon. The prevalent political system is responsible for the absence of a true sense of nationalism. This causes citizens to be more affiliated with their sects. It is important to note that practicing one's religion freely while respecting that of the other is an important achievement.

Endnotes

1. *Ijtihad* or Islamic jurisprudence.
2. A *fatwa* is a legal pronouncement according to Islam, issued by a religious law specialist on a specific issue. Usually a *fatwa* is issued at the request of an individual or a judge to settle a question where *fiqh*, (Islamic jurisprudence) concerning the issue in question is not clear.
3. *Al-qa'ida el kulliya* stipulates: *La younkar taghayour al-ahkam bi taghayour al-zaman wa al makan*, (It cannot be denied that rulings of early jurists may change in accordance with change in the times or locations).
4. Article 9: Liberty of conscience is absolute. By rendering homage to the Almighty, the State respects all creeds and guarantees and protects their free exercise, on condition that they do not interfere with the public order. It also guarantees to individuals, whatever their religious allegiance, the respect of their personal status and their religious interests.

The Opinion of a Religious Authority
Parson Dr. Habib Badr President of the Evangelical Religious Courts of First Instance in Beirut

Editor's question:
Do you believe that giving jurisdiction over family legislation to religious courts rather than civil courts has any advantages? What are they?

Giving spiritual or religious courts jurisdiction over family legislation in Lebanon was not a decision taken on the spur of the moment or during a neutral time in history or in a vacuum. It is also not a pure legislative system independent of the public political system that constitutes the foundation of Lebanon's modern state and its prevalent political atmosphere. The confessional system applied in our country today was adopted during the French mandate and developed from the 'religious system' (millet) that prevailed in Lebanon and the wider region under the Ottoman Empire's 400-year rule.

This millet system is an Ottoman device by means of which non-Muslims enjoy Muslim protection. It derives from practices that the consecutive Islamic states (Umayyad, Abbasid, Fatimid, and others) applied to 'the people of the book' (believers in revealed religions i.e. Christians and Jews) and Muslim minorities.

Hence, it is not possible to judge the characteristics of the spiritual courts system in general without talking about the public, political and civil system prevailing in Lebanon today.

Giving religious courts jurisdiction over family legislation is based on the general principle that religion should determine the identity of the communities that make up the Lebanese state

History proves that the organizing frameworks and the political structure in any country, including family legislation, must stem from the social nature and sociological fabric of the country in question. In our country, the current confessional system does not draw a line between religion and state. This reality is the result of the region's history, which is marked by the Islamic conceptualization of the state and of its organization. Family legislation stemming from this vision is principally based on religious identity and therefore cannot fall within the jurisdiction of another legislative system, regardless of its kind, by simply writing it into another system.

Following the example of Europe, where state and religion have been separated for almost three centuries, is useless and does not help us in assessing the advantages and qualities of confessional legislation. Judging our system as 'retarded' or 'underdeveloped' compared to its counterparts in the West is similarly useless. It is important to remember that during the Middle Ages Europe knew a 'dark' period during which it confused religion with the state before progressing and relinquishing this confusion. The foundations of Western societies stemming from Greek, Roman and Christian heritages facilitated a shift from the system which confused state and religion to a system which distinguished between them. But our oriental society is of a different nature.

Islamic ideology, which prevails in our region, does not believe in separating religion from daily life. There is no shame in that – i.e. there is no shame in the fact that the religious or confessional factor, whether political or legislative, provides the foundation of a society or state, provided that this confessionalism preserves the principles of the rule of law, human rights, freedom, equality, and democracy. This is not impossible as the Lebanese experience has shown in the past two centuries. I believe that if confessionalism is correctly applied it can preserve many of the religious legislative system's advantages while reducing its disadvantages.

It is true that misuse of the jurisdiction of religious courts (even the entire confessional system) over family legislation has in recent years stained the reputation of the confessional system. It is also true that many younger Lebanese principally refuse this system in favor of the Western secular system, which gives the civil (or secular) state jurisdiction over civil and family legislation. However, the confessional system has many advantages that can be brought to light if it is correctly and ethically applied, and if amendments are introduced to modernize it and better adapt it to the requirements of our era.

One of the most pressing amendments needed relates to the rights of women as mothers, wives, and daughters. We, as an evangelical confession, have sought to amend our personal status system in this direction. However, there is much that is yet to be done.

In conclusion, I wish to say that the current confessional law, under the present circumstances and for our reality as Christians living in the Arab and Islamic world, remains the best guarantee of our freedoms and rights until the nature of our society and its civil political fabric are changed.

Islamic Family Law in a Changing World: A Global Resource Book

Abdullahi A. An-Na'im, ed.
London: Zed Books, 2002

■ Reviewed by Cassandra Balchin
Women Living Under Muslim Laws
H-NET BOOK REVIEW Published by H-Gender-MidEast@h-net.msu.edu (February 2004)

Shari'a Has Never Been and Should Never Be the Basis for Family Law

As the quintessential identity battleground, family law in Muslim countries and communities is one of the hottest political and developmental topics. Those situated within these contexts constantly find themselves struggling for progressive or (more often than not) against regressive reform, while for those with the outsider's gaze, 'understanding' Muslim communities is currently a major preoccupation.

In this context, a book which consciously explodes the myths – propounded by cultural relativists and fundamentalists alike – of one homogenous 'Muslim world' and the immutability of Muslim laws, and is edited by one of the field's most respected progressive scholars, must be warmly welcomed.

Muslim men, since the earliest days of Islam, have taken women-friendly positions and today some of the most outstanding gender-sensitive theological interpretations are being produced by men; yet this fact is often overlooked. This is particularly true among academic and policy-making circles outside Muslim contexts, where short-sighted political correctness has produced a form of segregation whereby only women are to propound upon gender relations in Islam and Muslim societies. It is therefore significant that the present book, which seeks to highlight the human rights of women, be primarily the work of a male scholar.

In all cultures, women are the pivotal territories, markers and reproducers of the narratives of nations and other collectivities.[1] In the case of Muslim societies this has had two identifiable outcomes. Firstly, fundamentalist forces and states that have failed to build alternative national identities have focused their politicization of identity on women – invariably through dress codes and/or family law. As women activists and researchers in many Muslim contexts have noted, the family is the site of women's most immediate and daily experience of imposed definitions of gender appropriate roles, and it is also where the converging influence of customs, culture (including religion), and laws (frequently justified with reference to religion) is most vivid.[2] Secondly, as Leila Ahmed argues, women have been the focus of an Orientalist discourse on Islam that characterizes it as inherently oppressive of women.[3] Even today, outside Muslim communities, discussion of women in Muslim societies is common shorthand for wider assertions of cultural superiority and the supposed benefits of the liberal Enlightenment.

While An-Na'im focuses on family law in Muslim societies and particularly on its impact on women's human rights, he is neither a fundamentalist nor a liberal. He is part of a long tradition of iconoclastic, questioning, progressive Muslims, both confident in Islam's message of social justice and convinced of the importance of human agency.

Before summarizing the scope, purpose, and content of the book, I would like to clarify my own position. I was closely involved in the 1992-2001 Women and Law in the Muslim World (W&L) action-research Program run by the international solidarity network, Women Living Under Muslim Laws (WLUML). This produced a very different – but possibly complementary – book on a similar topic: *Knowing Our Rights: Women, family, laws and customs in the Muslim World* (2003). My evaluation of An-Na'im's book is therefore bound to reflect commonalities and divergences in the theoretical and practical approaches of these two projects. Meanwhile, I am now on the Advisory Board to the Rights at Home project, the follow-up to the "Islamic Family Law: Possibilities of Reform through Internal Initiatives" project from which An-Na'im's book is derived, and which was until very recently headed by An-Na'im.

> *... family laws in Muslim countries are not shari'a but state law, & like all other law, derive authority from the political will of the state*

The now-increasingly significant body of literature on these topics has to date fallen into five broad categories: anthropological or sociological works (generally based on Ph.D. theses and focusing in depth upon one or two particular countries); theological discussions and (re)interpretations; writings largely grounded in political science and again usually based upon the experience of a limited range of countries/communities; listings of statutory texts with usually perfunctory and/or generally legalistic commentary; and, cross-disciplinary writings which combine a knowledge of jurisprudence, statutory law, and the realities of women's lives – of the 'law in development' or 'women's law' schools. This last category is quantitatively by far the smallest – even if arguably the most relevant to understanding and formulating strategies for strengthening women's human rights in Muslim countries and communities. Rarer still is the sub-category within this of works that move beyond a country-specific or even region-specific focus to encompass the full diversity of Muslim societies and to offer a cross-comparative view. An-Na'im's book, as indeed the WLUML book, does precisely this.

Before discussing the theoretical underpinnings of An-Na'im's book reflected in his preface and introductory chapter, I shall first examine the bulk of the work. This is organized into nine parts, each covering a distinct geographical region, with sections on each region's social, cultural and historical background followed by legal profiles of countries in that region. A total of 38 countries are covered, in addition to Central Asia and the Caucasus (which includes Turkey), and southern Africa which are only covered via regional backgrounds. There are contexts such as Fiji and the United Kingdom where, although governed by non-Muslim, 'secular' laws (i.e., generally based on a Christian conceptualization of marriage), Muslim communities may find the courts making allowances for or even reinterpreting Islamic family law in their judgments. A publication aiming to map Muslim family laws globally needs at least to acknowledge such diasporic communities – even if only as a group falling outside the 'mainstream.'

This geographical tour de force reflects much of the diversity of Muslim countries and communities: Where Muslims are the majority and the minority, affected by diverse colonial histories and with differing models of statehood from theocracy to monarchy to democracies which have wavered between military rule and populist elected governments; in some, Islam is the state religion while others have an (increasingly forgotten) history of secularism.

The scope of topics covered is similarly ambitious, offering a history of Islam, political institutions and legal structures in the region, along with a summary about the family, marriage, divorce, polygyny, children, custody of children, and inheritance. Meeting An-Na'im's declared intention of providing a gender-sensitive analysis, each regional profile also examines the issue of seclusion of women (purdah) which is broadened to extend to questions of political and economic participation, education, and an analysis of trends in dress codes. For each country, the legal profile section examines its legal history, the locally predominant schools of Islam (and other religions), the constitutional status of Islam/Islamic law, the court system, 'notable features' (an overview of relevant legislation with some indication of case law trends in depth, varying from half a page to half a dozen pages),

notes on the local case law reporting system, and an indication of international conventions signed (with relevant reservations). Both the regional background and country legal profiles have accompanying bibliographies and sources.

An-Na'im is aware that the project is ambitious, not least because the law is organic and constantly changing; already commentary regarding Morocco and Iran have been rendered outdated by reform.

It is an extraordinary achievement to have brought all this information under one roof and in a structure that is generally successful: The organization of the material is logical and consistent (even if varying greatly in depth); the size certainly unintimidating; and the language refreshingly appropriate for a non-academic audience (if occasionally inconsistent in that in places laws are reproduced verbatim with attendant legalese). If I have one language-related criticism it is that spellings of certain Arabic words such as *shari'a, talaq-al-tafwid* or *qadi* have been made uniform rather than used in their local form (*shariat, talaq-i-tafweez, kazi/qazi*, etc). Is this an inadvertent privileging of Arabic-speaking Muslim communities as more 'authentic' than others? The failure to acknowledge local spellings of common jurisprudential terms is possibly behind An-Na'im's mistakenly separate glossary entries for *khul'* and *khula* (the latter incorrectly conflated with *mubarat*). Meanwhile the publishers, Zed, should simply not have allowed sentences such as "*Hasan 'ala dhikrihi's-salam* announced the *qiyamat*, which means a spiritualization of the *shari'a*" to pass (although none of such sentences detracted from the overall clarity of the book). Inevitable repetition of the specificities of legal provisions in the regional backgrounds and then in the country profiles should equally have been smoothed by a proper copy edit. This is particularly true for a region such as South Asia where a single colonial era law applies across the board with almost insignificant post-independence variations.

I cannot pretend to be sufficiently knowledgeable of the legal systems in all 38 countries covered to discuss the merits – or demerits of all An-Na'im's country legal profiles. I shall, therefore, restrict my analysis to the South Asian section and the legal profiles for Bangladesh, India, Pakistan, and Sri Lanka, presuming that these are representative of the overall book (although I suspect less so since An-Na'im's greater knowledge lies in legal systems of the Middle East and parts of Africa). Moreover, whatever criticism follows is to be seen in the context that nowhere else in the existing literature is there such a manageable socio-legal history that covers so many contemporary family laws with an avowed human rights perspective.

... 'Islamic perspective' is the preferred perspective & that preservation of religious identity is essential for all

But the very scope of An-Na'im's book is bound too to be the source of its weaknesses. It is all but impossible to produce such a work that is error-free. Indeed, recognizing this, An-Na'im notes that "all the information contained in this book was first presented on a website (www.law.emory.edu/ifl) for nearly two years with emphatic invitation and appeal to all concerned to correct our factual assertions and/or challenge analysis." (p. xiii) That the project did not receive a single response means the blame for factual error must at least be shared.

Examples of errors include the assertion that Pakistan's 'Islamization' laws decreed that in compensation (*diyat*) cases the value of a woman's life was to be half that of a man's (p.205). This assertion was indeed common among local women's rights groups but was an activist slogan rather than a reflection of the actual law. Other examples include the statement that Pakistan became independent in 1948 (p.205) (it was 1947), and that 'Bangladesh's Muslim Family Laws Ordinance' was passed in 1962 (p.210) (the Ordinance was promulgated in 1961 and when Bangladesh was still part of Pakistan).

Of greater concern is the possibility that very different people or sources of information were used for the regional background and the country profiles. In certain instances there are contradictions between information presented on the same topic in these two separate sections. For example, the regional background claims that women in Bangladesh can only seek divorce on the grounds of polygyny, and this too only if the husband remarries without permission from his existing wife and the local authorities. (p. 210) Yet the country profile makes clear that multiple grounds for dissolution of marriage are available to Bangladeshi women and that it is the local authorities' permission (not the existing wife's permission) that is required for a polygynous marriage. Similarly, the regional profile asserts Bangladesh's constitution is 'avowedly secular,' (p.206) while the country profile correctly notes that the secular principle was dropped in 1977.

Is the problem possibly that, certainly in the case of South Asia, there is a tendency to use academic, non-practicing lawyer sources that are largely based outside the region? Or is this merely pique on my part because, for example, none of the Pakistan Women and Law Country Project materials (three internationally recognized publications on laws, case law and customs by 1998) seem to have been consulted?

The scope of An-Na'im's book also does not leave room for a more nuanced understanding (particularly class, age, and ethnicity differentiated analysis) of, for example, female infanticide or the treatment of divorced women. We are left, therefore, with frustratingly broad assertions such as "divorced women are stigmatized and face a difficult time socially and economically in Pakistan." (p.209) Surely this is true for Christian women in the United Kingdom while overlooking the fact that among the Sindhi peasantry divorce is not particularly stigmatized.[4] It is possibly in the area of custom – rather than statutory law – that this book is at its weakest. But researching and reporting custom is notoriously complex; custom can differ widely according to a long list of variables and even within the same village numerous different practices may co-exist.

While in the area of statutory law, the book offers useful summaries of family law provisions for most countries, overall there are few case law citations (too many would become indigestible). Thus pointers are missing to the contentious family law issues in any given country. Perhaps more importantly, there is little sense of the very significant distinction between text and implementation. This is the crevice through which women's rights most often slip – either because under the influence of social mores and/or political trends the courts do not apply the law within a rights-based framework, or because procedural law works counter to the rights established under family law. For example, An-Na'im notes that Sri Lankan Quazis have 'exclusive jurisdiction over the adjudication of maintenance claims' but fails to point out that Quazis have no powers of enforcement and a woman has to apply to the ordinary courts for enforcement of a maintenance decree, leaving her running between the two forums.

In all cultures, women are the pivotal territories, markers & reproducers of the narratives of nations & other collectivities

But the gap between text and implementation does not always work to women's disadvantage. Wherever possible An-Na'im has clearly attempted to provide a sense of how legal practice is continuously evolving. Sadly he has, at least in the case of child custody law in Pakistan, missed commenting on hugely positive developments in recent decades where interpretation of the text in case law has all but changed the essential nature of the original law – overwhelmingly to women's (and children's) advantage. To refer, as he does in this section (probably using Pearl and Menski, 1998[5] as sources), to the 'classical Hanafi position' (p.235) is to miss the point entirely.

With these comments in mind, I would be cautious about fully agreeing that An-Na'im has met his stated objective of providing information on specific legal rules and practices in family law. But, as stated earlier, it is probably unfair to judge An-Na'im on the detail he has missed as the book is the acknowledged outcome of a 'global "mapping" survey' and admirably achieves its other objective of providing "an overview of the influence of Islam on the socio-cultural and historical context" across different countries. Where else, for example, would I be able to find a brief, accessible description of the legal history of Tanzania's Muslims and the family law provisions applicable to them? As symbolized by my participation in the Rights at Home follow-up project, An-Na'im's IFL project and WLUML's Women and Law in the Muslim World Program are essentially complementary, as are their publications; where An-Na'im provides a broad and geographical focus, WLUML provides an issue-based, more in-depth examination of fewer countries. Both are needed.

Whatever the strengths and weaknesses of An-Na'im's description and analysis of family laws in Muslim countries and communities, his preface and introductory chapter, "Shari'a and Islamic Family Law: Transition and Transformation," are outstanding. Within days of reading it, I had copied and shared this chapter with the Gender Unit head in a major international human rights organization who was struggling with concepts around *shari'a* and recent developments in Nigeria.

An-Na'im was a student of the great Sudanese Muslim reformer, Mahmoud Mohamed Taha, hanged in 1985 by the Islamist-influenced government. Taha was no wishy-washy liberal reformist but a radical non-conformist and An-Na'im's progressive apprenticeship shines through his introduction.

He notes at the very outset that the shari'a is not monolithic. There are significant theological, legal and other differences among and within Muslim societies, and its application is modified by customary practices and state policy. His neat history of *shari'a* talks of 'surviving' schools and the 'total extinction' of some, both indicating that *shari'a* has always been internally contested. Even among progressive scholars there are differences over the meaning of *shari'a*: Some such as Riffat Hassan (1994) contend that the *shari'a* is not divine while some such as Ziba Mir-Hosseini (1999) distinguish between *shari'a* and *fiqh*, regarding the former as divine and the latter human.[6] Given that all hinges on what precisely is included in *shari'a*, An-Na'im's introduction would have benefited from a clear definition. This is only obliquely offered towards its conclusion: 'a moral code for the individual's relationship with God,' (p.18) meaning An-Na'im falls into the latter category; in his view the more limited understanding of *shari'a* is a recent phenomenon, emerging in the colonial period. Refreshingly, his analysis does not limit to colonialism the origins of parallel judicial systems in Muslim countries and their 'division of responsibility' between religious courts for family law matters and secular courts for matters other than personal status law.

An-Na'im insists that family laws in Muslim countries are not shari'a but state law, and like all other law, derive authority from the political will of the state. This also contests analysis of family law as supposedly relegated to a 'private' issue. He is angered that the post-independence elites in Muslim societies sacrificed women's human rights for the sake of political expediency but notes that while gender is a new element, the political manipulation of religious legitimacy has been around since the beginning of Muslim history.

Unlike the Islamists who may also contend that current family laws are not *shari'a*, An-Na'im is categorical that *shari'a* has never been and should never be the basis of family laws for Muslims. This is where An-Na'im is at his very best. He counters the Islamists' claim that application of *shari'a* as a systematic normative order is somehow an inescapable requirement for a pious Muslim community. As he points out, *shari'a* in this form did not develop until some 150-250 years after the Prophet's death and was therefore not applied by the early generations of Muslims – who are usually taken to have been more devout than later Muslims. An-Na'im further contends that even in the supposed pre-colonial Golden Age, the practical application of *shari'a* has been grossly exaggerated. It is impractical to enforce *shari'a* as state law because it does not provide all the tools and materials for a comprehensive and sustainable practical legal system, particularly given the major theoretical problems and differences within and between the schools. Challenging those who misuse Islam as a political slogan, An-Na'im notes that if countries were to actually live in accordance with *shari'a*, they would have to entirely transform their political boundaries and the nature of government, also living in almost total economic and political isolation from the rest of the world. Iran's current reform movement – supported by many clerics – demonstrates the impracticality of theocracy in the modern world.

An-Na'im is a true secularist, for whom the transcendental essence of *shari'a* is sullied by the very step of enacting it as the positive law of the state. For him, the only means of achieving "equality and fairness for Muslim women within an Islamic perspective, without compromising the religious identity of Islamic societies and personal piety of individual believers" is for human agency to understand the underlying (historically contextualized) rationale and spirit of the Qur'an and Sunnah, and develop equivalent social policy applicable in our modern context. This, he suggests, already exists in the form of universal human rights norms.

Many in Muslim countries and communities might contest the assumption that an 'Islamic perspective' is the preferred perspective and that preservation of religious identity is essential for all. Indeed, in terms of women's access to justice in family law, WLUML's W&L research clearly revealed that it is neither the 'Islamic' nor 'secular' character of a law which makes it less or more option-giving for women. The issue is whether the state and human society root this law and apply it in a human rights framework. Through perhaps very different paths we have come to the same conclusion.

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Globalization, Gender and Religion: The Politics of Women's Rights in Catholic and Muslim Contexts

Jane H. Bayes and Nayereh Tohidi, eds.
Houndmills and New York: Palgrave, 2001

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Why Do Politics Play Out on Women's Bodies?

Studies dealing with the broad theme of 'women and religion' are often designed along the lines of edited volumes of essays on each of the major religious traditions, written (most often) by Western experts. Such an approach is perfectly legitimate and, when the results are informative, justified as well. It is an approach, however, that makes comparison between (and even within) traditions difficult, as one crucial aspect of this kind of tradition narrative is inevitably missing. That aspect, and the most important word in this book's sub-title, is 'contexts.' The contexts in the present case are not defined by there being only two traditions treated, the (Catholic) Christian and the (Sunni and Shia) Muslim. Very specifically, five of the ten contributors to the volume, including the two editors, attended the UN 4th World Conference on Women held in Beijing in 1994. Two others were members of their countries' official delegations in Beijing while a third was, during preparation of the project, arrested and charged with treason for critiquing discriminatory laws against women in her own country. The Catholic populations dealt with are those in the United States (Susan Maloney), Latin America, with special focus on Costa Rica (Laura Guzman Stein), Ireland (Yvonne Galligan and Nuala Ryan) and Spain (Celia Valiente), while the Muslim contexts include Turkey (Ayse Gunes Ayata), Iran (Mehranguiz Kar), Egypt (Heba Raouf Ezzat) and Bangladesh (Najma Chawdhury).

In the editors' words, the Beijing Conference reflected important international divisions of perspective and concern, one being "a new transnational and cross-cultural conservative and religious alliance against equal rights for women" and another the "growing implications of globalization for women and gender politics." Conference headlines were made by the alliance of some Catholic and Muslim delegations, including men and women and led by the Vatican in Rome. Their objective was a uniform position in opposition to various women's issues proposed in the Platform for Action (PFA). The editors bluntly ask, 'Why is it that politics in Catholic and Muslim contexts are so often played out on women's bodies?' The related but broader issue dealt with in this book is the variety of strategies adopted by women when traditional gender patterns are challenged by forces of modernity.

An important observation is made in the editors' introductory remarks concerning the connecting themes

between the essays, namely that in these debates "the ongoing tension [is] not only and simply between modernity and tradition, secularity or religiosity, but also between competing notions of modernity, modernization and traditionalism" (p. 14). The force of this remark, however, is blunted somewhat by the sentence immediately following, claiming that the "real line of demarcation seems to be between those forces who are committed to democracy, freedom of choice, and equal human/women's rights and those who support authoritarianism, discrimination and gender hierarchy under a religious or secular guise" (p. 14). There are surely also competing notions of some or all of these terms just as there are of the ones previously mentioned. A similar difficulty in the editors' presentation appears when they, quite rightly, assert that the feminist movement is not one but many and that negotiating modernity takes many forms. But it is not as immediately evident that what unites feminists is a belief in "human dignity, human rights, freedom of choice and the further empowerment of women *rather* than any ideological, spiritual or religious stance" (emphasis added, p. 50). This claim, like the one above, privileges a secular perspective. Yet both editors concede earlier that "a basic claim among various religious feminist reformers ... is that their respective religions, *if understood and interpreted correctly*, do not support the subordination of women" (emphasis added, p. 48). An illustrative point is the debate in Turkey over a woman wearing a headscarf in government offices or universities. In her fascinating piece, Gunes Ayata notes that the prohibition of the Kemalist government against headscarves dates from the 1930s. The ban included female students of theological colleges who could only cover their heads while reading the Qur'an. In the mid-1990s, the Islamic Welfare Party found itself ranged against secular state institutions, including the army, when it proposed legislation which would, in effect, make it a woman's free choice whether or not she wore a headscarf in these public places (p. 169). Is the situation here a clear-cut one of democracy versus authoritarianism or of free choice against discrimination?

This leads to a comment on what is, perhaps, the most interesting contrast between feminist movements in Muslim countries: that described in the accounts on Turkey and Iran. The authors set each country's context in the opening sentences of their narratives. With the founding of the Turkish Republic in 1923, reforms involving women's rights were "some of the most important... attempts to break away from the Muslim world and turn toward the West" (p. 157). Contemporary Iran, by contrast, is a country where 70 percent of its population is under the age of 25, most of whom were born and educated under Khomeini's Islamic revolution of 1979. Since 1980, both countries have witnessed new configurations in their feminist movements: In Turkey, the older, secular Kemalist groups were challenged by 'new' feminists, influenced by recent radical Western feminist examinations of patriarchy, while in Iran those who conformed to the new Islamic state's policies on women were opposed by 'non-conformists.' In Turkey, Gunes Ayata concludes, the 'ongoing threat of Islamic fundamentalism' has produced a bitter confrontation between women as symbols of opposing sides, the secular and religious (p. 173); as a consequence, the author laments, 'women have lost the search for new solutions and alliances.' Note that, by implication, only the secularist feminist view is deemed legitimate for all Turkish women. In Iran, Kar notes that while non-conformist and secular women who remained after the revolution agree that religious interpretation is not a beneficial strategy for women, there has nonetheless been a "convergence of elements of the religious and secular women in their thinking about an increasing number of issues with regard to women" (p. 199). Together with a commitment to debate, dialogue, and pluralism among the various feminist perspectives, these, ironically, appear to be precisely the elements lacking in the Turkish case.

Another fascinating contrast may be drawn between Maloney's account of women's issues among Catholics in the United States and Chowdhury's coverage of the same questions in Bangladesh. Of the Christian population in the United States, which is about 70 percent, the Catholics are in the minority, while in Bangladesh, the Muslim population stands at just under 90 percent; the total population of the United States is approximately twice that of Bangladesh. The United States is a secular state, while the state religion in Bangladesh is Islam. According to demographer Emmanuel Todd, the fertility rate between 1981 and 2001 in the United States rose slightly from 1.8 to 2.1 while it dropped dramatically in Bangladesh from 6.3 to 3.3. Adult literacy in Bangladesh is still low at 34 percent, but is apparently set to rise quickly, as the fertility rate declines further. In the secular, more highly educated and pluralist context of the United States, Maloney's article significantly deals with the more abstract subject of Catholic 'feminist theologies,' while Chowdhury discusses the very practical problems of the 'politics' of Muslim women's rights. The Catholic feminists' chief concern is not the American state but whether and how far to support the external authority of the Vatican. For Bangladeshi feminists the patriarchal state and the broader society represent the main focus of attention; the state itself must steer a cautious course between advocating policies that may benefit women and an awareness not to zealously confront conservative, patriarchal political forces. One Catholic perspective, described as 'holistic feminism,' is represented by the American academic who chaired the Vatican delegation to the Beijing Conference; Mary Ann Glendon employs traditional Catholic sources to promote the view of woman as chiefly wife and mother. Equality of the sexes, in the Biblical sense, means men and women complement one another, a position familiar among Islamic feminists in Iran and Turkish 'fundamentalists,' but rejected by the Turkish feminists described by Gunes Ayata. In Bangladesh, the women's movement invokes articles of the Constitution to promote gender equality, but argues that it does not explicitly cover the private sphere of women's lives in the home. As Chowdhury concludes, on questions of gender equality in Bangladesh, there is ever a gap between political rhetoric and reality. In the United States, where Catholic women enjoy (relatively) higher levels of health, education and disposable wealth than their Bangladeshi sisters, there is, according to Maloney, little communication or contact between women of different perspectives (whether holistic, moderate or reconstructive). This is a situation similar to the women's movement in Turkey, but much less so in Iran and Bangladesh.

This volume contains a wealth of material covering several important, but significantly different, contexts in which women contest, in varying degrees, traditional religio-patriarchal values and compete among themselves from a variety of perspectives. The final excellent essay of the book, by Heba Raouf Ezzat, on women's developments in Egypt reiterates the editors' point (noted above) that the struggle is not simply one between A and B, but of competing definitions of A and B or, in this specific case, between competing visions of secular modernity, Islamic modernity, and Islamist traditionalism. Ezzat's final cautionary words may fairly sum up all the contributions from whatever perspective each is offered, "that the story has no happy ending; it is still unfolding" (p. 272). Nonetheless, the story as told thus far is a must read.

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