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

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3 Debating and changing family law

‘[L]e moment le plus dangereux pour un mauvais gouvernement est d’ordinaire celui où il commence à se réformer.’

A. de Tocqueville, *L’Ancien Régime et la Révolution*¹⁰⁵

Introduction

The previous two chapters described the historical and contemporary development of Syria’s family law and its current plural legal landscape, in which we find an array of personal status laws and courts. Syria’s legal plurality in family law has its foundation in the Ottoman *millet*-system, which gave religious minority (non-Muslim) groups the right to apply their own religious laws in matters of personal status. History also showed that changes or reforms in the domain of family law in the Middle East were often controversial and, as will be explained in this chapter, remain a sensitive issue today.

During the last decade, several efforts were made by the Syrian government and civil society groups to introduce changes to the personal status laws, most importantly the SLPS; some of these recent developments will be discussed in this chapter. It will become clear that (proposed) changes in the field of family law of late were often accompanied by political and social turbulence. While the government always retained final decision-making authority, it was nevertheless susceptible to demands of various – sometimes opposing – groups, including secular, civil society, and religious groups.

Buskens contents in his article on family law reform in Morocco that the content of the Moroccan family law ‘is a social construction, shaped by political considerations’ (2003: 71; cf. Tadros on Egypt (2009: 119). Similarly, the content of the SLPS is a product of its time, influenced and shaped by socio-political developments. Its contents may, for the most part, be nearly sixty years old,

¹⁰⁵ De Tocqueville (1887: 259).

today's SLPS can still be regarded as a compromise or result of a delicate balancing act between patriarchal family values, religious claims, and progressive demands. The recent developments concerning personal status reforms in Syria, as I will argue in this chapter, confirmed this observation.

In chapter 1, I discussed Pinto's 'use of Islam as a cultural idiom' by different actors, including the state, as a political instrument (2011: 191-92). In his article, Buskens points to the important symbolic role of Islam in society, in relation to Moroccan family law. He maintains that '[f]amily law has become a symbol of the place of Islam in society and of the right to participate in politics.' (Buskens 2003: 122) He explains that 'family law and gender serve as powerful political symbols in the modern Muslim world' (2003: 71; Hélie-Lucas 1994). In this chapter, I will contend that the role that family law plays in Morocco is similar to that in Syria. In Syria too, family law and gender policies are of great symbolic value, and indicative for the role religion and the various religious communities (are allowed to) play in Syrian society. Of course, like any comparison, the comparison of the role of family law in Morocco and Syria, does not hold true completely, as the countries come from different historical, political and religious backgrounds. For example, the current Moroccan King Muhammad VI played a decisive role in reforming and proclaiming the new family law in 2004; President Bashar al-Asad's role regarding law reform, on the other hand, was not as decisive. Rather, Al-Asad's stance bears more resemblance to the strategy employed by the late Moroccan King Hassan II in 1993, who took firm control over the reforms and accepted only extremely modest reforms, so as to avoid social upheaval in the country (Buskens 2003: 79-83). Similarly, the government of Al-Asad has attempted to avoid social and religious unrest and instead sought to preserve the status quo.

This chapter embarks on an examination of the government's secular ideology in relation to its contested relationship with Islam. In line with this ideology, the Syrian government advocated state feminism and equality between the sexes. Gender equality and religious diversity are important ideologies for the regime to support, yet difficult to uphold due to its contested political legitimacy, as will be explained in the course of this chapter.

The year 2003 was a year that marked the start of various social initiatives in the field of family law, including proposals to reform the SLPS and other proposals to amend existing laws. The second and largest part of this chapter will describe several of such proposals and activities, in addition to a number of civil society organisations and individuals who were active in this domain. Furthermore, some noteworthy changes in the field of family law will be discussed, including the new Catholic personal status law of 2006, two controversial drafts for a new SLSP in 2009, and finally, a minor but significant amendment to the SLPS that was made in 2010. This chapter will be concluded with an analysis as to why reform in family law remained a politically sensitive issue in the recent past.

The sources that are used for this chapter are, most importantly: interviews with some of the most important participants of the recent debates, such as initiators of the 2003 petition, members of civil society groups, members of Parliament, lawyers, scholars, and religious figures. In addition, I will refer to some of the draft law projects that were published and which are in my possession.

3.1 The challenge of secularism

The Ba‘th Party has always, in line with the ideology of Arab nationalism, espoused a secular ideology. The Party envisioned ‘a society in which all Arabs would be equal, irrespective of their religion.’ (Van Dam 2011: 17); a vision which would minimise the role of religion in society and guarantee equality for all citizens, including religious minorities. However, the secular nationalist ideals did not touch a chord with all Syrians.

From its coming to power in 1963, Syria’s Ba‘th Party has had a troublesome relationship with Islam, in particular with some segments of the Sunni population. The Party’s secular ideology proved difficult to uphold, also with regard to family law. As explained in the first chapter, history showed that both the Sunni majority and the various Christian minorities were often ill-disposed towards far-reaching government interference in the domain of family affairs. An initiative by the early Ba‘th government to introduce a secular family law was staunchly rejected (Rabo 1996: 170), and no attempt to introduce a civil family law has been undertaken since. Christian leaders feared they would lose

their privileges, whereas many Sunnis perceived any secular-oriented reform in family law by the secular, non-Sunni government as interference in religious affairs. A matter in which, according to many Sunnis, the 'Alawi-dominated government has no legitimate say, because of its lack of, or at least shaky, religious legitimacy.¹⁰⁶ Due to this sensitivity, the government remained reluctant to push for reforms in family law (Rabo 2005c: 726).

In response to challenges to its political and religious legitimacy, the regime felt 'compelled to allow some room for controlled religious activity and discourse.' (Sparre 2008: 11) It did so by allowing the 'Islamic character of public space' to increase over the last few decades (Rabo 2012a: 131). According to Rabo, this increased public display of Islam is a source of great concern to many Christians, who fear that it may infringe upon the 'secular, minority' character of the regime, which is considered a safeguard against increased Islamic public dominance (2012a: 131). Rabo's observation corresponds with my own experiences in Damascus; during my fieldwork I met several Christians who longingly recalled the times when women were able to wear miniskirts and interact more freely with the opposite sex. Besides allowing public display of Islam, the regime also tried to reaffirm and expand its control of religious activities and Islamic discourse (Pinto 2011: 192). In his article about the relationship of the Ba'th regime with Islam, Paulo Pinto cites President Bashar al-Asad from an interview (Al-Asad had) with an American journalist in May 2010, in which he stated 'that the biggest challenge he faced was '[h]ow can we keep our society as secular as it is today.'" (2011: 192)

3.1.1 State feminism

The Ba'th Party in Syria, similar to other secular-oriented governments in the region, e.g. Turkey and Tunisia, used and mobilised women as symbols of development and modernisation of the nation. At the same time, the government fostered the ideal of a sound and stable family as the mainstay of society (Rabo

¹⁰⁶ To reiterate: the Constitution stipulates that the President has to be Muslim, and whether or not 'Alawis are truly Muslims is questioned by many Sunni Muslims (see chapter 1).

1996, 2011: 32; Sparre 2008).¹⁰⁷ Ba‘thist socialist ideology stressed the importance of women’s participation in public life and encouraged women to contribute to the progress of Syrian society. According to official Party rhetoric, women had to be liberated from ‘feudal and backward’ family and kin-group bonds in order for them to contribute to building a new and better nation (Rabo 1996: 162; Sparre 2008: 7). To this end, gender equality and equal access to education and employment for both men and women were important ideologies to the Ba‘thi government.

Since the 1970s, the Syrian government invested heavily in education and employment, which led to a significantly lower illiteracy rate, a dramatically increased number of people working in the public sector, as well as a considerably higher number of male and female students enrolled in basic and higher education (George 2003: 142-43).¹⁰⁸ The state’s investments and development of a large state apparatus and welfare programme were crucial in gaining control over political and economic resources and, at the same time, generating support from the nation. The increased employment opportunities were also open to women; that is why the number of women working outside the house increased noticeably, with the public sector as the main employer of women (Rabo 1996: 167).¹⁰⁹ The Labour Law also made it easier for women to work outside the house, as its provisions stipulate that women employees are entitled to at least 75 days (depending on whether it is a first, second or third child) paid maternity leave, and additionally, the state provides for state-funded day care centres (1996: 162).

Since the late 1980s, due to high unemployment rates, increased inflation, and enormous population growth, the need for educated women in the public workforce withered away and, consequently, the number of women workers decreased dramatically (Khatib 2011: 99). For that reason the state encouraged women to take on the role of wives and mothers at home. Sparre argues that there is another explanation for the state’s changed policy towards women’s participation in society, which she attributes to ‘the increased role of Islam in both

¹⁰⁷ On the position of women in relation to nation-state building projects in the Middle East, see Charrad 2001, Kandiyoti 1991.

¹⁰⁸ In Syria, education is compulsory for both boys and girls until the age of twelve (Sha‘aban 2003: 56).

¹⁰⁹ Therefore, according to Khatib, ‘the uncontrolled private sector mirrored better the prevailing gender bias in Syrian society’ (2011: 99).

the public and private sectors' (2008: 9). She writes that 'in Islamic discourses women most often are presented as mothers and housewives' (2008: 9) and for that reason 'the idea of women as the nurturers and educators of the nation's future citizens' became common place in Syria of late (Sparre 2008: 13).

In this context it is interesting to point out to the recently released documentary *The Light in Her Eyes* (2011), directed by Julia Meltzer and Laura Nix, which portrays a conservative Muslim preacher, Huda al-Habash. She founded an (non-state) all girls' *Qur'ān* school in Damascus where she teaches girls and women about the *Qur'ān* and Islam; she propagates exactly this message, i.e. women have a duty to be(come) nurturers and educators of the nation.

3.1.2 Equality for all citizens?

Syria often portrayed itself as one of the leading Arab countries in promoting gender equality and women's full participation in Syrian society. Similar to the previous Constitution of 1973, the current Constitution also guarantees equal citizens' rights. Article 33 paragraph 3 of the 2012 Constitution reads that 'citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.'¹¹⁰ In addition, article 23 reads '[t]he state shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social and cultural life, and the state shall work on removing the restrictions that prevent their development and participation in building society.' However, whether the Syrian government takes its own constitutional guarantees of equality for all seriously is debatable.

The Syrian government officially promotes state feminism and equality for all, but legal realities are sometimes very different, in particular in family relations. The contents of the different personal status laws, the Nationality Law, and the Penal Code clearly prevent the equal enjoyment of rights by men and women. These laws contain numerous provisions that conflict with principles of gender equality and non-discrimination, as not only laid down in the Constitution but also in

¹¹⁰ Translation taken from the Syrian Arab News Agency (SANA) website: <http://www.sana.sy/eng/361/2012/02/27/401178.htm>, accessed 14 March 2012.

international conventions, such as the Women's Convention (CEDAW), to which Syria is a party.

When we look at personal status law, it is evident that the SLPS does not assert equal rights and responsibilities to both men and women in marital and family life. The inequality in marriage, divorce, child custody, inheritance (and so on) between men and women is manifestly present in the provisions of the general Syrian family law. A woman's status is determined by the relationship to her male family members, i.e. until she marries she is connected to her paternal family, and after marriage, her status is connected to that of her husband. Nor is she regarded as a full Syrian citizen. For example, she cannot pass on her nationality to her children as a mother under the Nationality Law, because that law only allows a man to confer the Syrian nationality upon his children.

In fact, an influential female Ba'ath Party member, Bouthaina Sha'aban¹¹¹, admitted that, despite the constitutional gender equality before the law:

'[i]n practice, however, none of the leaders of the Baath party seem to be great supporters of women's rights. Although they are members of a secular party, Baath Party members support traditional morality (Christian or Muslim) when it comes to women's issues. Any demands for establishing more equal laws for women are often met with the argument that we are a religious society and we cannot anger the fundamentalists of both religions.' (2003: 60-61)

Sha'aban's observation hit the nail on the head. It reflects the government's quandary in trying to balance its official secular discourse and policies, on the one hand, *and* accommodate the demands of a significant segment of its conservative Muslim and Christian citizens (cf. Khatib 2011: 98 ff.). Recent examples of how the government tried to manage this difficult balancing act in the field of family law will be discussed in more detail in the course of this chapter.

¹¹¹ Bouthaina Sha'aban was the Minister of Expatriates from 2003-2008, since 2008 she is the political and media advisor to President Bashar al-Asad. Before she became a state official, she was a Professor in Literature at Damascus University.

Syria is, obviously, not unique in its gendered laws of personal status and nationality; laws of other Arab countries bear, although in varying degrees, a resemblance to Syria. Mayer points out in her article on personal status reforms in North Africa that:

'[b]oth in their movement toward accepting women's equality and their resistance to this same norm, societies on the northern and southern shores of the Mediterranean are involved in a common dynamic. In this clash of systems, patriarchal norms sanctified by religion and tradition contend with the impact of profound social and economic transformations and the influence of prevailing international norms of equality between the sexes. Although religion and tradition may seem to be potent forces militating against change, countervailing forces have been set in motion that should undermine discriminatory laws in the Maghrib, just as they have done already in Europe.' (1995: 446)

As mentioned in chapter 1, the ascension to the Presidency of Bashar al-Asad in 2000 ushered in an era of hope, hope for reform and social and political change in the country, but within a few years, this hope faded away. The cautious emerging civil society in the early years of Bashar's Presidency was nipped in the bud by the regime. Initially it seemed that the government was willing to consider (modest) legal reforms in family and gender relations. Although some social reforms were accepted, most notably in 2003, the door to reform was securely closed in 2007. From that time onwards it became clear that the Syrian government would not accept changes that would upset the conservative segments of society; in fact, the conservative forces gained the upper hand in the struggle for change of the family law.

In the following sections, several recent proposals for reform of the family law, in particular the SLPS, will be discussed, including draft laws that were put forward by the state and non-state actors.

3.2 Mending family law: who wants change?

The SLPS was promulgated as legislative decree no. 59 on 17 September 1953; it was subsequently amended in 1975, 2003, and 2010. As explained in chapter 2, the SLPS was, at the time, considered to be one of the most comprehensive and progressive family law code in the Middle East (Anderson 1955: 34), but today it has largely lost its significance in this respect. The last major amendments to the 1953 Personal Status Code were made in 1975 (by Law no. 34), with the aim to improve the position of women. The annotation to the 1975 amendment law states that the state has a constitutional obligation to ‘lift the bonds that restrain the development of women’ and ‘their participation in the development of society’ (‘Atari 2006: 13). To that end, the amendments aimed to restrict the practice of polygamous marriages and traditional divorce rights of men.¹¹² In addition to polygamy and divorce, the amendments also changed SLPS provisions related to the dower, maintenance, nursing, legal guardianship and custodianship (‘Atari 2006: 13-19). After 1975, it took another 28 years before any further changes to the SLPS were made in 2003, and this time it concerned merely a minor amendment (see below). It is important to note that the amendments to the SLPS never profoundly affected or changed the substantive contents of the law, but that they were mostly procedural. For example, polygamy and a man’s unilateral right to divorce (*ṭalāq*) were not proscribed, but merely restricted by imposing procedural limitations to them. This type of legislative reform policy is, incidentally, common in many Arab Muslim countries.¹¹³

Those seeking change of the existing personal status law(s) in Syria come in all shapes and sizes, viz., women rights’ activists, members of Parliament, religious figures, lawyers, union members, and so on. When we focus on the last decade, we can distinguish various individuals, several organisations, either state-funded,

¹¹² One of the amendments concerned article 17, the provision pertaining to polygamous marriages. As of 1975, the article stipulates that a judge may refuse permission for a second marriage, unless the husband can prove that 1) he is capable of supporting two (or more) wives, and 2) he has a lawful justification (*musawwigh sharʿī*) to marry a second wife. The latter condition was added in 1975.

¹¹³ Cf. Welchman 2007 on codifications and reform policies in various Arab states, and for individual country studies see, for example: Sonneveld 2012a (Egypt), Buskens 1999 (Morocco), Voorhoeve 2011 (Tunisia).

affiliated or semi-independent from the state, who were actively involved in efforts to reform the laws. It will be beyond the scope of this thesis to discuss all the different actors, I will therefore only mention those whom I interviewed personally. I interviewed a number of people, either acting in their individual capacity or as (former) representatives of organisations, who were active in the field of family law and/or gender-based law reforms.

3.2.1 2003: Syria's accession to CEDAW – a catalyst for social and legal action

On 28 March 2003, Syria acceded to the international human rights agreement, the Convention of Elimination of all forms of Discrimination Against Women (CEDAW), with reservations referring to *shari'a*. The reservations made by Syria exclude the application of certain CEDAW provisions, most notably those that guarantee equal rights of men and women pertaining to marriage and family life.¹¹⁴ The accession to the Women's Convention worked as a catalyst for civil society groups to discuss and develop plans for legal reforms. Women organisations organised seminars and established working groups to discuss the need to lift the reservations the Syrian government made to the Convention, as well as the possibilities to change the personal status law and other laws that discriminate on the basis of gender.

A government body that played an instrumental role in the campaign to review the options to lift the reservations to CEDAW, was the Syrian Commission for Family Affairs (SCFA). The SCFA was established by Law no. 42/2003, following Syria's ratification of the CEDAW Convention; it was officially assigned to review discriminatory legislation and to propose new legislation and amendments to existing laws. In addition, the SCFA was responsible for raising awareness on family issues, advice the government in policies and national plans related to family affairs, as well as coordination of the reporting process to international human rights bodies (Euromed 2006: 27).

¹¹⁴ Syria made reservations to Arts. 2; 9 par. 2; 15 par. 4; 16 par. 1 sub c, d, f, g; 16 par. 2; and 29 par. 1 CEDAW (source: www.bayefsky.com).

In the years following Syria's accession to CEDAW, the SCFA coordinated various projects. Under its auspices, several laws in relation to personal status issues were drafted, including a so-called Children's Rights Law,¹¹⁵ and various drafts to reform the SLPS and the Nationality Law. In 2004 and 2005, the SCFA organised workshops and seminars in which a wide range of individuals debated about the possibilities to lift the CEDAW reservations the Syrian government had made (Maktabi 2010: 566). The SCFA had asked Dr. Muhammad al-Habash, member of Parliament and an expert in Qur'ānic studies and Islamic jurisprudence (*fiqh*),¹¹⁶ to examine the (in)compatibility of the provisions of CEDAW with *sharī'a*. In his study he concluded that all reservations could be lifted; all but one, namely the reservation to article 16 paragraph 1 pertaining to marriage and family law (cf. Al-Habash 2005, 2006). According to Al-Habash, men and women cannot have equal right in divorce and marriage, because of what is ordained by *sharī'a*. In the same line of argument, he argued that the concept of adoption is not acceptable under Islamic law and, thus, for those reasons the reservation to article 16 paragraph 1 was justified.¹¹⁷

Al-Habash's study was discussed in Parliament, in mosques, and in the media, but no avail. In May 2007, the Syrian government met with the CEDAW Committee in New York to discuss Syria's initial periodic report. Following this meeting, several civil society groups drew up a draft law proposing to abolish the reservations to the Convention; the draft law was submitted to Parliament. Earlier the government had promised to lift the reservations, or at least partially, but the draft was nevertheless rejected by Parliament in November 2008.¹¹⁸ Several of my interviewees believed that the reason for this inaction on part of the government was the preservation of the delicate power balance between the government and conservative Muslim clerics who generally oppose any 'progressive' changes to the

¹¹⁵ This draft law (2006) included provisions dealing with nursing (*ḥaḍāna*), child care, and the right to see family members following a divorce (interview with the director of the Syrian Commission of Family Affairs, Dr. Farouk Al-Basha, Damascus, 16 April 2009).

¹¹⁶ Dr. Muhammad al-Habash is also the founding director of the Centre of Islamic Studies in Damascus, established in the 1980s, which advocates religious renewal and religious dialogue.

¹¹⁷ Interview with Dr. Muhammad al-Habash, Damascus, 22 April 2008. Furthermore, it may be interesting to note that the Grand Mufti of Syria, Ahmad Hassoun, made the same conclusions as Al-Habash with regard to the reservations to CEDAW (Maktabi 2010: 567).

¹¹⁸ Interview Sawsan Zakzak, Syrian Women League and independent researcher, Damascus, 13 April 2008; interview with Daad Musa, women's rights activist and lawyer, Damascus, 17 November 2008.

family law. This argument of maintaining the status quo or preserving the balance of power is a recurring argument, as will become clear below.

Syria's accession to the Women's Convention also sparked off debates about reform of the family law and other laws that discriminate on the basis of gender. The government and civil society groups studied and drafted proposals for amendments to the family law, which were fervently discussed in Parliament and wider society (Maktabi 2007: 13-15). Women's organisations, together with influential individuals, such as women's rights activist and former Member of Parliament, Hanaan Najmeh, had worked on proposals to change the SLPS since the 1980s.¹¹⁹ In 2003, the time was finally ripe for a public debate on reform of the family law.

In the early 2000s, several proposals were drafted. According to Sabah Hallaq, a women's rights activist, there were two drafts for a new SLPS that were put forward to the government. One draft prepared by a group that was more closely affiliated with the government, which included Mrs. Najmeh, and a more 'independent' group of women activists and NGOs, who submitted a second, slightly different, draft.¹²⁰ The family laws of Tunisia and Morocco, in particular, served as examples of inspiration to the different groups working on family law reform. The two drafts included the following proposals, with regard to marriage:

- the marriageable age for girls should be raised from 17 to 18 years;
- girls should be allowed to marry without the consent of their legal guardian;
- polygamy should be limited further (government draft);
- polygamy should be forbidden (NGO draft).

The changes concerning divorce included the following:

- the standard marriage contract should provide the option to include a stipulation that, in the event of divorce, the marital community of property will be divided equally between the two spouses;

¹¹⁹ Interview with Hanaan Najmeh, Damascus, 2 April 2008.

¹²⁰ Interview with Sabah Hallaq, Syrian Women League and independent consultant, Damascus, 25 April 2008. For the sake of readability, I will refer to the different drafts as 'the government draft' and 'the NGO draft', respectively.

- when such a stipulation is not recorded in the marriage contract, the wife should receive compensation;¹²¹
- men and women should receive equal divorce rights; for example, following the example of Egypt, a revised SLPS should include the option for a woman to initiate divorce without her husband's consent¹²² (NGO draft);
- a state-regulated maintenance (*nafaqa*) fund should be established, which would supervise and ensure that divorced mothers and children receive their maintenance fees.

With regard to custody of children, the guiding principle should be 'the best interest of the child', and with that in mind, the following proposals were made:

- a divorced mother has a right to nurse (*ḥaḍāna*) her children until a certain age, the age for both sons and daughters should be raised to 15 years;¹²³
- when the children turn 15, they should be able to choose whether they want to stay with their father or mother;
- when the parents divorce and the children stay with their mother, she should be able to stay in the marital home with the children.

Finally, also following Egypt's example, general family courts should be established, instead of different denominational courts.¹²⁴

3.2.2 Petitioning for change: the 2003 SLPS amendment

In 2003, in line with the above-mentioned proposals, the women's organisations staged a petition calling for amendments to the family law. The petition asked for four changes to the SLPS:

¹²¹ This divorce compensation should be awarded in addition to the post-divorce maintenance (*nafaqat al-'idda*), which generally covers the period of three menstrual cycles after the divorce, and any unpaid dower amount (see chapter 4).

¹²² Egypt's Personal Status Law (revised in 2000) makes it possible for a woman to initiate a *khul'* divorce without her husband's consent (cf. Sonneveld 2012a).

¹²³ Before 2003, a divorced mother could nurse her son until the age of 11 and her daughter until the age of 13, these age limits were raised, as will be explained later.

¹²⁴ Interviews with Hanaan Najmeh, Sabah Hallaq. The family court system was introduced in Egypt in 2004 (Sonneveld 2012a: 108-09).

- 1) the year for nursing (*ḥaḍāna*) should be the same for boys and girls;
- 2) a divorced mother with the nursing right should be provided with a house;
- 3) when a divorced mother with the nursing right remarries, she should not lose her *ḥaḍāna*-rights;
- 4) the amount of maintenance (*naḥaqa*) should be raised.¹²⁵

The petitioners collected 15,000 signatures, enough to induce the Parliament to study the proposed amendments. The proposed reforms were vehemently debated in the Parliament and wider society. Some religious conservatives accused women's rights activists of seeking to tarnish the *Qur'ān* and religious laws by calling for equality between men and women, which they considered an imitation of the West. The women activists claimed that the current law was a male law, not necessarily Islamic; they questioned the patriarchal interpretation of the existing laws (Maktabi 2007: 18-19).

In the end, only one amendment, in adjusted form, made it into the SLPS. Article 146 was modified and now gives a divorced mother the right to nurse her children until the age of 15 for girls and 13 for boys, an increase of two years respectively. The original proposal intended to abolish the age distinction between boys and girls, and leave them both in the *ḥaḍāna* care of their mother until the age of 15.¹²⁶ Interestingly, the amendment was not issued by Parliament, the People's Assembly, but promulgated by Presidential Decree as Law no. 18/2003. According to Rabo, the President intervened by personally reforming the family law, in order to settle the debate between the conservative clerics and the civil society groups (2005b: 85-86).

Baudouin Dupret made an ethnomethodological analysis of the debate in the Syrian Parliament on raising the age for *ḥaḍāna*, which took place on 19 October 2003. Dupret's analysis focuses on the form or context of the debates (i.e. performance of the participants, form of speech, procedural rules, etc.) and not so much the contents of the arguments employed by the members of Parliament. Nevertheless, it is interesting to note that, when looking at the quoted excerpts of

¹²⁵ Interview with Sawsan Reslan, (dissolved) Association for the Social Initiative, Damascus, 24 April 2008.

¹²⁶ Interview with Hanaan Najmeh, 2 April 2008.

the debates in Dupret's article, the independent Member of Parliament, Dr. Muhammad al-Habash, played an instrumental role in the realisation of the rise in age for *ḥaḍāna*-care. In the debate he based his argumentation on article 3 of the Constitution, which states that Islamic jurisprudence (*fiqh*) is a main source of law. According to Al-Habash, this article opens the door to a wide range of legal interpretations on the subject (Belhadj and Dupret 2009: 33-34).

Let me devote a few words to the person of Dr. Muhammad al-Habash. In an interview I had with Al-Habash, he introduced himself as an advocate for a liberal Islam. According to Al-Habash, about 80 per cent of the Muslims are conservative and the remaining 20 per cent belongs to the renewal direction.¹²⁷ He explained that, with regard to Islam and the reform of family law, the conservatives believe that Muslims today do not have the right to change the rules; instead 'we' (i.e. Muslims) have to go back to the time of the Prophet. In addition, the same conservative Muslims believe that there is only one way to God, i.e. one truth, one interpretation. Reformers like Al-Habash, on the other hand, believe that Muslims can adjust the rules, within limits, to the needs of the present time. He therefore supported plurality and rejected a static, monolithic interpretation of Islam.¹²⁸

Al-Habash believed that the SLPS needed to be adjusted to the present time, but, at the same time, it must be in conformity with *sharī'a*. He said that one of his goals, as a Member of Parliament, was to change 'old' laws, especially those that negatively affected women. For that reason he supported several activities undertaken by civil society groups, such as the projects against honour crimes, and the establishment of a maintenance fund to support divorced mothers and children.¹²⁹

The Association for the Social Initiative (ASI) was one of the main driving forces behind the 2003 petition calling for changes to the SLPS.¹³⁰ The ASI was a non-governmental group created in 2001. In 2003, the ASI was officially recognised by

¹²⁷ Furthermore, there are some radical Muslims, but, according to Al-Habash, their number is negligible (interview with Dr. Muhammad al-Habash, 22 April 2008).

¹²⁸ For an elaborate discussion on Muhammad al-Habash as a leading figure in the religious renewal movement in Syria see the article written by Paul Heck (2004).

¹²⁹ Interview with Dr. Muhammad al-Habash, 22 April 2008.

¹³⁰ Interview with Sawsan Reslan, 24 April 2008.

the government to work as a civil society organisation. After the successful, though minor, change to the law in 2003, the ASI continued its activities asking for additional changes to the SLPS. In 2005, for example, it conducted a nation-wide survey called 'Survey on the need to change laws prejudicial to women'.¹³¹ The questionnaire was filled out by 2,855 Syrians (male and female) from seven of the fourteen country's governorates (Abu Halawa 2006: 5). The survey included questions such as 'Do you support an adult woman's right to conclude her own marriage?', 'Does polygamy have a negative impact on the family?', 'Do you support equality in inheritance for men and women?', and 'Do you support making an honor crime a criminal, punishable offence?' (Abu Halawa 2006: 44-47). According to Maktabi, the publication of the survey in 2006 caused quite a stir in Syria, with conservative clerics accusing the ASI and other women activists of seeking the abrogation of *sharī'a* based law and creating tumult by imitating Western countries in their demand for changes to the family law (2010: 563-64). Soon after, in January 2007, the license of the ASI was withdrawn by the Ministry of Labour and Social Affairs under the pretext of public interest,¹³² and the collaborating researchers from Damascus University were banned from proceeding with the analyses of the survey results (Maktabi 2010: 563-64).

3.3 Other law reform projects concerning family and gender

During the last decade, considerable attention was given to the problem of Violence Against women (VAW), in particular domestic violence and honour crimes. Several activities were employed; for example, the largest women's organisation in Syria, the General Union of Syrian Women,¹³³ conducted a study on violence and discrimination against women in cooperation with United Nations Development Fund for Women (UNIFEM).¹³⁴ In the subsequent years, other governmental organisations, in cooperation with the Ministry of Justice and the

¹³¹ In Arabic: *istiṭlā' ra'y ḥawla ḍarūrāt taghyīr al-qawānīn al-mujhifāt bi-ḥaqq al-mar'a*, see Abu Halawa (2006).

¹³² Interview with Sawsan Reslan, 24 April 2008.

¹³³ The GUSW is a semi-governmental organisation, established in 1976, dominated by Ba'th Party members. For an analysis of the organisation see El-Rahabi's study (2006: 14 ff.).

¹³⁴ The results of this field study were published in 2006 and are available online, see: http://www.unifem.org/attachments/stories/currents_200606_SyriaVAWstudyKeyFindings.pdf, accessed 9 April 2012.

Ministry of Religious Endowments, recommended to abrogate and amend some highly disputed articles of the Penal Code¹³⁵ pertaining to honour crimes.¹³⁶ Such as, for example, article 548 which stipulates that a man can be exempted from punishment or receive a reduced punishment when he kills or hurts a female relative because he saw her committing adultery or engaged in an illegitimate sexual relation. In the end, in 2009 and 2011, this article was amended and a man found guilty of an honour now faces 5 to 7 years imprisonment.¹³⁷

Another important law that was subject to criticism was the Nationality Law of 1969. The Syrian Women League (est. 1948), in origin a communist organisation, was instrumental in proposing amendments to change the Nationality Law, so as to make it possible for Syrian mothers to pass her nationality to her children (Euromed 2006: 34).¹³⁸ In March 2004, a proposal to change article 3 of the Nationality Law, which stipulates that only a Syrian Arab father can pass on the Syrian nationality to a child, was submitted to Parliament. The proposal, which would also make it possible for a Syrian mother to pass on her nationality to her children, was discussed in Parliament and a number of Parliament members put forward some proposals requesting a change of the law to the Cabinet of Ministers, but it came to nothing. A number of interviewees mentioned that the official explanation for the unwillingness to change the Nationality Law was that it could not be changed because of the 'Palestinian issue'.¹³⁹ The reasoning was as follows: Palestinians have a right to return to Palestine and if 'we', i.e. Syrian government, would give them the Syrian nationality, they will not return to Palestine when they are able to return. Several persons told me that they questioned whether this was

¹³⁵ Penal Law (*qānūn al- 'uqūbāt*), Law No. 148/1949, with amendments.

¹³⁶ See: <http://www.thara-sy.com/TharaEnglish/modules/news/article.php?storyid=62>, accessed 9 April 2012.

¹³⁷ There are still several disputed articles that remained unchanged, Arts. 192 and 240-242 allow a judge to reduce punishment if the crime was committed in rage or due to extenuating circumstances. In addition, articles 473-475 stipulate different punishments to male and female adulterers, i.e. women are subject to double the penalty compared to men. For example, a man can be acquitted from punishment for rape if he marries his victim (Art. 475). Finally, article 489 permits marital rape (Euromed 2006: 22-23).

¹³⁸ The Syrian Women League also coordinated and published the NGO's CEDAW shadow report (2007), in addition to the NGO's report on Beijing +10 Declaration and Platform for Action.

¹³⁹ Most notably: interview with lawyer and independent consultant, Hala Barbara, Damascus, 25 March 2008; interview with Sawsan Zakzak, Syrian Women League and independent researcher, Damascus, 13 April 2008.

the real reason for the rejection; most likely the 'Kurdish issue' also played a role. At the time (spring 2008), there were an estimated 300,000 stateless Kurds living in Syria, due to a special census held in the Hassakeh province in 1962.¹⁴⁰ In response to the Syrian Revolution, which started in March 2011, the government granted stateless Kurds citizenship in April 2011.¹⁴¹ However, the Nationality Law remained unchanged, Syrian mothers are still unable to pass on their citizenship to their children.¹⁴²

3.4 The 2006 Catholic Law of Personal Status

Against the background of these proposed law reforms, a new law in the field of personal status was issued. In 2006, the Catholic Churches in Syria managed to obtain a new, and some say revolutionary, law, i.e. the Catholic Law of Personal Status (CLPS).

In October 2004, the drafting process started under leadership of Archimandrite,¹⁴³ Antoun Mouselh, assisted by two experienced lawyers working in the Catholic denominational courts. The main source of legislation for the draft was the Code of Canons of the Eastern Churches (the CCEO; in Arabic: *majmū'at qawānīn al-kanā'is al-sharqiyya*).¹⁴⁴ In addition to the CCEO, other sources were used; most importantly, international conventions pertaining to women's and children's rights, such as CEDAW and CRC, and provisions from the previous Catholic personal status law.¹⁴⁵ A few months later the draft was presented to the Council of the heads of the Catholic Churches in Syria, who, after approval, submitted it to

¹⁴⁰ Anyone who could not prove he/she was a Syrian citizen or who was not at home at the time of the census had his/her Syrian citizenship removed, and was listed as a 'foreigner' (interview Sawsan Zakzak).

¹⁴¹ BBC News website (7 April 2011), 'Syria's Assad grants nationality to Hasaka Kurds', available at: <http://www.bbc.co.uk/news/world-middle-east-12995174>, accessed 28 March 2012.

¹⁴² Conversely, other Arab states have changed their nationality laws, enabling women to pass their nationality to their children, such as: Morocco in 2006 (Sadiqi 2008: 461), Egypt in 2004 (Sonneveld 2012a: 51), Tunisia in 1993 (Voorhoeve 2011: 35).

¹⁴³ The title archimandrite is an honorary title used in the Melkite Church; the title is equivalent to the title of *Monsignor* used in the Latin Church (Faulk 2007: 52).

¹⁴⁴ The Arabic translation (of the original Latin text) was conducted by a committee established by the late Coptic Catholic Patriarch of Alexandria (Egypt), Stephanos II Ghattas (d. 2005), in 1995.

¹⁴⁵ Interview with Fr. Antoun, judge in the first instance and appeal of the Catholic court in Damascus, Damascus, 25 April 2008; Moslih 2008: 138.

the Council of Ministers. After some additional revisions it was eventually sent to the People's Assembly, who approved it on 13 June 2006 and five days later, on 18 June 2006, it was promulgated by Presidential Decree as Law no. 31 (Moslih 2008: 138).¹⁴⁶

Novelties in the CLPS, compared to the old Catholic Law and other Syrian personal status laws, were, most importantly: Catholics were allowed to adopt a child,¹⁴⁷ men and women were guaranteed equal inheritance rights, and fathers and mothers were given equal custody rights over their children in the event of separation. The major legal consequence of the law, however, was that, with the coming into force of the law, all Catholics of Syria were solely governed by the provisions of the CLPS, and thus excluded from application of the SLPS (Moslih n.d.: 7). Moreover, the Catholic courts had full jurisdiction over all personal status matters pertaining Catholics. I deliberately use the past tense because this situation only lasted four years; in 2010 the position of the Catholics in the field of family law changed significantly, as will be explained below.

The promulgation of the Catholic law happened quickly and quietly, and came as a great surprise to many, including the Catholic communities themselves. The exceptional position of the Catholics vis-à-vis the other Christian groups following the issuance of the CLPS was subject to criticism (Rabo 2009: 7; 2012b: 86). Particularly non-Catholic Christians were discontented that they were put in a false position in relation to the Catholic Churches with regard to the SLPS and the *shar'iyya* courts. Instead of working towards harmonisation or unification of a Christian family law, the Catholics 'underlined Christian sectarian divisions thus weakening the minority as a whole, some argued.' (Rabo 2009: 7) Others, striving for a secular or civil family law devoid of any religious references, feared that Law no. 31/2006 would open the door wide to demands for religiously inspired family law reforms from other religious groups (Rabo 2009: 7). Rabo remarks that 'some Christian lawyers and lay people [repeatedly, according to Rabo] claimed that the law was so easily changed in order to pave the way for Muslims to demand a more

¹⁴⁶ Law no. 31/2006 was published in the Official Gazette Issue 26, on 5 July 2006.

¹⁴⁷ Adoption (*tabanni*) is prohibited in Islam, and therefore not recognised by Syrian law (chapter 5, § 5.7).

patriarchal and 'religious' personal status law' (2012b: 92 n. 20). Interestingly enough, this is in fact what happened in 2009, as we will see below.

Rabo writes that the Church only started to educate its clergy and lay members about the new law after its promulgation, i.e. June 2006. She attended such educational seminars in Aleppo and observed that the reactions to the new law varied greatly. Women were generally happy with the new law as it improved their legal position as wives and mothers; some men, on the other hand, were less pleased with the content of the law or complained about its immediate enforcement (Rabo 2012b: 86).¹⁴⁸ Most of the Catholics I met during my fieldwork told me that they were very pleased with their new law, while several Orthodox Christians admitted being slightly jealous, or disgruntled, of their Catholic counterparts and they expressed the wish to have a similar law. The reason why the Catholics managed to be granted this special position vis-à-vis the other Christian groups is unclear and remains a subject for further study.

As mentioned above, the situation only lasted for four years (see below); in the meantime new attempts to change the SLPS came to light in 2009.

3.5 The 2009 SLPS drafts

In May 2009, various lawyers, judges, representatives of churches and of civil-society organisations and others were taken by surprise when they received a copy of a draft for a new personal status law, i.e. a new SLPS. They were given one week to study and comment on the draft, which was significantly more elaborate than the current SLPS, i.e. 665 articles compared to 308 articles, respectively. From June 2007, a committee of five anonymous Islamic legal scholars appointed by the Council of Ministers had worked on the draft in secret (Cardinal 2010: 208). The draft was heavily criticised by members of Parliament, religious figures, lawyers and intellectuals, in national newspapers and on the internet, the latter including

¹⁴⁸ Furthermore, Rabo observed that some lawyers complained about the wording of the law and 'claimed it had not passed the critical assessment of legal experts.' (2012b: 86)

media forums such as Facebook, at the time still officially banned in Syria.¹⁴⁹ Opponents accused the committee of imposing extremist Islamic views ‘similar to those of the Taliban’ (Ferguson and Muhanna 2009).¹⁵⁰ In their view, the proposal was regressive instead of progressive; it swept aside all attempts of the last decades at reforming the family law and improving the position of women and children.

The draft contained a number of strongly controversial issues. One highly contested issue concerned the proposal to create a body called the *sharʿiyya* public prosecutor (*al-niyāba al-ʿamma*), which would be authorised to raise and investigate certain personal status claims related to public policy (*al-nizām al-ʿamm*), such as claims regarding impediments to marriage, annulment of marriage, claims related to descent, endowments and bequests.¹⁵¹ The public prosecutor would have the authority to initiate actions against unlawful marriages, for example if one of the spouses is deemed to be an apostate (*murtadd*; someone who had renounced his/her faith, i.e. Islam).¹⁵² The draft retained the inequality of rights between men and women already laid down in the current SLPS, such as the duty of the husband to pay maintenance of the wife in return for the wife’s obedience, unequal divorce rights, a divorced mother’s limited custody rights over her children, and so on. More than that, it reintroduced classical Islamic legal divorce grounds that were generally considered outdated, i.e. ‘denial of paternity’ (*liʿān*) and two types of oaths of sexual abstention (*ilā* and *ḡihār*),¹⁵³ and it used religious-sensitive language, such as the term *dhimmi* (see chapter 1) to designate non-Muslims.¹⁵⁴

Early July, following a successful nationwide campaign against the draft, the draft law was withdrawn by the President. A few months later, a revised draft was published. The second draft omitted most of the contested provisions of its

¹⁴⁹ For example, a campaign against the draft was launched through the website of the organisation *Syrian Women Observatory* (*Nesasy*), www.nesasy.org.

¹⁵⁰ Buskens’ states that similar reactions were expressed on government plans to reform the family law in Morocco in the early 2000 (2003: 100-03).

¹⁵¹ This proposal brings to mind the Egyptian *ḥisba*-procedure, which allows a Muslim to file a *ḥisba*-petition against a fellow Muslim at a civil court invoking the defence of Islamic public order (Bernard-Maugiron 2004: 333-39). The case of Naṣr Abu Zayd is probably the most famous case in which such a petition was accepted (cf. Berger 2005: 89-101).

¹⁵² Ferguson and Muhanna 2009; Cardinal 2010: 209 n. 65.

¹⁵³ The oaths of sexual abstention (*ilā* and *ḡihār*) are believed to date back to pre-Islamic times.

¹⁵⁴ See also Rabo 2012b: 79.

predecessor,¹⁵⁵ but the reform-minded critics also disregarded this second draft since its content closely mirrored that of the current SLPS. It appears that this second draft also never made it out of the ministries' offices, and ended where most draft legislation of late ended up, on a shelf collecting dust. Due to the strong opposition against the two drafts, it seemed the government abandoned, at least for the time being, the idea of introducing a new comprehensive family law. Instead it introduced a minor but significant modification of article 308 of the SLPS, which intended to grant all Christian communities autonomy in testate and intestate inheritance, as will be explained below.

It has been argued that the Ministry of Justice and the Ministry of Religious Endowments (*awqāf*) played a significant role in the recent attempts to change the personal status laws (Al-Aws 2010). Apparently, both played an instrumental role in the drafting process of the two government-issued (2009) draft laws and in blocking recent 'more progressive' proposals put forward by civil society groups, together with the Syrian Commission for Family Affairs (SCFA).¹⁵⁶ That being said, the role of the SCFA and the Ministry of Labour and Social Affairs, for their part, was also questionable.¹⁵⁷ According to several of my interviewees, both the Ministry and the SCFA had failed in their duty to promote family and women's interests. The Ministry has the mandate to actively seek to modify or abolish any laws that are discriminatory against women and children; yet, the Minister did not appear to be in favour of any of the activities or proposals put forward by the SCFA or other organisations. In fact, the Minister only seemed to frustrate any progress or development. Some people were of the opinion that the Minister's attitude was the reason why, since 2007, legislative progress had come to a standstill.¹⁵⁸ Interestingly, instead of the draft proposals being put into law, the year 2007, as we saw above, witnessed the establishment of the above-mentioned

¹⁵⁵ Besides, it was not as elaborate as the previous draft, for it consisted of only 288 articles.

¹⁵⁶ Apparently, the Ministry of Religious Endowments has also been instrumental in dismissing the calls from civil society groups to lift the reservations to the CEDAW Convention.

¹⁵⁷ The SCFA operates under the umbrella of the Ministry of Labour and Social Affairs.

¹⁵⁸ The Minister of Labour and Social Affairs is, amongst other things, responsible for the emancipation of women. One interviewee commented to me that the suitability of the then (i.e. 2008-2009) Minister, Mrs. Diala Al Hajj Aref, was questionable, particularly knowing that she (allegedly) married as a second wife to her husband.

secret committee, composed of religious scholars, which was responsible for the two controversial SLPS drafts.

3.6 SLPS amendment no. 76/2010

The Catholics' *status aparte* in family law was changed in September 2010, when an amendment was made to article 308 SLPS. Presidential Decree No. 76, issued on 29 September 2010, amended article 308 to such an extent that the special jurisdiction of the Christian and Jewish communities over personal status matters now also extends to inheritance and bequests. Before the 2010 amendment, these matters belonged to the competence of the *shar'iyya* courts.

It should be noted that, according to Rabo, '[s]ome Christians claim that their clergy were given the option of adopting Christian inheritance rules at the time when the law [i.e. the SLPS] was made in the early 1950s, but that they were happy to follow the misogynist state law.' Others, however, stressed that being governed by the inheritance rules of the SLPS was an improvement for many Christian women, who, especially those from rural areas, often did not inherit anything (Rabo 2012: 84).

Whereas the first article of the amendment expanded the jurisdiction of all Christian communities, the second article limited their jurisdiction. This article was of particular interest to the Catholics of Syria, but at their expense. The article states that provisions of the Syriac Orthodox Personal Status Law, the Greek Orthodox Personal Status Law, and the Catholic Personal Status Law, pertaining to matters of personal status other than those listed in the revised article 308, are abrogated by the amendment. Seeing that from June 2006 until September 2010, the Catholics of Syria were solely governed by the provisions of the 2006 Law (i.e. the CLPS), which allowed them to apply provisions which were previously (before 2006) not implementable by the Catholic personal status courts. The 2010 amendment of article 308 SLPS, however, ended this exceptional legal position for the Catholics, for it stipulated that matters of personal status other than those listed in the revised article 308 were abrogated by the amendment. As a result, the amendment rendered a substantial part of the CLPS inoperative, and thus its regulations regarding, for example, adoption, legal guardianship, paternity (or

descent), were no longer applicable. Due to this amendment, the Catholics again fell under the scope of article 308, and thus back within the competence of the *shar'īyya* courts.¹⁵⁹ Where this change will lead to, especially for the Catholic communities, remains unclear.¹⁶⁰

3.7 Balancing for legitimacy

The relationship between patriarchy, religion and the state is a complex one, in Syria and elsewhere in the Arab world. The dynamics of gender relations, patriarchy and religion have influenced – and continue to influence – Syria's pluralistic family law system. The state delegated its legislative power in the area of family law to conservative clerics and with that the state 'throws family matters into the domain of non-negotiable sacred religion and into the hands of patriarchal religious clerics'. Moreover, the clerics generally support patriarchal kinship structures (Joseph 1997: 81).¹⁶¹ Although Suad Joseph refers here to the Lebanese state, I argue that the same accounts for Syria. The Syrian government keeps the legal plurality in family law in place by granting (relative) autonomy to the religious establishments. The religious establishments, for their part, support this legal plurality because it allows them (within the boundaries of the state) to administer their own affairs in their respective communities.

Though the Syrian government grants the religious communities partial legislative and judicial authority in matters of personal status, it nevertheless resists any profound legal changes which might endanger the status quo. According to Muñoz, authoritarian Arab states fear that allowing 'progressive' reform in the domain of family law and thereby 'extending freedoms and developing individual autonomy within the family – and so weakening patriarchal authority – could lead to a questioning in the public arena of the ideological basis of state power.' Arab governments often invoke religious norms and make references to 'tradition and

¹⁵⁹ See also Bisan al-Bunni, '*sūriyya: ta'dīl li-l-aḥwāl al-shakhṣiyyat yataḥāwalu al-irth wa-l-waṣiyya wa-l-ikhtisāsāt al-ṭawā'if*' in: *Al-Hayat* newspaper, 21 October 2010 (available online: <http://international.daralhayat.com/internationalarticle/194022>, accessed 17 June 2011).

¹⁶⁰ Due to the revolution in Syria, which started in March 2011, I have not been able to return to Damascus and have therefore not been able to follow up on this issue.

¹⁶¹ In this article Suad Joseph argues that 'patriarchal connectivity' is linked to the Lebanese nation/state-building enterprise.

custom' so as to 'legitimize the continuation of patriarchal rule' (Muñoz 2012). That is why projects or ideologies such as state feminism and participation of women in the political arena are often merely symbolic (Manea 2011: 178-79); it is 'more a demonstration of rhetoric or political symbolism, concerned primarily with projecting a progressive image internationally, than it is a real motor for change' (Muñoz 2012). Hence, if change threatens to disrupt established patriarchal structures, a government will consider it more opportune to keep these structures in place.

Furthermore, it is the nature of the state itself, which can be defined as 'neopatriarchal' that reinforces patriarchal structures and social control in a modernising context (cf. Sharabi 1988).¹⁶² In a neopatriarchal state, according to Moghadam, 'religion is bound to power and state authority; moreover, the family, rather than the individual, constitutes the universal building block of the community. The neopatriarchal state and the patriarchal family reflect and reinforce each other.' (2003a: 11) In Syria too, the complex, reciprocal relation between state authority, religion and family patriarchy fosters a woman's subordinate status as a citizen and in society. In this regard, personal status law, because of its religious imprint and its plural composition, is a convenient tool for the state to use for its own political objectives, in particular to maintain or strengthen its political legitimacy (Moghadam 2003a: 129-30).

Manea argues in her book *The Arab State and Women's Rights* that 'lack of legitimacy' has shaped the gender policies of the Arab authoritarian states of Syria, Yemen, and Kuwait (2011: 28). The preservation of patriarchal structures benefits these states in their 'politics of survival'. In Syria, according to Manea, the regime's reluctance to change the family law system can be explained by its politics of survival, '[b]ecause of its sectarian character it has been afraid of antagonizing the Sunni majority, which resents Alawite control.' (2011: 169) Secondly, according to Manea, the religious foundation of the family law system was never changed, because family law was never considered a relevant issue for the Ba'th Party (2011: 168-69).¹⁶³ The third explanation that Manea provides is that the family law system

¹⁶² See Wedeen for an analysis of the use of the familial metaphor and the Asad cult in Syrian state rhetoric (1999: 49-65).

¹⁶³ The Nasser regime adopted the same strategy in Egypt (Moghadam 2003b: 71).

suited the Asad regime's divide and rule tactic: 'It must keep the sectarian and religious division intact in order to continue this survival policy, and the Syrian family law system, based on legal pluralism, is the instrument that preserves this division.' (2011: 171)

Warrick follows the same line of argument and maintains in her book about gender and politics in Jordan that the duality of many Arab legal systems, i.e. secular and Islamic law, is the outcome of a purposive political choice by the state, in particular to serve the need for legitimacy. According to Warrick, '[d]ual legal systems provide a flexible framework for social regulation, the exercise of state power and the maintenance of popular legitimacy in various sectors of society.' (2009: 42-43) This observation corresponds with what was described in chapter 1 (§ 1.7), where I argued that the Syrian government maintained a plurality of family laws and jurisdictions as a result of a partnership between the state and the various religious communities.

To counter-balance this challenge of legitimacy, the government employed various strategies. First of all, it continues to play the secular card; the Syrian government, being a 'secular' minority regime, presents itself as the best (or only) possible safeguard for the various religious minorities against Sunni dominance. Connected to this is the preservation of the plural family law system, which allows the Druze and Christian communities the authority to regulate their own affairs in personal status matters (see chapter 1, § 1.7). This led to the remarkable decision of the Syrian government to promulgate a new Catholic law of personal status, the CLPS, in 2006. The CLPS was remarkable in many ways; first of all because it granted the Catholic communities full jurisdiction in all matters of personal status, and with that allowed the Catholics to break away from the supremacy of the SLPS and the *shar'iyya* courts. How and why it happened as it happened remains unclear, but what is clear that was not favourably received by other Christian groups and some conservative Muslim groups.

Another significant event that marked a fundamental shift in government's policy on family law reform happened in 2007. In June 2007 (one month after the CEDAW meeting in New York), the government installed a secret committee of Islamic legal scholars, responsible for two conservative and controversial SLPS drafts. A plausible explanation for the establishment of this committee is that the

government took it a step too far with the promulgation of the CLPS and, in response to protests of, most importantly, conservative Muslims, it allowed for the formation of this committee.¹⁶⁴ It is remarkable that conservative Muslim scholars were given ample opportunity to put forward family law proposals based on strict interpretations of Islamic law. Al-Aws explains this leeway for conservative Sunni scholars as an attempt by the government to channel religious opinions through state organs, and with that to circumvent public debates about family law and prevent strong religious opposition against law reforms (Al-Aws 2010; cf. Maktabi 2007: 27-28). The year 2007 appears to be a watershed year for Syrian family law, from that time onwards, the government redrew the boundaries of its religious plural legal system. It provided a platform for conservative Muslim scholars to voice their opinions on personal status law. In addition, the government reinforced the old system by the 2010 amendment to the SLPS, by retracting the privileges extended to the Catholic communities in 2006 and, at the same time, expanding the jurisdiction over inheritance matters to all Christian communities.

As explained in chapter 1, here we see an example of ‘the use of Islam [or religion] as a cultural idiom’ (cf. Pinto). When we understand personal status law as ‘a symbol of the place of Islam in society’ (Buskens 2003: 122), we can see how the SLPS and the other personal status laws were used as a political instrument by the Syrian government and other stakeholders to serve several political purposes. The amendment of 2003, for example, was a good example of a compromise of a delicate balancing act between patriarchal family values, religious claims, and progressive demands. The recent developments should be understood in the light of the government’s ‘politics of survival’, as an attempt to preserve the balance between social change and maintaining the status quo.

3.8 Conclusion

This chapter has demonstrated that (proposed) changes or reforms of the last decade in the domain of family law in Syria were controversial, mostly because of the regime’s difficult relationship with religion, in particular Islam. The political

¹⁶⁴ In addition, in 2007, the Ministry of Labour and Social Affairs revoked the license of the Association for the Social Initiative.

and religious legitimacy of the 'Alawi-dominated minority regime has been challenged from the very beginning and forced the regime to continuously try to find a balance between religion and politics. Recent modifications to the SLPS and controversial family (draft) laws caused quite a stir in the heterogeneous Syrian society and reverberated on the already tensed relations between the Sunni majority population and the religious minority groups, and within these communities themselves. Maintaining religious differentiation and patriarchal family structures played an important role in the balancing act of the government. It is a delicate balancing act of, on the one hand, upholding its official secular discourse and the wish to improve the position of women and minorities, and on the other hand, maintaining the status quo and appeasing, most importantly, a significant segment of its conservative Sunni Muslim citizens.

In the introduction of this chapter I referred to recent reforms in Morocco's family law. The current King Muhammad VI played a decisive role in the promulgation of the new family law of 2004. Conversely, as has become evident in this chapter, the Syrian President, Bashar al-Asad, did not play such a decisive role in implementing personal status law reforms. Only through personal intervention of the President, minor legal amendments were enacted to existing legislation concerning personal status and gender equality. This strategy bears more resemblance to the government style of the former Moroccan King, Hassan II, who only accepted extremely modest reforms, so as to avoid social upheaval in the country (Buskens 2003: 79-83).

For many years now, the government appeared to be unwilling to undertake any serious large-scale reforms, not just regarding personal status laws, but any law in general. Instead, the government employed a 'patchwork approach', which consists of minor modifications to various laws without really improving the existing situation.¹⁶⁵ The reason for this reluctance is, most likely, as was suggested to me by several people during my time in Syria, that the government fears that any serious family law reform, or law reform in general, may incite calls for other legal and political reforms (cf. Muñoz 2012). Tocqueville

¹⁶⁵ See also Al-Thara online article 'Mending the Personal Status Law' (translated by Anna Jozwik, 6 November 2011), available at: <http://www.thara-sy.com/TharaEnglish/modules/news/article.php?storyid=298>, accessed 20 March 2012.

wrote in 1856 that the most critical moment for a bad government is when it witnesses its first steps toward reform, for then they run the risk of being destroyed by a revolution. That said, it appears that for the Al-Asad regime that critical moment has already past, as the current Syrian revolution seriously threatens its survival.

