Debating Islamic family law in Palestine: Citizenship, Gender and 'Islamic' Idioms

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Abstract

This chapter sheds light on the family law debate in Palestine following the establishment of the Palestinian Authority (1994). It elaborates on the public debate and political contestation over attempts to reform the 'Islamic' family law during the second half of the 1990s. It describes and analyzes the various positions, articulations and styles of argumentation adopted by many actors involved in the debate. In Palestine, as in other Muslim-majority countries, diverging assumptions about the role of the shar'ia, Islam and gender were put forward as expressions of the 'social will' that each group claimed to represent. The paper analyzes the deep divisions that split Palestinians over conceptualizing the desired gender relations organized by the reformed family law, including its procedures and institutional organization.

Introduction

Unlike today's atmosphere in which pessimism is prevailing in the Palestinian territories, in the second half of 1990s Palestinians were optimistic; somehow confident that they are about to harvest the first intifada's sacrifices. With the establishment of the national authority in 1994, Palestinians were hopeful that they will finally be able to focus on their internal 'social' problems including gender issues. It was in this context that Palestinian women's movement took the lead in campaigning for family law reform as part of the state-building project anticipated after the signing of the Oslo agreements between the PLO

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and Israel in 1993, which led to the establishment of the Palestinian Authority (PA). This initiative of the women's movement triggered various reactions from different political and social groups, which led to intense discussion of family law in the public sphere to the point that it was defined as the first major social debate in Palestinian history. In comparison with other Arab and Muslim countries, the discussion about family law in Palestine is not unique. In all these countries, the debate has been based on struggle for power and hegemony. The Moroccan, Egyptian, Iranian and Yemeni debates of the 1990s focused on the place of Islam, the *shari'a* and religion in the lives of people and on determining who could claim the right to exercise *ijtihād* (independent reasoning).[1] They also referred to the notions of national and cultural authenticity and the ways in which various expressions of traditionalism and modernism are contested. All these elements are to be found in Palestine as well.

The debate on family law in Palestine presents certain similarities with those underway in other parts in the Arab world, in that personal status is used by many political actors to further their interests and gain power. For instance, when a project for family law reform was tabled in the Legislative Assembly in 1997, it elicited hostile reactions from the Islamist members. Their discourse, despite contextual differences, showed many resemblances to the Islamist discourses from other Arab countries. Similarly, the religious establishment, fearing to lose influence over *shari'a* courts, launched attacks on the women's movement activists, linking them with the 'West' and the 'conspiracy against Islam'. One distinct feature of the debate in Palestine is that it originates in the context of an on-going struggle for liberation and state-building, whereas in other Arab countries it was debated in the context of escalating tension between an already established state and emerging civil society.

This chapter presents the various issues at stake, beginning with a brief discussion of the political context in which family law debate took place in Palestine. Then the subsequent section will provide

details about the Model Parliament for Women and Legislation (MP), which was the climactic event of the debate. The chapter ends with concluding remarks.

Political Context of the Debate in Palestine

The process of state-building in Palestine counts as one of the most complex experiences in Third World history. The Palestinian Authority (PA), created after the signing of the Oslo agreements in 1993, lacks independence, sovereignty and control over its borders and resources. Even in those disconnected areas of the West Bank and Gaza Strip that are formally under its control, the PA's power is largely hampered by Israeli restrictions over the movement of individuals and goods, by the Israeli right – stipulated in the Oslo agreements – to supervise security in most areas and by the presence of hundreds of thousands of hostile Jewish settlers on Palestinian land, whose numbers continue to increase steadily.[2]

The situation is worsened by the PA's lack of previous experience in governance, the undemocratic political structure and the presence of a strong Islamist opposition. These deficits are combined with a severe shortage of natural resources and extreme economic dependency on Israel and the international donor community. The hostilities since 2000 show that signing a 'peace accord' on paper without establishing justice on the ground easily enables the iron fist of the powerful to prevail. As Hammami and Hilal (2001) observe, Israel now enjoys control over Palestinian public funds and hampers Palestinian workers' access to the Israeli labour market while fragmenting the occupied territories into dozens of encircled areas. Thus, it has made the PA's ability to practise self-rule, or even to carry out its assigned job as guarantor of Israeli security, a virtually impossible task.

The debate on family law began during the first years after the Oslo agreements. A central feature of Palestinian politics during that period was that while many Palestinians were enthusiastically debating

the laws and challenging their newly established government on the basis of equal citizenship, they were aware of the framework on which their new reality was being constructed, namely agreements which deprived them of their fundamental right to self-determination and independence; which approved and sustained their inequality with Israel; and which, by virtue of being signed by Palestinian representatives and approved by the international community, was a written surrender and acceptance of the unequal relation with the state of Israel.

Furthermore, the PA's discourse since the signing of the Oslo agreements has increasingly focused on negotiation at the expense of resistance, thus delegitimizing the resistance-based discourse of Islamists. The negotiation discourse has portrayed the Israeli abuses of Palestinians' human rights as mere violations of the peace process. Islamists, on the other hand, view the PA as no more than guardians of Israel's security (Sh'hada 1999). Avoiding the discourse of rights, as Welchman et al. (2002) argue, weakened the legitimacy of the emerging authority and made both the PA's search for legitimacy and Islamist opposition based on rights credible. This influenced the responses of these two players on the gender issue, particularly in the field of family law.

The post-Oslo political circumstances created a contradictory environment for the women's movement.[3] On the one hand, there was a conducive atmosphere; nationalists continued to recognize the role of the women's movement as vital; it was still the most active social movement (Hammami and Johnson 1999: 319). The project of a Palestinian 'state' was still in the making and there was thus room for negotiating gender; laws were being drafted and therefore social groups could lobby for change. On the other hand, the Palestinian Authority as an administrative body lacked power and resources; thus, the struggle for independence and self-determination remained the top priority. The likelihood of political compromises between the strong conservative Islamist movement and the Palestinian Authority at the expense of the gender issue was a real concern. It was these contradictory

circumstances that provided the political opportunity for the women's movement to initiate programmes and activities for legal reform (Abdulhadi 1998, Welchman et al. 2002). It raised issues related to equal citizenship at a time when the nationalist movement was at its 'lowest ebb' (Abdulhadi 1998: 661). The latter's failure to address issues related to social rights, democracy and freedom of speech was striking (Hammami and Johnson 1999: 319). The nationalist movement had faced severe setbacks abroad since the early 1980s due to the PLO's military defeat in Lebanon and in the occupied territories it was confronted with the rise of alternative political initiatives in the wake of the *intifāda*.[4] More generally, the new international order after the collapse of the Soviet Union was a decisive moment for many national movements including the PLO. The 1991 Gulf war was another breaking point because it altered the international and regional balance of power, putting the PLO in danger of being reduced to nothing more than a disintegrating and destitute bureaucracy located in Tunis. Its only aim was survival and its only claim to legitimacy was that it represented Palestinians (Bishara in Usher 1995). After 1993, political disputes over the Oslo agreements further impeded the nationalist movement from meeting the expectations of its constituents.[5]

The women's movement's public appeal reflected a particular political strategy. Instead of grounding its equality discourse on specific, exclusive gender rights, the movement communicated its message in the idiom of nationalism, state-building and democracy for which no national faction would disagree.[6] Its ability to enter the 'monopolised public space' (Bishara 1998) with new claims and demands allowed left- wing factions to reassert their presence in the political arena.[7] In other words, advocating family law reform 'opens up the possibility of new democratic alliance' with these factions (Hammami and Johnson, 1999:337). The same factions which were apologetic *vis-à-vis* the Islamists during the first Intifada (1987-1991), now became supporters of the MP. It was the social question posed by the MP, which the leftists had for a long time failed to advocate, that made possible a renewal engagement with

'masses'. One leftist leader commented on the MP campaign, saying that "the [MP] was like a light and we had to respond" (Zakut, 1999, cited in Hammami and Johnson, 1999:335).

Despite the ideological differences and heterogeneity within the women's movement, a common element emerged, namely a shift towards the public questioning of gender relations. This process was paralleled by a gradual institutionalization of the women's movement itself through the establishment of women's study centers and of grassroots organizations focusing on empowerment and awareness as well as the setting up of women's departments within ministries. Further, a number of organizations established programs reflecting the importance of family law reform and the provision to women of adequate advice and counseling in matters of divorce, child custody, sexual abuse and violence in the domestic sphere.

The women's movement, while appearing in public as a body unified around the question of family law reform, was in fact subjected to a number of limitations. Power relations developed within it based on differences in locality, access to material resources or publicity, and the expression of divergences with mainstream discourse on family law. Unity vis-à-vis others was no more than a mantle hiding divergences of vision and over access to power resources. Such differences were marked by strong criticism and counter-criticism expressed in memos and meetings, but they did not emerge in public. The reasoning behind this consensus on hiding discord was that washing dirty linen in public would give the Islamists further ammunition and thus would not be in the interest of any organization. In this sense, the women's movement had – at least – two facets: one of unity and harmony when encountering other political actors and the other marked by the exchange of invective within.

Model Parliament for Women and Legislation

The activities and initiatives of the women's movement culminated in the campaign for family law reform known as the Model Parliament for Women and Legislation (MP) in 1997-99. The MP project resulted from a four-year review of gender-based laws by a number of women's organizations and human rights centers. Established in 1997, the MP project aimed to propose Palestinian legislation based on equality and human rights. The campaign for family law reform was viewed as the first major social debate in the history of Palestine. It engaged a wide spectrum of political and social groups. For the first time, political actors of diverse backgrounds and interests used Palestinian television stations, radio, newspapers and posters to communicate a politicized gender discourse.

When the MP project started, its activities were organized in the West Bank by the Women's Centre for Legal Aid and Counseling (WCLAC) which had taken the initiative and obtained funding for the project in both Gaza and the West Bank. However, when the Gazan MP preparatory committee (of which I was a member)[8] received the proposed working manual from the West Bank, which was supposed to review all the gender-based laws implemented in Palestine, the committee found that no Gazan law had been considered.[9] This generated a sense of frustration and anger among the members.[10] The Gaza committee decided to ignore the West Bank manual entirely and design its activities according to what it described as 'Gazan specificity'. It decided to focus on family law only and to leave other less controversial laws to be reviewed by the West Bank group. Not only the women's movement, but all political actors, including Islamists, recognized the special significance of family law. Further, instead of appealing to human rights conventions and international measures when presenting its proposed reforms, the Gaza committee worked from within the context of the *shari'a*. It sought points of leverage by appealing to the principles of *takhayyur* (selection from different schools of *fiqh*), thinking that would prevent accusations of going beyond the boundaries of the *shari'a*. In this sense, the

suggestions made were not innovative.[11] The reforms proposed by the Gaza MP were in many ways

similar to, or even less 'revolutionary' than the laws already applied in other Arab countries. For

example, it was suggested that women should be guaranteed their legally prescribed and religiously

legitimate (*shar'ia*) share of inheritance. Concerning the rights of the *walī*, the draft proposed activation

of the already specified right of women to initiate their marriage contract as stipulated in the Book of

Personal Status Rulings.[12] Further, the MP committee proposed to limit polygyny to exceptional cases,

to subject it to the authorization of a *qādī* and to require that both the first and the second wife be

informed in advance.[13]

Despite all the efforts to accommodate others' perspectives, it appeared that they were not convinced of

the MP's sincerity. As one religious scholar put it, 'We know that the MP use the *sharī'a* as a mask to

further their evil project. They use it for public consumption and that is worse than rejecting the *sharī'a*

squarely.[14]

The suggestions for reform in Gaza were not top-down initiatives; rather, they were subject to

discussion and negotiation within the preparatory committee and then the wider community. Often,

certain suggestions for reform would be modified after a few rounds of debate. Even after a document

was drafted, the plenary session of the MP in Gaza could modify certain proposals.[15]   At the MP,

various approaches were recurrently presented by passionate activists. Some drew on personal

experiences and others were inspired by feminist writings. Yet other activists were well-versed in law,

fiqh or *sharī'a*. Most had been active during the first *intifāda* as members of the nationalist movement.

The majority perceived the MP as an exceptional platform for debating gender relations within the

wider framework of national aspirations for independence and self-determination. Therefore, the Gazan

leadership of the MP did its best to take advantage of the opportunity. For example, the seats in the

parliament were divided equally between men and women.[16] Attention was paid to maintaining social and political plurality so that the composition of the assembly would reflect the wider spectrum of Palestinian society. All political parties, civil society organizations, community figures, *imams*, Legislative Council members and religious leaders were invited to take part in the debate. During the preparatory meetings, members of Hamās, Jihād and national parties were invited, but the agenda for the meetings was prepared by the MP preparatory committee.

Public meetings were held in various localities and communities, with invitations to all groups to join the discussions. The members of the parliament and its chairperson and deputies were elected through a democratic process. It was an exercise of community democracy in which women took the leading role. The chief campaigners of the MP asserted two principles: first, the need to guarantee the broadest possible participation of groups from various localities and political backgrounds; and second, while maintaining plurality, stronger political groups should be prevented from manipulating the campaign and thus diverting it from its objectives.[17]

On 25 April 1998, the final session of the MP began in Gaza. Hundreds of guests representing political parties, the Legislative Council, regional and international guests, international news agencies and socially recognized figures attended. As Welchman et al. point out, almost all the speakers affirmed the important role of women in the national struggle, as well as the right of free speech as fundamental to the nationalist project. Typically, women's rights were linked to the modernist and nationalist project of state building. Nationalism was also evoked as a justification for legal reform, including personal status laws: the laws in force were repeatedly described as 'foreign' and imposed by occupying powers. When it came to the specifics of reform, however, most of the political leaders were either vague or somewhat conservative in their focus and recommendations (Welchman et al. 2002: 26).

During the final session, the MP members debated the measures that had been drafted by the committee and discussed in different localities and communities. At one point, while discussing a man's right to marry more than one wife, the parliament members split into two camps. One advocated the man's right to marry more than one wife, not with reference to the *shari'a* but to the politics of Islamic family law: '[If we opposed the right to marry more than one wife,] tomorrow we would appear in the newspapers as opponents of Islam and the *shari'a* and this would be an excellent weapon in the hands of the Islamists. We have to avoid that.' The second camp advocated a ban on polygyny, arguing for radical social change: 'If we keep compromising, we will never win.' The man's right to marry more than one wife was not at issue. Nor is polygyny a symbol of adherence to or divergence from Islam. The political and social price paid by those labeled as religiously or culturally 'unauthentic' was in fact the real issue. The proposal was won narrowly, with 42 for, 32 against, and 5 abstentions.

The assembly members also disagreed over the issue of a *wali*'s rights. The MP's draft document proposed that no marriage contracts should be initiated for persons under 18 and that the consent and signature of both spouses should be required. This proposal implied abolishing the *wali*'s prerogatives, which entitle the male guardian not only to sign the contract but, on some occasions, to decide who should marry whom. Here, the divisions were more complex. Astonishingly, some female members argued against the proposal, fearing the heavy social price the family would pay if its right to consent was not acknowledged in law: 'How could we face our community if our children married without our blessing? That would not only be embarrassing, it would be disastrous,' a communist female member protested. Another member agreed: 'Our children's marriage is the occasion on which we display our pride and dignity. What would remain to us if the law robbed us of it?' One of the deputy chairpersons, a 65-year-old *imām*,[18] who had maintained a dignified silence in the proceedings until then, could not

hold his tongue any more. 'You will all pay for that; I swear in the name of God that I am against the fathers who take advantage of their rights as *walī* to coerce their daughters to marry or not to marry, but the proposal will inflict major harm on all of us including myself. Be smart and do not force the issue because this is a red line in our society.' The proposal was not adopted.

Two discourses had emerged during the year that led up to the opening of the MP. The first argued for termination of the existing power structure of marriage and its replacement with a relationship based on equality.[19] The other insisted that any reform should preserve the Islamic quality of Palestinian legislation. Reform should be derived from the *sharī'a*.[20] They feared that overlooking the cultural, political and social connotations of Palestine's Islamic identity would impact negatively on the women's movement in the eyes of the wider society and give additional ammunition to its opponents. The profound change in the political atmosphere symbolized by the establishment of the PA brought intense and vibrant debate over what are defined by some as 'inherited laws'. Novel appeals to various conceptions of citizenship intertwined with ambivalent statements of identity and various visions of state-building.

In the Palestinian public sphere, the family law debate was both open and controlled. It was characterized by the inclusion of new participants and publics, yet various control mechanisms were imposed by powerful actors to silence certain identities, prohibit given subjects or impose chosen methods of deliberation (Moors 2003). Actors often shifted the debate from one domain to another. At certain moments, religious leaders, for example, asserted the right of *ahl al-ikhtisās* (religious specialists) to exclude specific participants from the process of deliberation. At others, they transferred the debate from the social and political domain to a more morally charged and religiously sensitive sphere. At yet others, they stirred the public up by stressing the danger of any reform of the family institution. The

articulation of arguments and the processes of exclusion or inclusion of subjects and identities were just indicators of how the power structure can compromise the course of deliberation, even in the absence of formal acts of exclusion (see Fraser 1993).

The religious establishment influenced the debate through speeches in mosques, at public meetings, on television programs and in newspaper articles. Some *qudāh* kept their distance from Islamists, perhaps fearing that their attitude would be interpreted as a form of opposition to the newly established PA, while others were explicit in their association with the Islamists. The above illustration is derived from my personal involvement in the campaign for family law reform in the Gaza Strip. The following characteristics of the debate on family law reform, however, apply to both the Gaza Strip and the West Bank.

First, the question of who is allowed to speak about family law (in the public sphere) authoritatively and depict other voices as irrelevant was posed clearly: for example, the foremost religious figure in the counter-campaign was Shaykh Bitāwī, who was well known in the West Bank for his vocal opposition to the women's movement. His intervention was sparked off at an MP meeting conducted by a human rights specialist in Nablus in early March 1998. During the session, Shaykh Bitāwī objected to her discussion of family law on the grounds that she was a 'Christian' interfering in 'issues that concern Muslims'. 'We do not interfere in your religion and you should not interfere in our legislation,' he told her.[21]

Second, the issue of who is allowed to speak was intertwined with the question of representation. In an article on 26 March 1998, Shaykh Jarrār denounced the MP activists as misrepresenting Palestinian women's needs and aspirations: 'There are a number of figures who claim that they represent

Palestinian women. They should let the Palestinian nation decide who should talk in its name. [22]In the same issue of the *al-Ayyām* newspaper, Shaykh Jarrār wrote a reply to a communiqué by the General Union of Palestinian Women (GUPW) which had denounced the campaign launched in the mosques against Palestinian women 'who participated in the struggle and made every sacrifice for liberation and independence.'[23] He wrote, 'We request the GUPW not to talk in the name of Palestinian women and not to use Palestinian women's struggle to impose the opinions of some figures. The GUPW is allowed to sign in the name of its members only when all members sign its communiqués.'[24]

The above example is better analyzed if it is linked with the religious leaders' discourse regarding the issue of special competence *'ahl al-ikhtisās'*. The claim that only the religious leaders have the required competence aimed at excluding women activists from the debate. In an interview published on 5 March, Shaykh Bitāwī launched a fierce attack on the MP, denouncing its attempts to exclude religious jurists from the debate: 'The MP is administered by culturally alienated women who have no connection with our Islamic *sharī'a*. *Ahl al-ikhtisās* (specialists) like *qudāh* and professors of *sharī'a* […] and *rijāl al-iftā'* [religious jurists], who have worked for decades, are kept away.'[25] In another interview, Shaykh Bitāwī asked: 'If they claim that they want to work from within the *sharī'a*, why did they not consult us? We are the specialists (*ahl al-ikhtisās*), not they!'[26]

Third, various religious leaders felt that their hold on the *sharī'a* courts, and thus their interests, were threatened by the MP proposal to replace the *sharī'a* with *nizāmiyya* (civil) courts. It is in such incidents that the struggle over authority and institutional power is noticeably revealed. A striking element in the religious establishment's response was the accusation that *sharī'a* courts were being treated as an administrative rather than a religious institution. In an interview, Shaykh Bitāwī, head of the *sharī'a* Court of Appeal, said: 'The MP activists are working against the *sharī'a* since they propose that *nizāmiyya*

courts should replace the *sharī'a* court in issues related to marriage, custody and divorce. This implies a cancellation and elimination of the *sharī'a* court'.[27] Other religious leaders also expressed anger over the proposal to transfer the mandate of the *sharī'a* courts to civil courts. On 26 March, Shaykh Mahmūd Salāmeh, a *qādī* in the Gaza City *sharī'a* courts who later became the deputy *qādī al-qudāh* and has close ties with Fatah and the Palestinian Authority, told a meeting at the Islamic University of Gaza: 'The most dangerous issue in the MP is its proposal to rule on personal status issues in the *niẓāmiyya* instead of the *sharī'a* courts.[28]

Fourth, in addressing the public, the style of arguments was indicative: religious leaders did not only count on physical intimidation, they also labeled the MP proposals anti-Islamic. Their discourse of family ethos based on love and compassion was charged with nationalist sentiment and appeals to Palestinian masculinity. The following extract from a newspaper interview with Shaykh Jarrār is an example of how Palestinian masculinity is invoked:

> The MP wants to humiliate men; the problem is not political, but religious. The MP proposals pertain to our lives and families … The MP proposals start from 'equality', a notion of Western origin. We accept the 'equality' notion, but it should be clear that its definition and conceptualization have to be given in the framework of Islam, which grants women better rights than the West. What the MP presents is against the *sharī'a* and the Quran as well as the will of the *'ulamā'*.

Shaykh Jarrār then employed the Islamists' favorite tactic against the MP, linking it with Western enemies of Islam: 'They are supported by Western funds; they want to enforce the Western concepts and Western lifestyle over our lives and civilization.' Commenting on the women's struggle against occupation, he said, 'All the Palestinian people participated in the struggle against Israel, not only women's groups … their participation does not give them the right to rebel against *sharī'a*' (cited in

Hamdan 1998: 4). A few days later, Shaykh 'Ammār Badawī, the *muftī* of Nablus, declared that the MP's suggestions were intended to destroy the Palestinian family, an objective that even the Israelis had not achieved.[29]

Fifth, the competing camps were not unified. Even within the religious establishment, some voices appeared less convinced by the above discourse. For example, Shaykh Zuhayr al-Dib'ī, an *imām* at the largest mosque in Nablus and a member of the MP, told *Al-Ayyām*:

> The personal status code is not the monopoly of *ahl al-ikhtisās*. Every citizen is affected by it and consequently all of us should discuss it. As a citizen, I have four daughters and I am concerned about their future. As a preacher, the law concerns me. They [those who attack the MP] depicted the MP campaign as if it were an attempt to assassinate the *sharī'a*. This is not true. This is a dangerous charge against our sisters and against us as MP members. The *sharī'a* is the same everywhere, but each country has to codify it according to its circumstances. What we wanted to do is to protect Islam from the abuses perpetrated in its name. Some men marry a second wife the same way they buy another car, which is not Islamic.[30]

The need for reform was also addressed by Dr. Hasan al-Jūjū, a practicing *qādī*, in an article on 16 March 1998 that offered a careful examination of family law, its origin and the reasons motivating its reform (Welchman 2003 analyses al-Jūjū's position at length). He is possibly the only *qādī* who provided a balanced account of what could be done and how. In his view, family law should be reformed to meet the needs of contemporary life. He quoted *qādī* Ibn 'Abdīn and Caliph 'Umar bin 'Abd al-'Azīz to justify the legitimacy of reform: 'It has become very important to reform the personal status laws in all the Palestinian territories and to unify them by eliciting the proper measures from the four *fiqh* schools and selecting from among them the ones that meet people's interests *(masālih)* and correspond to the spirit

of the time. This could be done within the flexible and fertile framework of Islamic legislation. We should follow the methodology of selection (*takhayyur*) because confining ourselves to one *madhhab* has shown that there are dispositions that do not meet the requirements of contemporary life. If *ijtihād* does not rely on *nass* (holy text) it is often derived from *'urf* (custom). And in this case, *ijtihād* should be treated as an opinion which might be wrong or right,' he wrote.[31] However, *qādī* al-Jūjū was firm about his rejection of certain changes suggested by the MP: 'The voices that demand equality in inheritance and the cancellation of men's *qiwāma* (precedence) over women should be denied and denounced because they cause *fitna* (discord) and they declare an aggression against our religion and civilization,' he concluded.[32]

These differences in viewpoint show that the religious establishment is not a monolithic institution. There are those who construct their discourse on mere ideology, motivated by their politico-economic interests, and those who take a practical stance due to their daily contact with the problems and dilemmas of people in matters of personal status. These differences demonstrate the importance of taking into consideration the attitudes of practitioners: when they become involved in the debate, they often express more balanced and concrete views. This stance, as Masud (2001) argues, indicates that the normative basis of law lies not in the debate but elsewhere; it is in the social reality which has been disregarded by both camps. Masud (2001: 5) points out that the current debate in the Muslim world regarding the role of Islamic law indicates the existence and persistence of three levels of contradiction: (i) The political conceptualization of the *sharī'a* is based on a moral stance while law is likely to be more pragmatic. (ii) On the social level, women suffer from the contradictions between the ideals of the *sharī'a* and the social norms. (iii) On the religious level, a contradiction between legal norms and Islamic ethical values still exists. While practitioners throughout Islamic history have tried to reconcile social norms and Islamic law by invoking principles of necessity, convenience, preventive measures, state of

emergency, and so forth, contradictions persist because these measures have not been incorporated as 'norms' in legal theory.

The women's movement and its supporters structured their arguments in the framework of nation-building, democracy and freedom of speech. The Christian Human Rights specialist who was attacked by Shaykh Bitāwī even claimed her right to *ijtihād* on the basis of being a Palestinian activist at the national as well as community levels: 'No one should say that I am not from *ahl al-ikhtisās*. I have the right, just as any other Palestinian, to debate the law and propose alternatives. We have a right to exercise *ijtihād* because we work with women, live in Palestinian society and struggle to build our Palestinian society. We have the right to speak because we are legal specialists.'

The campaign continued and more actors joined the debate. Academics from Birzeit University wrote articles and produced programmes on Palestinian television in favor of the MP. The majority of Legislative Council members expressed their sympathy with the MP campaign in newspaper interviews and by attending MP sessions. Several lawyers expressed diverse attitudes and arguments. Almost everyday, articles appeared in the newspapers dedicated to the issue of personal status. Arguments and counter-arguments were put forward from various quarters. Some groups in the Gaza Strip (and the West Bank) used other means of publicity. The walls, which had been freshly painted after the arrival of the PA, were taken over by some groups as a legitimate public space to convey their agreement or disagreement with the MP. Some MP posters were replaced by hand-written statements denouncing what they termed an attack on 'Islam and the *sharī'a*' and threatening MP members. In this sense, laypeople were actively engaged in the debate not only through usual forums, such as active discussion in seminars or workshops, but also by voicing their opinions through all available avenues. The Palestinian public sphere hosted conflicting and competing publics (see Fraser 1993, Eley 1993) as it

witnessed one of its most intense debates ever. Family law had sharply divided Palestinians into at least two camps: those who supported pluralism and freedom of expression and those who aimed at monopolizing *sharī'a* and Islam.

A survey conducted by the women's study program of Birzeit University showed that the question of reform responds to highly conflicting interests and values. The analysts demonstrate that while respondents are committed to equality and justice, these sentiments co-exist with their desire to preserve gender hierarchy within the family (Welchman et al. 2002). In a similar vein, contradictory attitudes exist with regard to legal reform. People believe that they have the right to determine what religious law should be, but, simultaneously, they favor expanding the role of religious authorities. The study concluded that these contradictions may obtain within each individual. Legal reform should thus take into consideration not only notions of equality, but also other controversial values and interests.

Before concluding, I would like to mention that the strong apposition led the women's movement to decide (after the Model Parliament completed its activities) to work on the question of family law reform by following a different strategy. In particular, activists opted for 'low-key' lobbying instead of a loud popular campaign. This meant that the focus was on activities such as meeting with politicians, lobbying decision-makers, influencing Legislative Council members, and so forth, in order to muster wide political support for its new family law draft. This strategy was meant to counteract that of Islamists and religious leaders, who have better access to the public thanks to better means of communication and a discourse that invokes people's religious and cultural heritage. The women's movement lacked this capacity to communicate with the public.

Conclusion

This chapter investigates the identity and positions of the participants in the debates, the way they conceptualized family law and the idioms they used to communicate their positions. The main factor affecting any activity in Palestine is the Israeli occupation. Checkpoints on Palestinian territory prevent the free movement of goods and people. Settlements, in conjunction with these barricades, fragment the population and land. With Israel controlling Palestinian internal revenue, the Palestinian Authority has limited power and resources at its disposal. Thus, the need for independence and self-determination overshadows everything else. These conditions explain why Palestinian public discussion on family law differs from that conducted in other Arab countries. Whereas debate in the latter reflects tension between the state and civil society, the Palestinian debate has developed in the context of the national struggle for liberation and state-building. Thus, in Palestine, not only is the question of who may claim the right to interpret the sources of law central, but so is the clash between appeals for reinforcing equal citizenship rights as opposed to cultural and religious specificities in the framework of the national struggle for independence. This aspect has influenced participants' discourse and shaped their argumentations. They often refer to the substance of family law, yet frequently argue with reference to nationalism and state-building.

With this in mind, the chapter analyzed the Model Parliament for Women and Legislation (MP) which was the climactic focus of the debate on reforming family law in Palestine. The MP was a popular exercise to analyze and recommend changes to the law. Five main features were observed: First, the question of who is allowed to speak about family law authoritatively while depicting other voices as irrelevant was posed clearly. Second, the women's movement and the religious establishment were not unified. While the Gaza MP based its discourse on *shari'a* by stretching the principle of *takhayyur* to its

utmost limits, the West Bank MP referred to the principles of human rights. The religious establishment, for its part, did not emerge as a monolithic bloc; some of its members did realize the need to remedy certain gender-based injustices of family law. Third, analogously to the debate in other Arab countries, the Palestinian discussion appeared both open and controlled; open in that it included new participants and publics, yet controlled in that powerful actors silenced certain identities, prohibited given subjects or imposed chosen methods of deliberation (see Moors 2003). Fourth, significant among the controlling mechanisms was the strategy of both opponents and supporters of reform in shifting the domains of debate from one sphere to another. Religious leaders in some instances asserted the right of *ahl al-ikhtiṣāṣ* (specialists) to exclude particular actors from the process of deliberation; in other instances, they transferred the debate from the social domain to the political or entered a more morally charged and religiously sensitive sphere. Still, they always stressed the danger that reform would pose for the institution of the family. The women's movement (in both Gaza and the West Bank), in contrast, was less successful in shifting course. The main thrust of its discourse was to articulate gender needs and interests in idioms related to nationalism, state-building and democracy. This strategy was generated from the movement's conscious attempt to locate its arguments around issues less related to sexuality and sexual rights (see Peteet 1999) which family law regulates.

The year-long discussions and deliberations were a marathon social exercise not only for the women's movement but also for other social actors. Family law reform was a political project in which diverging assumptions about the role of the *sharī'a*, Islam and gender were put forward as an expression of the 'social will' (Hammami 2004: 126) that each group claimed to represent. The chapter showed the extent to which such debates can be divisive.

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Endnotes

[1] See Moors (1999) which compares the text of family law with social practice in the Arab world, and Moors (2003) which explores various positions, styles and modes of argumentation that appeared in the 1990s. Welchman's contribution to Moors (2003) reviews the debate in Palestine, whereas her previous work (Welchman et al. 2002) assesses the legislative and lobbying initiatives related to Islamic law. Welchman (2000) further examines both the debate and application of family law in the West Bank from a legal perspective. Buskens (2003) links the debate on family law with the emergence of a public sphere in Morocco and the struggle of various political actors for legitimacy and power. Shaham (1999) examines Islamic marriage contracts in Egypt. Mir-Hosseini (2000a) compares the application of family law in Iran and Morocco. Moghadam (2001) studies the emergence of Islamist feminists and their engagement in the reform debate. Wurth (2003) deals with Yemen and shows which perspectives emerge from the different positionalities of women. Hammami and Johnson (1999), Sh'hada (1999) analyse the Model Parliament for Women and Legislation in Palestine.

[2] This was still true of the situation at the end of 2004, before the announcement of the Israeli intention to withdraw from Gaza and to close down four west Bank settlements. At the same time, some West Bank settlements were being expanded with official Israeli permission, so it remains to be seen whether such a withdrawal, if actually carried out, is merely meant to legitimize permanent status for and expansion of the remaining settlements in the West Bank.

[3] Women's involvement in the national struggle has been extensively researched in the last two decades. Researchers have focused on investigating whether the national struggle provides sufficient room for women's emancipation or presents an obstacle to it. Most feminist scholars have confirmed that national movements are predominantly patriarchal and that women are often co-opted during national struggles. Palestinian nationalism, as Peteet (1999: 71) observes, is characterized by 'contradictory potential'. On the one hand, it acknowledges the multiplicity of women's positionalities; on the other, it has 'denied them the status of either independent agency [and has not] accept[ed] them as a basis from which to launch political organizing'. For reasons related to the scope and focus of this study, I will not review the history of the women's movement in Palestine. There is, however, a vast amount of literature concerning particular sections of Palestinian women's activism, often linked with the secular national movement. See, for example, Peteet 1999, 1991, Hiltermann 1991, Jad 1995, Abdo 1999, Hammami 1990, Hammami and Kuttab 1999, Sayigh 1993, Ameri 1999, Dajani 1994, Gluck 1997, Sharoni 2001, Abdulhadi 1998 and Kuttab 1993. For literature related to the question of women and nationalism in the Third World, see, for example, Kandiyoti 1991 and 1997, Joseph 1991 and 1986, Badran 1993, Molyneux 2001 and 1998, Hatem 1993, Jayawardena 1989, Chatterjee 1993 and Mohanty et al. 1991. For a more general theorization on women and nationalism, see, for example, Yuval-Davis 1992 and 1997, Pettman 1996 and Walby 1996

[4] The *intifāda* (meaning 'uprising') was a mass protest against the Israeli occupation of the West Bank and Gaza. It started in December 1987 and continued until the beginning of the so-called 'peace process' initiated by the U.S. after the Iraqi defeat in the Gulf war of 1991. It shifted from mass-based actions to prolonged, institutionalized actions. The main objective of the uprising was to exhaust rather than evict the occupying power through a combination of local and international pressure. The most remarkable features of the *intifāda* were not only the participation of Palestinians from all sectors and classes but also the ease with which mobilization was carried out and support structure built within a few months of its eruption (Hiltermann 1991).

[5] For more details on the Oslo agreements, see Usher 1995.

[6] Peteet (1999) points out that this specific strategy of Palestinian women emanates from their deliberate attempt to locate their arguments within the human rights and democracy paradigm rather than around issues related to sexuality.

[7] Bishara (1998) argues that the post-Oslo period witnessed a growing demobilization of political activities in the West Bank and Gaza due to the multiplication of security services by the PA.

[8] The members were selected on the basis of 'democratic' election among the activists of civil society organisation. More than three months of preparations were spent in deliberations and discussion to find the proper form on the basis of which the committee should be 'elected', its mandate, responsibilities and representation.

[9] The manual, written by a Jordanian lawyer familiar with the West Bank legal system and laws, was: A. Khadr (1998) *Al-qanūn wa al-mustaqbal al-mara' al-falastīniyya* (Law and the Future of Palestinian Women). Jerusalem: WCLAC and UNDP.

[10] Gazans often feel that West Bankers treat them with certain arrogance. There are historical reasons for this, but it is beyond the scope of this study to go into them.

[11] The final text proposed the age of marriage to be set at 18 for men and women; abolition of the institution of guardianship; alimony (*nafaqa*) should be paid from the date of separation; legal rights of inheritance should be protected by the state; state-regulated polygyny; husbands' second marriage should be for 'serious' reasons for which the first wife should be informed; instead of unilateral divorce, the course should be the decision-maker; mothers' renunciation of their custody rights should not be accepted; custody decisions should apply to children up to the age of 18; the best interests of children should be the guiding principle for deciding custody cases (Nashwan 1998).

[12] The Book of Personal Status Rulings According to the School of Abū Hanīfa compiled by Qadrī Pāshā of 1875 specified that the *bāligh* (mature woman) does not need the permission of a *walī* to initiate her marriage contract. This article is derived from the *Hanafī* school of thought. Article 34 states that 'the *walī* is a condition for the legitimacy of under-age men and women' (*al- walī shart li-sihhat nikāh al-saghīr wa al-saghīra*) and 'the *walī* is not a condition for the legitimacy of the marriage of free, mature and *bāligh* [men and women]' (*wa laysa al- walī shartan li nikāh al-hur wa al-hurra al-'āqilayn al-bālighayn*), their marriage is valid without a *walī* (*bal yanfuth nikāhahuma bila walī*).

[13] For more information, see K. Nashwan (1998) '*Muqtadayāt li-qanūn ahwāl shakhsiyya falastīnī muwahhad*' ('Requirements for a Unified Palestinian Personal Status Law'), Discussion Paper, Model Parliament for Women and Legislation.

[14] Abū Sibbah, Shaykh 'Attā Allāh during a public discussion, 1998. He is professor of Islamic Studies at the Islamic University of Gaza.

[15] The suggestions for reform are summarized in K. Nashwan (1998).

[16] The symbolic number of seats was initially equivalent to that of Legislative Council members, 88, but was then increased to 120 due to the number of people wanting to participate. In the West Bank, the central session maintained the number of seats at 88.

[17] 'Stronger political groups', in this study is a reference to the PA leading political party (Fatah) and its Islamist rival (Hamās).

[18] *Imām* means the leader of the congregation prayer.

[19] This view was expressed mostly by NGO members, for the most part funded by Western NGOs, who adopted the mainstream discourse of human rights and democracy.

[20] This view was by and large adopted by the activists of the General Union of Palestinian Women. Most of them were members of the ruling party, who on the one hand stressed the need for reform, and on the other hesitated to antagonize the Islamists.

[21] *Al-Ayyām*, 19 March 1998.

[22] *Al-Ayyām*, 26 March 1998.

[23] GUPW communiqué, published in *Al-Ayyām*, 25 March 1998.

[24] *Al-Ayyām*, 26 March 1998.

[25] *Al-Risāla* weekly, 5 March 1998.

[26] *Al-Hayāt al-jadīda*, 19 March 1998.

[27] *Al-Ayyām*, ibid.

[28] *Al-Hayāt al-jadīda* daily newspaper, 26 March 1998.

[29] *Al-Quds* daily newspaper, 18 March 1998.

[30] *Al-Ayyām*, 21 March 1998.

[31] *Al-Ayyām*, 16 March 1998.

[32] *Al-Ayyām*, 16 March 1998.