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Family law in Syria: a plurality of laws, norms, and legal practices

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INTRODUCTION

In April 2009 I attended a court hearing in the Greek Orthodox court of Damascus. A young couple seeking divorce appeared in the court for a cross-examination session. The plaintiff was a strong-willed woman who claimed that the marriage was never consummated and that she was still a virgin because her husband was not 'manly' enough. The husband, for his part, was clearly annoyed and embarrassed by her allegations. In his defence he presented a little plastic bag to the court, which he said contained the proof that she had lost her virginity, i.e. the blood-stained cloth of the wedding night.

This case particularly struck me because, according to my prior assumptions, I associated the importance of physical proof of a bride's virginity as typical of Muslim societies rather than of Christian societies. The case proved these assumptions to be false. During my fieldwork I increasingly realised that the Christian and Muslim communities of Syria shared many common normative values and practices, in particular views on marriage, family, gender and sexual propriety. Examples like this confirmed my growing impression that statutory laws are not the only normative force in the field of family law. This made me wonder in what ways legal plurality is manifested in family law in Syria. It is this legal plurality that is the focal point of this study.

It might seem trivial to write a study on family law in Syria while the country has fallen into a full-scale civil war. At the moment of writing there is no way of knowing in which direction Syria is going, which leaves us with numerous questions: when will this conflict end, who will stay or come to power, what type of government will emerge from the turmoil, what will become of the state institutions, including the legal system? At times I wondered why I continued writing this thesis, Syrian family law seemed so irrelevant to the current crisis. However, I am certain that this thesis will be a useful and valuable contribution to understanding the historical, socio-political and religious complexities that mark today's Syria. The multi-religious composition of Syrian society not only shapes the socio-political context but also feeds into the formulation and application of family law and thus has an impact on inter-communal relationships and the daily

life of individual Syrians. Whatever the future holds, the way in which a (future) government deals with the plurality of Syria's personal status law will be indicative or illustrative for the (future) position of religious minorities in Syria.

Family law in Syria

> *Syria is located at the Mediterranean Sea and borders Turkey, Lebanon, Israel, Jordan, and Iraq. The Syrian Arab Republic has a population of well over 22 million people. About 90 per cent of the Syrians are of Arab ethnicity, the rest being mainly Kurdish and Armenian. There are no official statistics available on religion, but according to estimates about 74 per cent of all Syrians are Sunni Muslims, and around 16 per cent are non-Sunni Muslims, such as Druze, Shi'a and 'Alawi. About 10 per cent of the population belongs to various Christian denominations. In addition, a few Jewish and Yazidi families still live in Syria.*[1]

Syria is a multi-religious and multi-ethnic country, with a Muslim majority and several religious minorities, most notably various Christian denominations. The different religious communities have since long enjoyed the right to regulate and administer their family relations according to their respective religious laws. The main law in Syria that regulates family relations, the 1953 Syrian Law of Personal Status[2] (*qānūn al-'aḥwāl al-shakhṣiyya*) (hereafter SLPS) amended in 1975, 2003 and 2010, is predominately based on Islamic legal sources, particularly Hanafi *fiqh* (i.e. Islamic jurisprudence). The SLPS is the general law because it applies to all Syrians, irrespective of their religion. This means, for example, that non-Muslims also have

[1] Central Intelligence Agency 2013, *The World Fact Book* (online edition, 2013), at https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html, accessed 17 June 2013; *International Religious Freedom Report* 2012, available online at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dlid=208412, accessed 17 June 2013.

[2] Personal status law is also commonly referred to as 'family law', for that reason I use the terms 'family law' and 'personal status law' interchangeably. The term 'statut personnel' originates from Medieval Europe and was used to denote rules and regulations concerning the status and capacity of persons, vis-à-vis the term 'statut réel', which referred to matters connected to property (see Bewes 1922). The term 'personal status' (in Arabic: *aḥwāl al-shakhṣiyya*) was only introduced in Arab legal writings in the late nineteenth century, most notably by Muhammad Qadri Pasha in Egypt (Nasir 2002: 34 ff.; Sonbol 2003: 89-90).

to refer to a *shar'iyya*[3] court (i.e. the competent courts to hear cases under the SLPS) for matters related to, most notably, the determination of paternity and legal capacity and representation. That said, conversely – or perhaps more importantly, the SLPS grants the Druze, Jewish and Christian communities limited legislative and judicial autonomy in personal status matters, most importantly marriage and divorce. Family relations in Syria are thus governed by a multiplicity of personal status (or family) laws that regulate matters of personal status, including marriage, dower, dissolution of marriage, maintenance, child custody, and succession.

Manifestations of legal plurality

Family law in Syria as such is pluralistic, as a multiplicity of personal status laws and courts operate within the legal framework of the state. This situation of legal plurality is further intricated by the fact that the various laws are generally religious-based: Islamic, Christian and Jewish, although in varying degrees. Besides, the courts that implement these laws are either civil (i.e. non-religious) courts or religious courts, which sometimes leads to interesting and complex intersections of jurisdictions and communal relations.[4] This situation of legal plurality does not, however, imply equality of laws and jurisdictions, as the general law that regulates family relations (i.e. the SLPS) and the courts that implement this law, i.e. the *shar'iyya* courts, clearly have supremacy over the other (i.e. non-Muslim) laws and courts. This asymmetrical plurality will be discussed in further detail in chapter 2.

A variety of statutory personal status laws and courts thus organises and regulates matters of personal status through legislation and courts – but only to a certain degree. In this study I will maintain that besides the inherent pluralism of Syria's personal status law, other (i.e. non-state) 'forms of normative ordering' (Merry

[3] In the section 'Family law in the Middle East and North Africa' (see below) I explain why I have chosen to leave the adjective *shar'iyya* untranslated.

[4] In international private law this intersection of jurisdictions, which follows from the coexistence of different laws for different groups within one country, is commonly referred to as 'interpersonal conflict of laws'. For an overview of the various forms of interpersonal conflict of laws, see Lipstein and Szászay (2011).

1988: 870) are at work within and in conjuction with this legal field.[5] First of all, the SLPS itself accommodates legal enforcement of extra-judicial customary practices, by allowing retro-active registration of (customary) marriage, unilateral divorce and proof of paternity.[6] Accordingly, the state recognises and incorporates customary practices into its legal framework and thereby enhances legal plurality in the field of family law.[7]

Furthermore, state law does not exclude the existence of norms acknowledged and upheld by other (i.e. non-state or lay) actors engaging in the legal arena. Litigants and witnesses, as participants of the legal process, express or emphasise (intentionally or unintentionally) the importance or prevalence of communal, religious or moral norms and values about marriage, divorce, gender relations, and family relations, in their statements and testimonies. These expressions then, to a certain extent, find their way into legal proceedings and rulings, as judges and lawyers working in the personal status courts have to direct or translate these narratives to accommodate them within the framework of the law.

In this thesis I will examine how legal or normative plurality is manifested in Syria's family law on a variety of levels, including statutory, political, communal, and individual. First of all, I will describe and analyse a number of historical, legal and political aspects of Syria's plural family law system. Whereas the different aspects of Syria's plural legal landscape are the focus of part one of this thesis, in the second part I aim to demonstrate that, albeit this plurality, Syrian personal status law is also characterized by the prevalence of shared norms and views on marriage, gender relations, sexual propriety, and family relations. I will argue that these communal norms were shared amongst the diverse – primarily Muslim and Christian – communities and find their expression in both statutory family law provisions and legal proceedings of the personal status courts.

[5] The concept of legal pluralism has been subject of much debate, particularly amongst scholars of anthropology and other social sciences. The idea of legal pluralism challenges the assumed monopoly of the state over law and the legal system. There is a wide, complex and – at times contradictory – debate about what legal pluralism is or entails, see for example (amongst others), John Griffiths (1986), Sally E. Merry (1988), Brian Z. Tamanaha (1993), Boaventura de Sousa Santos (1987); for an overview see, for example, Dupret (2007a) and Tamanaha (2008).

[6] See chapter 5 (§ 5.6.2 ff.) for a more elaborate discussion of this subject.

[7] Cf. Dupret (2007a) on a similar situation in Egypt.

In addition, I will discuss the actual content of the various personal status laws and examine legal practices as observed in some personal status courts, in particular a *shar'iyya* and a Catholic court in Damascus. In these analyses, I will pay attention to other (i.e. non-state) 'forms of normative ordering', such as patriarchal norms and values regarding marriage and gender roles.[8] In doing so, I will also take into account the influence and interactions of various players, i.e. the state, the judiciary, legal professionals, women and civil society groups, 'religious men', and individuals (e.g. litigants, witnesses), as they all contribute to the legal plurality of Syria's personal status law.

Family law in the Middle East and North Africa

This study is informed and inspired by work on family or personal status laws in the Middle East and North Africa. Numerous studies have been conducted about various countries and societies, from a variety of disciplinary angles, including anthropology, gender studies, law, history and religious studies. As Syria is geographically situated in the Middle East, I primarily focused on contemporary studies on other Middle Eastern countries, most notably Egypt, Palestine, Lebanon, and Yemen but also two *Maghrib* (North African) countries, Morocco and Tunisia. For this study I selected a few well-known legal-anthropological studies on family law written by established scholars in the field, including: Buskens 1999 (Morocco), Mir-Hosseini 2000 (Morocco and Iran), Moors 1995 and Welchman 2000 (West Bank, Palestine), Shehada 2005 (Gaza, Palestine); but I was also inspired by the work of some junior, up-coming scholars, most notably Carlisle 2007c (Syria), Sonneveld 2012a (Egypt), and Voorhoeve 2012 (Tunisia). These studies focus on the practical (social) implications and/or the application of the personal status laws by courts in the respective countries. Furthermore, some of these scholars have written about debates around personal status laws, see most importantly Moors (2003), Buskens 2003 (on Morocco), and Sonneveld 2012a (on Egypt), which is also a subject under study in this thesis.

[8] An analysis of the 'patriarchal family model' (cf. Buskens 2003: 75), meaning that (senior) men are the head of the family and with women and younger family members in a more subordinate role, will be given in chapter 4 (§ 4.1).

Studies on family law in societies and countries in the Middle East and North Africa often focus specifically on Islamic law or Islamic family law. This is understandable to a certain degree, as most statutory family or personal status laws are based on or inspired by Islamic law. Baudouin Dupret in his article 'What is Islamic Law?' (2007b), however, asserts that scholars regularly claim that Arab personal status laws are Islamic personal status laws. He maintains that such assumptions have to be challenged, for 'these claims fall short of any satisfactory definition of what is specifically Islamic that would make this [these] law[s] an Islamic law and its provisions something better characterized by their Islamic rather than their national (...) dimension.' (2007b: 97)[9] I agree with Dupret when he asserts that personal status laws should not be made 'an instance of' the general Islamic law model (2007b: 82) but that we have to take into account the specific national (or local) and temporal context of the different laws, which are not necessarily Islamic.[10] Lynn Welchman adopts a similar approach in her book *Women and Muslim Family Laws in Arab States*. She points out that state legislatures, judiciaries, and women's movements invoke '*sharī'a*' in relation to Muslim family law in a variety of ways; for example to inform the legislative choices governments make concerning the codification of their statutory family laws (2007: 16).

Before turning to Syrian family law, it is necessary to reflect briefly on the question of what Islamic law is. Islamic law or *sharī'a* carries various meanings and connotations: it has been described as 'the expression of God's will for mankind' (Vikør 2005: 1) or 'the sacred Law of Islam' (Schacht 1982: 1).[11] Calder writes in the entry on *sharī'a* of the second edition of the *Encyclopedia of Islam*: 'Within Muslim discourse, *sharī'a* designates the rules and regulations governing the lives of Muslims, in principal from the Ḳur'ān and ḥadīth.' According to the Islamic faith, God revealed His will and guidance to mankind in the *Qur'ān* through the Prophet Muhammad (c. 570-632 CE). The *Qur'ān* and the sayings and exemplary actions of the Prophet, the *Sunna*, are the two main sources for Muslims to understand 'God's will for mankind'. Efforts to expound God's will and guidance were traditionally undertaken by religious jurists (*fuqahā'*) and laid down in writing in so-called *fiqh*

[9] In this article Dupret focuses on personal status law in Egypt.
[10] See also Hélie-Lucas (1994: 394-95).
[11] See also Buskens & Dupret (2012).

works. The word *sharī'a* is therefore also closely associated with *fiqh*, i.e. legal doctrine or the outcome of legal reasoning (Islamic jurisprudence) or, to quote Dupret again: 'Islamic law can be the mere reference to Islam in a legal setting or it can be a legal system identified with the classical body of *fiqh*.' (2007b: 81) Thus, since there is plurality of definitions and understandings of Islamic law or *sharī'a*, we have to be cautious when we use the term Islamic law or *sharī'a*, bearing in mind the nuances and sensitivities of this term. For example, I chose to leave the adjective *shar'iyya* in relation to the courts untranslated because I do not want to use the term 'Muslim' or 'Islamic' to denote this type of court. The *shar'iyya* courts are regarded as the general personal status courts because, even though the majority of their cases involve Muslims, they also have (limited) jurisdiction over non-Muslims. Besides, I do not want to label them as religious courts; *shar'iyya* judges are civil servants trained at secular law faculties, unlike the Christian courts, where priests act as judges (see chapter 6).

In my description of the historical development of family law in Syria, I take into account the changing position and role of Islamic law or *sharī'a* in relation to the state (chapter 1). Furthermore, in my analysis of Syria's current main personal status law, the SLPS, I occasionally refer to the Hanafi *fiqh* when discussing certain concepts in relation to this law. I deem it necessary to provide the reader with a historical context of Islam and Islamic law in order to understand the position of family law within Syria's legal system, the religious minorities-majority relations in the legal context and to understand in which (*fiqh*) tradition, concepts and provisions of the SLPS find their origin.

Nevertheless, in Syria's case, it would be wrong to focus solely on Muslim personal status law because Syrian family law consists of more than the SLPS alone: Druze, Christian and Jewish laws and courts are also part of the picture. Mariz Tadros opens her article on the 'othering' of non-Muslims in relation to personal status law in Egypt as follows:

> 'There has been a conspicuous tendency in literature on family law in the Arab world to deal separately with Muslim and non-Muslim family legislation as if it affects two communities who inhabit two completely

> separate and isolated worlds where there is no convergence, engagement or interaction.' (2009: 111)

I agree with her observation that family law in the Middle East has too often been regarded from a purely Islamic point of view and thereby also ignoring the legal and practical implications of the asymmetrical plurality for non-Muslims, in particular non-Muslim women. Syrian Muslims, Christians, Jews, and Druze might belong to different religious communities, with their respective laws and courts, but that does not mean that they confine themselves to their own group (i.e. personal status). They occasionally move up and down these legal-religious categories: they engage with each other, possibly marry and divorce one another, convert to another religion, go to a different (not their own) court to achieve a particular, personal goal. This mobility is not always advantageous though; it can have negative consequences, particularly for non-Muslim women (chapter 2, § 2.5).

What do we know about Syrian family law?

Syria is a white spot on the map in many respects: empirical knowledge about the country's socio-political and religious make-up is limited, as has become evident in the current crisis. During the last decades, access to Syria for researchers (and journalists, for that matter) has been difficult due to the political situation. Especially since the 1970s, during the Hafez al-Asad years, Syria was considered an impenetrable country for (in particular) social scientists and anthropologists. Contemporary studies on Syria are written by scholars coming from, predominantly archeological, historical (pre-Asad), agricultural and political sciences. Sociological or anthropological studies based on empirical research are scant. Apart from the work of Annika Rabo (1986 ff.), hardly any empirical studies on Syria have been published since the 1970s. With the coming to power of the son Bashar al-Asad in 2000, the country cautiously opened up, also to academic researchers. From the 2000s, more sociological research has been conducted, resulting in academic publications, such as those by Böttcher, Khatib, Pierret and Pinto, who have written on Islam and the state in Syria.

When we look at the field of contemporary family law, however, we find only a small selection of publications. Botiveau, Cardinal and El-Hakim, for example, have written about Syria's legal system and the judiciary, and Dupret and Maktabi about debates on Syrian family law. But when we consider the laws themselves, apart from the articles written by Anderson and Berger, respectively (Anderson 1955; Berger 1995), there is barely any (especially non-Arabic[12]) literature available on the contents of Syria's main family law: the Syrian Law of Personal Status of 1953 (the SLPS). The latest addition, and important from a socio-legal perspective, is the work of Jessica Carlisle; she wrote her PhD thesis (SOAS, University of London, 2007) on 'judicial discretion in a Damascus shari'a court'. Apart from her publications, studies on family law practices or practices of the Syrian personal status courts are (to my knowledge) non-existent. More importantly, I have not yet come across studies dealing with contemporary legal or court practices in Christian family courts in the Middle East. With this thesis I therefore seek to contribute to filling a gap in the existing body of literature on contemporary laws of personal status in the Middle East.

Methodological approach

It is important to understand how the various family laws operate in their – inextricably intertwined – legal, socio-political, religious, and cultural contexts. The plural nature of Syrian family law requires a multidisciplinary research approach, including legal studies, historical and anthropological studies. Because family law and religion in Syria are inherently intertwined, a study of the subject requires an appreciation of the historical, religious dimension of the legislation and its implementation. Studying family law from a merely formalistic, legal angle would give us an incomplete and perhaps even false picture. I therefore employ a socio-legal approach to address the question of plurality in Syria's family law; this entails an analysis of the debates on Syrian family law reform as well as observations of the law in practice, which includes court observations, interviews with legal practitioners and other experts, and informal conversations with lawyers.

[12] The commentary of legal scholar and lawyer, Muhammed Fihr Shaqfa, on Syrian personal status law (1998) is an example of secondary literature in Arabic on this topic.

I started my academic education with legal studies and for that reason I have always considered myself a jurist or legal scholar, first and foremost. However, studying family law in Syria and, moreover, conducting fieldwork in Syria required some additional competencies. During my Bachelor's studies (Arabic languages and cultures) I familiarised myself with different views and ways of studying religion and Muslim societies as an object of anthropological study. The combination of these two disciplines proved to be a major asset for my research.

Fieldwork

From March-April 2008 and between October 2008 and July 2009, I conducted fieldwork in Syria, primarily in the city of Damascus. In this period, Syria was already a politically unstable country, which limited research possibilities and my fieldwork. During my two field visits to Damascus I took Arabic language classes, not only to improve my Arabic language skills in order to effectively conduct interviews, engage in participant observation and interact with people, but also because of the lack of an official research permit. I was unable to file for a research permit due to the political situation and, consequently, always stayed in Syria on a tourist or student visa. Nevertheless, I always presented myself as a doctoral student in my interactions with experts and interviewees and I always informed them that I was pursuing a Ph.D. in the field of Syrian family law.

In spring 2011, I had planned to go back to Syria for a two-three months field visit to follow up on unanswered questions (which are numerous) and other outstanding issues. Unfortunately, due to the developments following the Syrian revolution, which started mid-March 2011, I had to postpone my travel plans indefinitely, meaning that I have not been back to Syria since I left in the summer of 2009. Instead, I obtained additional information with the help of some befriended Syrian lawyers via email correspondence but this proved difficult, as they themselves had left the country and were preoccupied with other, more pressing issues.

Interviews and informal interactions

During my two field visits, I spoke to a wide range of people, including lawyers, judges, women's rights activists, representatives of civil society groups, members of Parliament, diplomats, and representatives of religious organisations. The main purpose of these open-ended interviews was to identify the different actors in the field and to gain better insight into the Syrian legal system and family law in particular. Snowball sampling was used to identify interviewees, meaning that talking to one expert often resulted into contacts with many more experts. The selection process of interviewees was rather informal, i.e. upon recommendation of scholars who (had) worked in Syria and through personal contacts in Syria but mostly via other interviewees. The bulk of the interviews were conducted during my first field visit (March-April 2008), which included, most importantly, lawyers, two Catholic judges and various representatives of civil society and women organisations, who were active in seeking to change personal status laws and other laws related to women and family issues. During my second visit (October 2008-July 2009), I continued my interviews, which included those with a *shar'iyya* judge, a Protestant judge, the Druze judge and representatives of various organisations, such as religious institutions, governmental bodies, and civil society groups. Furthermore, I met up with some of the interviewees I had met on my first visit, either to follow-up on certain issues or to consolidate and expand my network of contacts. The information provided by the experts in the field gave me insight into the legal system in general, the position of family law in the legal system, and legal proceedings at the court, and more. In addition, I was able to identify the issues at stake in the public debates about reforming family law and subjects related to women and family relations, which included opinions about gender roles and the role of religion in society.

Besides interviews, an important source of information was the recurrent informal interactions I had with (legal) experts, particularly lawyers. Working with lawyers provided me with many insights, familiarised me with legal procedures, laws, and customs.[13] Furthermore, it provided me an interesting perspective on Syrian legal practice. Through my interactions with them, I got the opportunity to

[13] For example, court *mores* prescribed that you could not sit with your legs crossed in the presence of a judge, which habit proved difficult for me to break.

take a closer look behind the scenes of the personal status courts. Whereas I found that judges took on a more formal attitude in their interactions with me, i.e. using 'official rhetoric', lawyers were often more straightforward. In my experience, most lawyers were generally not hampered by formalities and therefore less inclined to give desirable but 'honest' answers.[14] They pointed out that the 'theory' often did not correspond with what happened in actual practice.

Furthermore, participant observation and interactions with Syrian friends, including lawyers, my Arabic teacher, and 'family members' provided a much needed insight into Syrian society. I believe that the role of my Syrian 'family members' has been instrumental in my fieldwork and analyses. My ideas and perceptions about family and gender roles – in particular those with regard to women – in Syrian society were influenced by frequent interactions with them. 'My family' was from a predominantly Christian town close to Damascus; they were Christian by birth, but not necessarily by conviction. I became good friends with two of the daughters. It was particularly my interactions with the two daughters that taught me much about gender relations in Syrian society and made me realise that many gender norms and values apply equally to all Syrian women, regardless of religion.

Court observations

Syria's political climate posed challenges in gaining access to the courts, court records, and other relevant material. The possibility of conducting frequent court observations in the *shar'iyya* courts of Damascus was limited due to various reasons, most importantly because I did not have the required clearance from the authorities. Just before I finalised my research plans in the spring of 2007, the Minister of Justice had issued a regulation denying foreigners access to Syrian court rooms. However, through my lawyers-network, I gained access to three types of personal status courts, i.e. a *shar'iyya* court, a Catholic court, and a Greek-Orthodox court.[15] In the period February until July 2009, I observed court cases in these three courts in Damascus. It proved to be a challenge to work out the

[14] Compare with Dupret and Sonneveld, who both underlined the orientation of Egyptian judges towards procedural correctness in their rulings and interactions with litigants and lawyers (2006: 150-57; 2010: 106-08, respectively).

[15] In Syria, court sessions are generally open to public.

different court agenda's and to distribute my time wisely so that I could attend as many sessions as possible in the different personal status courts.

Although the possibility of conducting frequent court observations in the *shar'iyya* courts of Damascus was limited, I managed to get permission from one *shar'iyya* judge presiding over one of the six *shar'iyya* courts of Damascus proper, to sit in on his court sessions (see chapter 5). I was allowed to observe the court proceedings in his court, but I could not copy files or other documents, not until I would get the required clearance, which I never obtained in the end.

I gained access to the first instance Catholic court in Damascus through a friend. She had arranged for me to meet a Catholic judge for an interview, in which she was present and additionally provided some translation when needed, first in the spring of 2008 and later in the autumn of the same year. Early 2009, I got the judge's permission to attend his court sessions. The same befriended lawyer also opened the door to the Greek Orthodox court. This meant that, around the same time (early 2009), I also got permission to observe court cases in the Greek Orthodox court in Damascus. However, due to time and scope constraints, these latter court observations are only used in passing in this study. The court visits, observations, and interactions with the judges, court personnel and lawyers, at all the abovementioned courts, produced ample and valuable data for my research.

The court sessions were generally conducted in colloquial Arabic. That is to say, the interactions between the judges, other court personnel, litigants, lawyers, and witnesses. Testimonies of litigants, witnesses, and/or experts, and all other verbal exchanges were heard in colloquial Arabic. However, court hearings and proceedings were not transcribed verbatim. In all the personal status courts, the presiding judge summarised and dictated what had to be written in the case file in Modern Standard Arabic to his clerk.

Because of the sensitivity of the political situation I decided to refrain from asking for permission to record the interviews I conducted and the court sessions I was permitted to attend. Instead, I asked for permission to take notes during the interviews and the court observations and I was never denied permission. Taking notes meant a limitation to my data collection, as I could not note everything down verbatim. Instead I wrote summaries of the events and/or my observations. My

observations are thus my own interpretation of the events and interactions. Furthermore, all the names used, including the name of the *shar'iyya* judge, in these case studies are fictitious. With regard to my interviewees and informants, when I feared that using their real names could harm them, I used pseudonyms to protect their identity.

Written sources

In addition to material collected during my fieldwork in Syria, this thesis is also based on a variety of sources, including primary and secondary written resources. As mentioned earlier, comprehensive published studies about contemporary family law in Syria are scarce. Besides, much of the available material, both in European languages as well as in Arabic, dates from a much earlier period, generally from the 1950s and 1960s. In addition to existing literature, I purchased or received a significant part of the (primary) written material during my visits to Damascus. This includes statutory laws, law commentaries, draft law projects, and publications written by women organisations, legal and religious experts. The available written sources, supplemented with interviews with legal scholars, judges and lawyers, provided a base of material to write about the legal-historical development of Syrian law and Syria's contemporary legal system in general.

Research obstacles

In addition to the apparent practical challenges caused by the political climate in Syria, the 'culture of fear' also had an impact on my data collection and my stay in Syria in general. I agree with the observation of Panagiotis Geros, who has done extensive fieldwork in Syria on Christian identities that 'the academic literature that deals with Syria has underestimated the culture of fear disseminated by Asad's regime and its ramifications for all kinds of social relations.' (2010: 94) This culture of fear is cultivated and sustained by the regime with its (allegedly) vast and omnipresent secret police force (*mukhabarāt*). The prevailing view that anyone can potentially be a *mukhabarāt* agent or be willing to pass on information to the *mukhabarāt*, including neighbours, colleagues, family members and friends, contributes to this culture of fear and creates a general sense of distrust amongst

many Syrians (Geros 2010: 95 ff.). Furthermore, there are numerous stories going around about foreigners living and working in Syria who have had some sort of encounter with the *mukhabarāt*. The general perception that is popular amongst foreigners is that they are considered Western spies by the Syrian government. This culture of fear, whether real or perceived, also had an effect on my experiences and working strategies and, most importantly, limited my data collection.

My presence in the court was, however, never subject to serious concern to the authorities or the court personnel, lawyers or litigants, at least not to my knowledge, but of course my presence did not go unnoticed. Towards the end of my fieldwork, one of the Catholic judges asked for a copy of my passport because the authorities had requested it.

During my stay in Syria, I also struggled with the question how to conduct research in a non-transparent, corrupt legal community. My research contacts frequently pointed out to me that corruption had permeated all levels of the judiciary and that bribery, political interference, and backroom deals were part of day-to-day reality. Being aware of this fact, I realised even more that what I was able to observe with regard to legal proceedings and legal practices in the personal status courts of Damascus, was only a small part of a much bigger picture.

Organisation of the thesis

This thesis consists of six chapters and is divided into two parts. In Part One ('The Plural Legal Landscape: Family Laws in Syria') I draw a sketch of the plural legal landscape of Syria, starting with a description of the historical development of the (religious) family law. This inherited plurality founded the fabric of Syria's current mosaic of family law, with all its complexities and contestations.

Part Two, entitled 'Unity in Multiplicity: Muslim and Christian Laws and Legal Practices', focuses on the content of the various personal status laws and on judicial practices in and around various personal status courts in Damascus. In addition, the argument that the diverse personal status courts are united in their shared communal, cultural understandings on marriage, gender and family relations, will run as a the connecting thread through this second part of the thesis.

Chapter 1 discusses the historical development of the position of religion, most notably Islam and Islamic (family) law in relation to the central state authority in Syria's past and present. I will argue that the religious legal plurality in personal status matters was maintained by the Syrian governments and the religious communities.

Chapter 2 will map out the different laws and courts of personal status that we find in Syria today; particular attention will be given to the general law of personal status, the SLPS. Furthermore, the difference in position of personal status for Muslims and non-Muslims will be examined, thereby also addressing the complexities that arise out of the intersection of the different jurisdictions.

Chapter 3 describes recent attempts that were made, some more successful than others, to change the SLPS and other personal status laws, including the debates that surrounded those proposed reforms. I will conclude the chapter with an analysis why reform in family law remained a political sensitive issue in the recent past.

Chapter 4 focuses on the intersection of law and culture; it will describe the cultural context in which Syrian family law operates. It will first introduce some key concepts in relation to family relations in Syria in order to provide an understanding of how they relate to and interact with the content of and legal discourses and practices around the various laws of personal status. Secondly, this chapter will analyse the legal regulation of marriage and divorce, according to the provisions of the SLPS and the major Christian laws of personal status.

Chapter 5 is concerned with the practical implementation of the SLPS, focusing on legal procedures and practices in the *shar'iyya* courts in Damascus. It will describe and analyse the merits and demerits of the versatility of the SLPS and the legal system. In addition, I will address the subject of (legal and non-legal) shared norms and views on morality, social propriety, marriage and gender relations.

Chapter 6 will expound the Catholic law of personal status law of 2006 and the workings of a Catholic court in Damascus. I will address the particularities of this

court, in addition to similarities with other personal status courts. The latter issue manifests itself particularly in the presence and importance attached to patriarchal norms and values on marriage and family relations.

The content of this study, including any error, (mis)interpretation or presentation of the data, is solely my responsibility, and does not represent the views and opinions of my informants.