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

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Conclusion

In this thesis I have aimed to demonstrate that the legal or normative plurality that characterises Syria's personal status law manifested itself on a variety of levels, including statutory, political, communal, and individual. The first part of the thesis ('The Plural Legal Landscape: Family Laws in Syria') focused primarily on the historical, legal, and political aspects of Syria's plural family law system. In the second part ('Unity in Multiplicity: Muslim and Christian Laws and Legal Practices'), I have pursued the matter of legal plurality further by examining the actual content of the various personal status laws and discussing legal practices in some of Damascus' personal status courts. Thereby also giving consideration to the presence of other (i.e. non-state) 'forms of normative ordering' (cf. Merry 1988), most importantly the hegemonic patriarchal and social norms and values that characterise family and marital relations in the various Syrian societies, Muslim and Christian alike. In fact, it are these norms and values that were at the core of the central theme of the second part of this thesis, i.e. 'Unity in Multiplicity'. I have argued that, albeit the plurality of family law, Syrian personal status law was also characterised by the prevalence of shared, communal norms and views on marriage, gender and family relations.

Syria's pluralistic personal status law: the origins

Legal plurality has always been present in Syria. It was partly inherited from earlier, predecessor dynasties and rulers; in particular the political and legal system of the Ottomans was foundational to Syria's legal system. The Islamic Ottoman Empire, like Syria today, was a multi-religious state, with Muslim and non-Muslim citizens. Non-Muslim Ottoman citizens were guaranteed certain privileges under the so-called *millet*-system, meaning that the religious or confessional communities (*millets*) enjoyed the right to apply their own religious laws; also in matters of personal status, most importantly marriage and divorce. From the late 1800s onwards the Ottoman political and legal system underwent a series of significant reforms (*Tanzīmāt*), heavily influenced by European political and legal traditions. However, the separate status of Muslims and non-Muslims in family law continued to exist. The Ottoman *millet*-system laid the foundation for

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Syria's contemporary plural legal system, which is characterised by a mix of Ottoman, Egyptian, European-styled civil laws (mostly French in origin), and a broad variety of religious (or religiously-based) laws.

This plural legal system was maintained and reinforced by the French during the Mandate period (1920-46) as part of their divide and rule politics. The subsequent post-independence Syrian governments, including the Al-Asad regime, also kept the system in place, often dictated by political motives. Inspired by the then popular ideologies of secularism, socialism and Arab nationalism, the latter governments tried to nationalise and centralise the legal system but they failed to do so in the field of family law due to conservative religious opposition. Secularism and religious diversity were important ideologies for the regime to support, yet difficult to uphold due to its contested political legitimacy. The government has been engaged in a delicate balancing act of, on the one hand, upholding its official secular discourse and policies, and on the other hand, maintaining the status quo and appeasing, most importantly, a significant segment of its conservative Sunni Muslim citizens.

The politics of legal plurality

From its coming to power in 1963, Syria's Ba'ath Party has had a troublesome relationship with Islam, in particular with some segments of the Sunni population. The political and religious legitimacy of the 'Alawi-dominated minority regime has been challenged from the very beginning, which forced the regime to continuously try to find a balance between religion and politics. The government's secular ideology proved difficult to uphold, also with regard to family law. 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.

Recently proposed changes and reforms in the domain of family law were met with significant controversy (similar to Ottoman and French time), primarily because government interference in personal status matters was considered an infringement on (the already limited) sovereignty of the different religious groups. The state had delegated part of its legislative and judicial power in the area of

family law to patriarchal religious clerics and with that family matters entered ‘into the domain of non-negotiable sacred religion’ (Joseph 1997: 81). The religious establishments, for their part, supported this legal plurality because it allowed them (within the boundaries of the state) to administer their own affairs in their respective communities (see below).

Furthermore, the Syrian government, being a ‘secular’ minority regime, presented itself as the best (or only) possible safeguard for the various religious minorities against Sunni dominance. The partnership between the state and religious minority groups (most notably Christians) therefore also contributed to the preservation of the plural family law system: it served the religious minorities because it granted them some degree of legislative and judicial autonomy in personal status affairs in return for support and legitimisation of the government. In this regard, the family law system had become a convenient tool for the state to use for its own political objectives, in particular to keep the sectarian and religious division intact in order to sustain its political survival.

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 Syria’s main family law: the Syrian Law of Personal Status (the SLPS). 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.

At the same time, conservative Muslim scholars were given ample opportunity to put forward family law proposals based on strict interpretations of Islamic law. This leeway for conservative Sunni scholars has been explained 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. Plurality in family law was thus utilised as a political instrument by both the Syrian government and religious groups, as both have something to lose if the system would collapse.

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 consisted of minor modifications to various laws without really improving the existing situation. The reason for this reluctance was, most likely, that the government feared that any serious family law reform, or law reform in general, would have incited calls for other legal and political reforms.

An exception to this political strategy was the promulgation of the Catholic Law of Personal Status (CLPS) in 2006. This law was considered revolutionary because it meant that all Catholics of Syria were solely governed by the provisions of the CLPS, which included delicate rights as adoption and equal inheritance rights for men and women. However, this exceptional legal position for the Catholics only lasted four years, for in 2010 an amendment to the SLPS effectively rendered a substantial part of the CLPS inoperative.

Asymmetrical plurality

The mosaic of Syria's legal plurality in family law today presents a wide variety of personal status laws and courts that regulate matters of personal status, including marriage, dower, dissolution of marriage, maintenance, child custody, and succession. The main law in Syria that governs family relations is the 1953 Syrian Law of Personal Status; it is the general law and applies to all Syrians, irrespective of their religion. Nevertheless, the SLPS grants the Druze, Jewish and Christian communities limited legislative and judicial autonomy in certain personal status matters, most importantly marriage and divorce. This legal plurality, however, does not entail equality between the different jurisdictions. The SLPS is the general, overriding law in matters of personal status, the non-Muslim laws are exemptions to and subordinate to the SLPS. Similarly, the *shar'iyya* courts, which implement the SLPS, function as national state courts and have full jurisdiction over all personal status matters involving Muslims and limited exclusive jurisdiction with regard to proof of paternity and legal guardianship over all Syrians, irrespective of their religion. Syria's plurality in family law is thus an unbalanced or asymmetrical plurality because the SLPS and the *shar'iyya* courts clearly enjoy the upper hand over the other laws and courts. This affects in particular non-Muslim minorities, most notably Christians, especially when these jurisdictions intersect, for example in the event of interdenominational or interreligious marriages or when one of the

(Christian) spouses converts to Islam, for example in order to obtain a divorce. When a spouse converts to Islam (the other way around is not possible), the SLPS becomes the applicable law and the *shar'iyya* courts are considered the competent courts. This also means that when a non-Muslim father or mother converts to Islam, the religious identity of the converted parent automatically devolves upon the children. Consequently, the converted Muslim parent can demand full custody over the children and the *shar'iyya* courts have generally rewarded such requests in favour of the Muslim parent. The supremacy of the Muslim faith over other faiths, and with that the supremacy of the SLPS and the *shar'iyya* courts over other laws and courts, are a manifestation of the asymmetrical plurality in Syria's family law.

The laws of patriarchy

The different manifestations of legal plurality discussed above are directly associated with the state. However, not only statutory laws of personal status governed family relations in Syria but other 'forms of normative ordering' were also found in addition to and within the official state system. Patriarchal and other social, cultural or religious norms formed often just as powerful a force in family law. This did not mean that state law norms were necessarily different from those non-statutory norms, for in fact some of these latter norms were also laid down in the various personal status laws, Muslim and non-Muslim alike.

I have demonstrated that Syria's personal status laws, as most Arab family laws, in varying degrees, reflected the patriarchal family model. The laws privileged men, in particular men from the patrilineal line, in numerous ways, i.e. in child custody, inheritance, divorce, choice of marriage partner, passing on religious identity to children (and with that, citizenship), household division of labour, and authority and obedience in marriage. Certain matters were typically associated with Muslim family law (e.g. the dower and polygamy) or, on the contrary, Christian family law (e.g. the sacramental marriage and the prohibition of divorce), but the underlying structures were generally the same. The patriarchal family model has been enshrined in all laws of personal status, Muslim and Christian alike, and with that contributed to the preservation and confirmation of that model in the Syrian legal context – despite reform attempts by those who challenge that very model. In my view, it was this family model which determined

the gender roles in society; it was more powerful than legal or religious norms, specific to the different ethnic and religious communities.

A plurality of norms and legal practices

The SLPS and the *shar'iyya* courts operated in a rather open, flexible system. The provisions of the SLPS were not narrowly defined and thus left ample room for interpretation by the *shar'iyya* courts. This versatility of the SLPS also revealed itself in the fact that it authorised registration of proof of marriage, divorce and paternity *ex post facto*. This meant that customary marriages and divorces pronounced or agreed upon outside the courtroom could be registered at a later date at court. These extra-judicial options have proved beneficial to a great variety of people, for example for couples who did not wish to marry in court because they married someone against their families' wishes or because the spouses belong to different (Muslim) sects. Another group that benefited from these extra-judicial possibilities was the judiciary itself. The *ex post facto* registrations of marriages, divorces and proof of paternity unburdened the already overloaded judicial system. Besides, the versatility of the SLPS has proved to offer opportunities for creative legal solutions, in particular to legitimise children born out of wedlock. Because of the possibility to register proof of paternity *ex post facto*, an illegitimate child could be given a paternal name, even if the name came from a 'fictitious' father.

The SLPS itself was thus extremely flexible, in a sense that it does not claim regulatory exclusivity on marriage, divorce, and paternity. In other words, the Syrian government, similar to other Muslim-majority countries, allowed for other 'forms of normative ordering' (in this case customary law) to work alongside the legal system of the state. Despite its efforts to discourage traditional practices such as *'urfi* marriages and out-of-court divorces, the state continued to recognise them. Hence, there were several 'forms of normative ordering' at work in the domain of Syrian family law: the statutory laws were part of only one order among several.

Syria's plural legal system also allowed for Christian Churches to regulate their family relations according to their own canon laws. In the case of the Catholics of Syria, it permitted the import of Eastern Catholic canon law issued by the Bishop

of Rome, the Pope. Moreover, the Catholic judges in Syria have all been educated in Rome: if a Catholic priest wanted to work as a clerical judge, he was required to go through a thorough three-years training in Eastern canon law, which included the extensive regular procedures that need to be followed in any ecclesiastical trial. Hence, in the Catholic courts we found ‘foreign’ legal rules and procedures from Rome fused with Syrian national procedural laws. This is another example of how the Syrian government allowed for other ‘forms of normative ordering’, in this case (supranational) canon law, to work within the family legal system.

The Catholic personal status courts were different from their Christian and Muslim counterparts in several regards, mostly due to their alliance with the Church of Rome. However, they also shared some key similarities with other personal status courts, namely the prevalence of patriarchal family norms and values. During my fieldwork I had observed that the Christian and Muslim communities of Syria shared many common cultural values and traditions, in particular views on marriage, family, gender and sexual propriety. Throughout my time in a *shar‘iyya*, a Catholic, and a Greek-Orthodox personal status court (all in Damascus), I had noticed that the same themes were constantly addressed: the ideal of marriage, the proper role of women – wives in particular, the husband as the provider and head of the household, upholding the family honour, and so on. The attachment of these patriarchal norms and views were greatly appreciated in the various personal status courtrooms, regardless of their legal and religious differences, which brought me to the conclusion that these courts were united in their shared cultural understandings of gender, family relations, social norms and behaviour.

The interaction between various social, legal, and religious norms (codified and uncoded) in the field of family law cannot be underestimated. Ideas about proper gender comportment in family and marital relationships (public and private) shaped and influenced legal discourses and practices. In my observation, they were continuously expressed by individuals in the different court rooms and played a role in, most importantly, the assessment of spousal or parental behaviour of the parties involved. The narratives presented to the courts by the litigants, their lawyers and witnesses influenced the outcome of a case, as judges took social (and not necessarily legal) norms and values into account. Hence, the courts could be

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regarded as sites where norms and expectations were expressed, emphasised and reinforced, not just by the judges but by all those who work on or visit these sites.

A view to the future

This thesis has contributed to the growing body of literature on family law in the Middle East and North Africa in two ways. First, given the lack of studies on contemporary family law in Syria in general, there is an increasing need for more (e.g. legal, sociological, and anthropological) research on this subject. This present thesis fills part of that gap. Second, I have intended to contribute to an incipient field of study that focuses on a more integrated, convergent understanding of Middle Eastern family law (cf. Tadros 2009), by studying both Muslim and Christian social and legal practices. This study will hopefully prompt and encourage other researchers to conduct similar empirical, convergent or comparative research on family law in the Middle East, including research on, for example, other plural societies such as Israel, Lebanon and Jordan.

As this thesis has demonstrated, it is important to understand Syria's plural family law in its historical and socio-political context, which will add to our understanding of the current Syrian crisis that started in March 2011. In the Introduction, I stated that I believe that the way in which the (future) government of Syria – and the same applies to other Arab multi-ethnic and multi-religious states, especially those in transition – deals with the plurality of the personal status law, will be illustrative or indicative for the (future) position of minorities in the country, not only their position within the legal system but also their position in society. We have seen that family law has been used as a political instrument for governance and negotiation by various governments as well as the various religious groups within the country. In the current conflict, the government continues to play the 'secular card', claiming that only a secular, minority regime can protect the interests of the minorities against a Sunni majority. The government feels empowered in its propaganda by the emergence of several jihadi militant groups, whose members have attacked non-Sunni civilians. Yet, at the same time, the government have used these events to stir up sectarian divisions and strife amongst its population, in order to legitimise its rule and secure the support of the

minority groups. If – or better, when – this government is replaced by a new government, I truly hope that the country will be successful in overcoming these sectarian challenges and divisions by following the path of national, communal reconciliation and transitional justice, which will lead to a Syria that is united in its multiplicity.

