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One Hundred Years of Family Law Reform in Parliament, in Court, and on Screen

Gianluca Parolin
gianluca.parolin@aku.edu

Nadia Sonnevald

Nathalie Bernard- Maugiron

Enas Lofti

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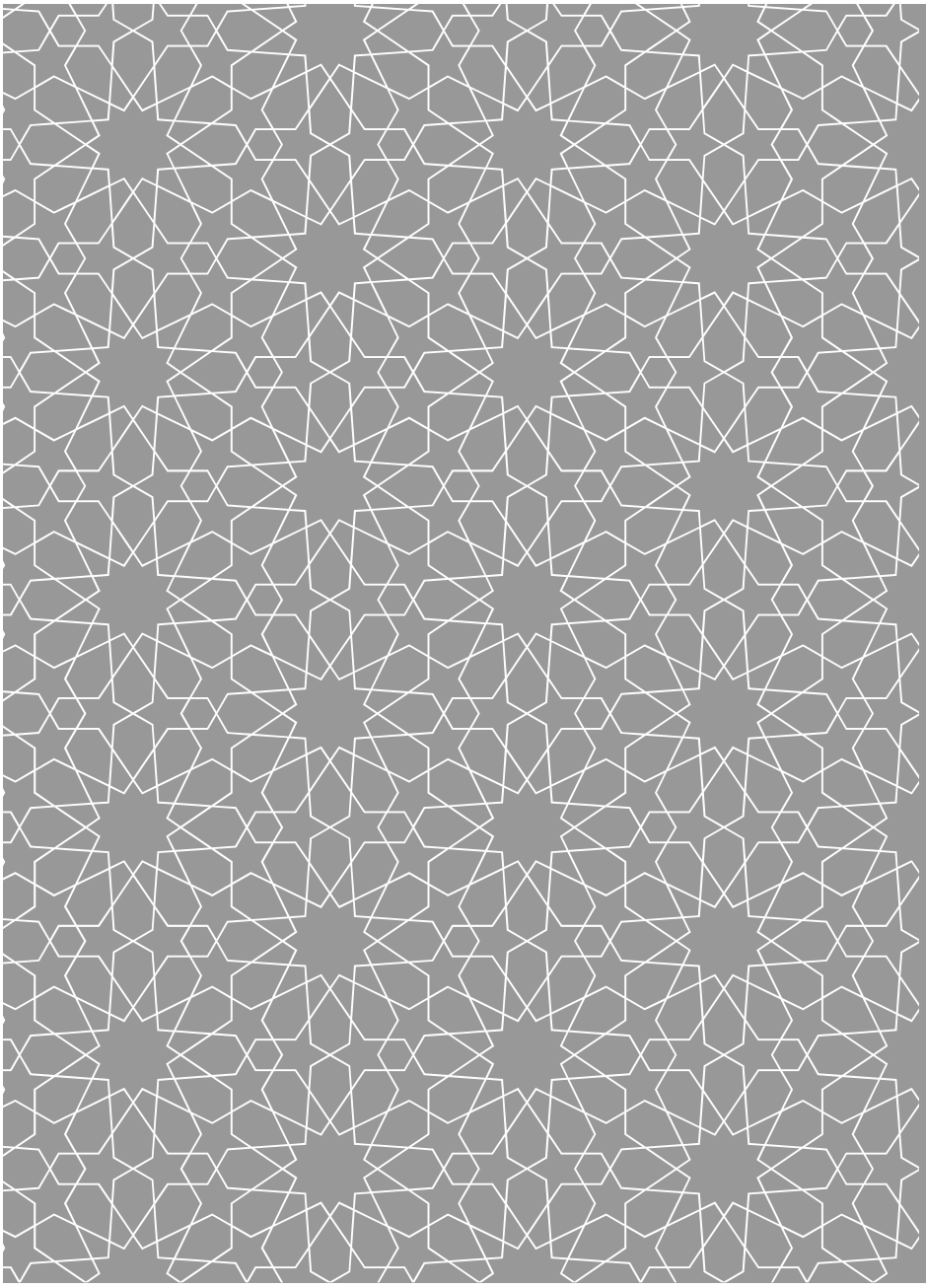
Gianluca P. Parolin (ed.)
With contributions by: Nadia Sonneveld, Nathalie Bernard-Maugiron, Enas Lofti



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Abstract:

Legislation as a way to regulate personal status matters has — over the period considered — come to embody the chief mode of (legal) reform of personal status. While recognising its tremendous impetus, this paper interrogates the very form of collective decision-making that legislation signifies, its operationalisation in adjudication, and its interrelation with popular culture. The three contributors identify some of the areas where these dynamics have surfaced in their experiences as both academics and practitioners and consider the Egyptian legal system, which is meant to function as a case study rather than a normative model. To appreciate the functioning of collective decision-making on matters of personal status, Nadia Sonneveld focuses on the different approach of the state towards the regulation of personal status for its Muslim and non-Muslim citizens. The 'best interests of the child' is the lens through which Nathalie Bernard-Maugiron illustrates the multiple entanglements of legislation and its eventual actualisation in Egyptian courts. Enas Lotfy discusses the classical examples of Egyptian cinema that are popularly associated with changes in legislation and underlines how the big screen in Egypt has often been the place where some of the most contentious and divisive matters of personal status have been discussed before (or away from) legislative intervention.

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The Governance Programme

General Introduction

Gianluca Parolin*

An anniversary provides a good opportunity to sit back and reflect on both accomplishments and challenges, and a centennial even more so. The end of the second decade of the twentieth century marked the beginning of sustained state interventions in the domain of personal status in the Arab world. The first of these was a set of modest reforms introduced by the Ottoman Law of Family Rights of 1917 and the Egyptian Law 25 of 1920. A century later, we asked three prominent contributors to lay the foundations of a reflection on the enormous transformations that have occurred in these 100 years in anticipation of a wider discussion, which we hope will take the form of a symposium.

Legislation as a way to regulate matters of personal status is certainly a formidable innovation, and — over the period considered — it has come to embody the chief mode of (legal) reform of personal status. While recognising its tremendous impetus, we want to interrogate the very form of collective decision-making that legislation signifies, its operationalisation in adjudication, and its interrelation with popular culture. Our three distinguished contributors provide us with insightful entry points into these questions by identifying some of the areas where these dynamics have surfaced in their experiences as both academics and practitioners. The legal system that all three contributions consider is that of Egypt, which is meant to function as a case study rather than a normative model.

In order to appreciate the functioning of collective decision-making on matters of personal status, **Nadia Sonneveld** brings to our attention the different approaches of the state towards the regulation of personal status for its Muslim and non-Muslim citizens. While this epitomises a distinct differential relation between the state and its Muslim and non-Muslim populations, the author offers us a parallel reading of reforms of personal status matters for Egypt's two largest denominations: Sunni Muslims and Coptic Christians. The span of a century — divided by the author into three phases — allows us fully to grasp how reforms for these two groups of citizens followed trajectories that can hardly be described as parallel. The author's parallel analysis, however, aptly foregrounds the question of collective decision-making (legislation) as an instrument of reform in matters of personal status when, for a

* Gianluca Parolin is Professor of Law and Faculty Lead of the Governance Programme at AKU-ISMC.

sizeable section of the population, these reforms do not even take the form of state legislation.

The 'best interests of the child' is the lens through which **Nathalie Bernard-Maugiron** illustrates the multiple entanglements of legislation and its eventual actualisation in Egyptian courts. Although the 'best interests of the child' made their appearance in Egyptian legislation and were even consecrated in the 2014 Constitution, the author notes how judges tend to read the previous regulations as a perfect incarnation of these new, undefined 'best interests of the child', effectively neutralising the legislative reform. Both judges and litigants engage with matters of custody and visitation in terms of rights claimed either by the child's mother or father, while the child and its 'best interests' recede into the background. In this endeavour, the author notes that both judges and litigants mobilise references that range from classical fiqh all the way to international law. In the context of this established case law, the author presents and analyses two cases in which the presiding judges decided to deviate from the standard construction of the 'best interests of the child' so as to accommodate visitation rights and even overnight visitation to the non-custodial parent.

Besides discussing the classical examples of Egyptian cinema that are popularly associated with changes in legislation, **Enas Lotfy** underlines how the big screen in Egypt has often been the place where some of the most contentious and divisive matters of personal status have been discussed before (or away from) legislative intervention. Comedy, in particular, seems to emerge as a very welcoming and fecund genre for critical societal discussions. Some of the more contentious and divisive matters appear to be addressed in comedic films, including one whose story and script was authored by our contributor: **Bashtarī Rāğil* [A Man Wanted, 2017]. The Egyptian celebrities starring in it and its comedic style brought a wide audience to engage with a very delicate subject in contemporary Egypt: a woman's desire for maternity while refusing marriage. The author further elaborates on her own experience as a screenwriter in relation to topical social issues such as matters of personal status.

It is our sincere hope that you will enjoy the richness of these first reflections that our illustrious contributors have kindly shared with us, and that you will also later join us in the symposium dedicated to *One Hundred Years of Family Law Reform in Parliament, in Court, and on Screen*.

Making Up the Balance: A Century of Muslim and Coptic Family Law Reform in Egypt

Nadia Sonneveld

Introduction

In 1920, when Egypt was still a British protectorate (1914–1922), a committee of religious and legal scholars introduced Egypt's first codified family law (Law No. 25/1920). The law was considered a landmark development, both in Egypt and the wider Muslim world. This and subsequent Egyptian family law reforms received much scholarly attention. In many studies, the predominant focus is on the position of women and how religious laws impact on their lives. Relatedly, scholars often ask whether the reforms led to social change and gender equality. One hundred years of family law reforms looks like a good moment to reflect on these questions. I, however, propose to use the occasion to assess the biases in the field and advocate for a more holistic approach to the study of religion-based family law. By moving beyond the almost exclusive focus on Muslim women, and including in our analyses neglected groups, such as men, migrants, non-Muslims, and people with physical and mental disabilities, we can make up for the fact that an important part of empirical reality has remained under-studied.

Both in feminist and sociological literature, family law policy is frequently used to measure the extent to which states are committed to gender equality (Sonneveld 2017: 89). Gender equality is at the heart of human rights and stipulated in universal human rights treaties, such as the Convention on the Elimination of all Forms of Discrimination Against Women (hereafter: CEDAW). However, while CEDAW applies to women worldwide, there is an over-emphasis on Muslim women and gender inequality within Islamic religion, despite the fact that various family laws of Jews and Christians in the Middle East and North Africa (hereafter: MENA) region also discriminate on the basis of gender.

A good example is the draft of a unified personal status law (hereafter: PSL) for Egyptian non-Muslims, which the religious representatives of the Catholic, Protestant and Orthodox communities in Egypt composed and discussed in 1978 and again in 1998 and 2010, under the leadership of the late Coptic Orthodox Pope Shenouda III. This draft contains a number of provisions which undermine gender equality. For instance, a wife must obey her husband in all that is related to his marital rights and respect her obligations towards her home, and a husband can forbid his wife from

studying or working outside the home in case of interference with the interests of the children or the management of the household (Bernard-Maugiron 2011: 383).

In a study on family law reform in Jordan and Morocco, Engelcke aptly remarks that "whereas shari'a court judges … have attended CEDAW meetings … and hold strong views on CEDAW, church court judges in Jordan stated that they had never been confronted with CEDAW and that there was simply no pressure to reform" (2019: 239). Moreover, "… a Jordanian shari'a judge criticized that Islamic law and shari'a courts in general are often under the microscope of the international community, especially international bodies like CEDAW", whereas the Christians courts "can do whatever they want" (ibid.). This interview fragment clearly shows the preoccupation of the international (donor) community with Islamic religion and gender equality, both in Muslim-majority and Muslim-minority contexts. To a large extent, the same applies to academic scholarship, despite the fact that a growing number of scholars engage in the study of non-Muslim family law reform, as we will see below. The strong preoccupation of academic scholarship with Muslim women has obscured ways in which governments, religious authorities, legal professionals, and citizens in the Muslim-majority countries of the Middle East deal with the rights of non-Muslims in the field of family law. How can governments and other relevant actors guarantee the rights of minorities to religious freedom while also ensuring equality and accountability before the law? This question does not exclusively pertain to governments in the MENA but is also debated in countries where Muslims form a minority (e.g. Bano 2012; Van Eijk 2019).

Elsewhere, my colleagues and I focus on the way Muslim men (e.g. Sonneveld and Lindbekk 2015; De Hart, Sonneveld, Sportel 2017; Sonneveld 2017) and migrants (e.g. Sonneveld and Alagha 2020; Sonneveld 2021) in the MENA relate to religion-based family laws. Building on the work of a small but growing body of academic scholarship committed to studying non-Muslim family laws in Egypt (e.g. Tadros 2009; Rowberry and Khalil 2010; Shaham 2010; Bernard-Maugiron 2011; Lindbekk 2014; Elsässer 2019; Scott 2020), Syria (Van Eijk 2016) and Jordan (Engelcke 2019), I focus in this paper on a comparison of the divorce rights of religious minorities. In the context of a century of PSL reform in Egypt I ask specifically how Coptic Orthodox PSL has developed in comparison to Muslim PSL and how differences and similarities can be explained. There are very few studies making a comparative analysis of Muslim and non-Muslim PSL. The only exception that comes to my mind is Van Eijk's study on the implementation of Muslim and Catholic PSL in the shari'a and Catholic courthouses of Syria (2016).

The following analysis is based on a review of the literature and is informed by fieldwork experiences in Egypt but is by no means exhaustive. In fact, more empirical fieldwork and historical research are needed to obtain detailed knowledge of the ways in which non-Muslim PSL reform was and is carried out and implemented in practice, and how it relates to PSL developments within the majority population.

This paper proceeds as follows; section one provides a brief introduction into religion-based family law in Egypt. Then in what follows, I compare the development of Muslim and Coptic family law[1] in Egypt in the period between 1920 and 1955 (section two); 1955–1971 (section three); and 1971–2008 (section four). In addition to providing an answer to the main question, in the conclusion I also briefly consider whether we can use the Egyptian case, in which Muslims form a majority and Christians a minority, to understand developments in religious authority and Muslim family law in contexts where Muslims form a minority.

1. Religion-based family law in Egypt

The Middle East is the cradle of Christianity and today Christians still form a sizeable minority group. In Egypt, Saint Mark is believed to have established Christianity around 40 CE. He is revered as the first Patriarch of the Coptic Orthodox church. The Islamic conquest of Egypt took place between 639 and 646 CE, ending centuries of Roman and Byzantine rule. In the centuries that followed many Copts converted to Islam. During the period of British domination, Roman Catholic and Protestant missionary organisations tried to convert Copts, Jews, and, to a lesser extent, Muslims, to Catholicism and Protestantism without much success. It is not easy to estimate the current number of Christians in Egypt, due to the sensitivity surrounding the subject, but estimates run from 5 to 15 percent of the population. Egyptian Copts present by far the largest Christian community in Egypt, and the MENA region in general (Rowberry and Khalil 2010: 82). Other countries with sizeable Christian communities are Lebanon, Syria, and, to a lesser extent, Jordan and Iraq.[2]

The religious diversity of the region is reflected in family law, by and large, the only field of law that is still religion-based.[3] At least on the level of substantial law, Muslim,

1 In this paper, I use the terms Personal Status Law (PSL) and family law interchangeably.

2 If we include Christian migrants living in the MENA region, then Gulf countries, such as the United Arab Emirates, Kuwait, Bahrain, Qatar, and even Saudi Arabia, also have sizeable Christian communities.

3 In the 1970s a process of religious resurgence started in many a Muslim-majority country. In some countries it led to Islamisation of the legal system. For example, in Egypt, a new constitutional decree (Art. 2) declared the principles of Islamic shari'a to be a (1971) and the (1980) main source of

Christian, and Jewish communities are governed in their familial matters by their own laws. For instance, in Syria there are five laws of marriage and divorce for Christians,[4] one for Muslims, one for Druze, and one for Jews. In Lebanon the situation is even more diverse; out of eighteen officially recognised religious groups, fifteen religious PSLs and courts are applicable.[5] In Egypt, among the fifteen recognised religious communities, nine religious family laws on marriage and divorce are applicable: one for Muslims, six for Christians, and two for Jews (Berger 2005: 394; 400–401).[6] On the level of procedural law, the situation differs as, in numerous countries such as Morocco, Tunisia, and Egypt, the religious courts were abolished and their jurisdiction transferred to civil courts where secular-trained judges handle family issues according to unified state laws. Some notable exceptions are Lebanon, Jordan, and Syria, where the religious courts still exist (Van Eijk 2016; Clarke 2018; Engelcke 2019). Below, I analyse how Coptic-Orthodox family law has developed in comparison to Muslim family law.

2. The reform of Muslim and Coptic family law compared: 1920–1955

In 1920, when the Egyptian government introduced its first codified Muslim family law, the legal system had been through a period of significant changes. During the Tanzimat period (1839–1876), codification had started in the Ottoman Empire, of which Egypt was officially a part. In 1882, the British continued the process of codification, which served two main goals: introduction of Western law (e.g., civil law, commercial law, penal law, procedural law), and modernisation of religious law, mostly family law (Peters 2002: 88). As far as we know, the modernisation of family law mostly left non-Muslim family law untouched, and Egypt's Coptic clergy retained legislative and judicial autonomy in the field of PSL, at least until 1874. By and large, this situation had prevailed for more than a millennium; after the Arab conquest of Egypt in 639 CE, the new Muslim rulers allowed the Coptic Church to continue

legislation. Other countries went further and Islamised parts of criminal law (e.g., Libya, Pakistan, Aceh/Indonesia).

4 These are the laws of the Greek-Orthodox; Syriac-Orthodox; Armenian-Orthodox; Catholic; and Protestant communities (Van Eijk 2016).

5 These are the Alawi; Armenian Catholic; Armenian Orthodox; Assyrian Church of the East; Chaldean Catholic; Copts; Druze; Evangelical (Protestant); Greek Catholic; Greek Orthodox; Isma'ili; Latin Catholic; Jewish; Maronite; Shi'a; Sunni; Syriac Catholic; and Syriac Orthodox.

6 These are the laws of the Coptic-Orthodox; Greek-Orthodox; Syrian-Orthodox; Armenian-Orthodox; Catholic; and Protestant communities.

exercising control over family law affairs (Berger 2005: 400–401; Rowberry and Khalil 2010: 99–100).

Prior to 1920, Muslim women could only divorce for limited reasons, which were difficult to prove. Based on the teachings of the official school of Islamic jurisprudence (*fiqh*) in Egypt, the Hanafi school, marriages could only be terminated by women on grounds of adultery, death, apostasy, impotence, and prolonged absence of the husband for more than 90 years. In practice, *qadi*s (judges) often granted women divorce on a variety of grounds, as studies of Ottoman court records show (e.g., Tucker, 1998). Little information is available on divorce practices among Coptic men and women. Sources suggest that before 1238 Coptic laws only allowed termination of marriage in the case of adultery and death (Rowberry and Khalil 2010). In practice, however, divorce rules were not strictly followed by laity or the clergy (ibid.). Coptic regulations on familial issues were codified in 1238 in the so-called Nomocanon. The Nomocanon expanded the official grounds for divorce considerably as we will see below. What happened in the practice of the Coptic courts remains obscure, at least until the nineteenth century, and needs further archival research (Rowberry and Khalil 2010: 116–117). Given that the Nomocanon was the basis of ecclesial law for Copts in Egypt, it is tempting to believe that Coptic men and women had various possibilities for divorce. However, based on Ottoman shari'a court records, Afifi shows that many Copts — and Jews — across the class spectrum, contracted marriages and divorces in the shari'a courts (1996). "… Copts took from the shari'a what suited their needs without accepting the shari'a itself" (ibid.: 207). Figuring most prominently was easy divorce based on talaq (repudiation) (ibid.: 205–207).

At the start of the twentieth century, Egyptian nationalists, such as Qasim Amin and Muhammad 'Abduh, increasingly proclaimed that the liberation of the nation from British domination depended on the liberation of (Muslim) women. They argued that the family, the cornerstone of society, was threatened by high divorce rates, in great majority caused by easy and excessive use of the talaq by Muslim, and sometimes also Coptic, husbands. Both Qasim Amin and Muhammad 'Abduh were active in the legal profession; Qasim Amin worked as a judge and Muhammad 'Abduh was a judge before he was appointed Mufti of Egypt in 1899 (Ziadeh 1968: 38). In his capacity as Mufti, 'Abduh received a letter from the Minister of Justice requesting a *fatwa* (religious opinion) on divorce opportunities for the many women who had complained to him of their miserable conditions after their husbands were sentenced to hard labour for life or other long prison terms. These women were unable to divorce husbands who could no longer provide for them. 'Abduh suggested adopting provisions from the Maliki school of Islamic jurisprudence, which provides more grounds for divorce (Amin 2001: 201). To put a stop to the high divorce rate, 'Abduh and Amin advocated procedural requirements to curtail the right of Muslim men to divorce. The 1920 PSL reform

indeed curtailed husbands' divorce rights and expanded women's rights. A repudiation pronounced by a husband who is intoxicated or under duress was declared ineffective in 1929 (Art. 1 of PSL No. 25/ 1929). Additionally, the triple talaq, in which the husband utters the repudiation three times in one sitting, counted, and still counts, as only one (ibid.: Art. 3). The PSLs of 1920 and 1929 gave women several new grounds for divorce. These were, and still are, the husband's absence without legitimate cause for a period exceeding one year (Art. 12 of PSL No. 25/1929); his imprisonment for a period exceeding three years (Art. 14 of PSL No. 25/1929); his mental illness or grave and incurable sickness, about which the wife had no knowledge at the time of the marriage (Art. 9 of PSL No. 25/1929); his failure to provide maintenance; or his harming of his wife (Art. 6 of PSL No. 25/1929; amended by PSL No. 100/1985). While codification of Muslim family law gave Muslim women more possibilities for terminating their marriages in the shari'a courts, at least in theory, it would take almost another twenty years for the codification of Coptic family law to take place.

In 1855, Sa'id Pasha, the *wāli* of Egypt and Sudan from 1854 until 1863, granted Copts equal citizenship rights. Initially, governance of the Coptic Church over PSL affairs was preserved, but this changed in 1874 when, in response to petitions by lay Copts penned by Butrus Ghali Pasha a khedivial decree was issued to allow lay Copts to form a so-called *al-Mağlis al-Millī*, a Coptic Community Council. The council was composed of twelve members and twelve deputy members and tasked with assisting the Coptic clergy in administrative and financial matters. The council also obtained the authority to adjudicate in PSL cases (Rowberry and Khalil 2010: 117. See also Shaham 2010: 410) in al-Mağlis al-Millī courts. In this new situation of shared governance, tensions frequently arose between church leaders and members of the Council, among others in 1938.

After pressure from the Egyptian government, which demanded that all religious communities codify and publish their procedural and substantive rules, the Coptic Community Council presented a PSL to the government in May 1938, which was implemented in July 1938 (Shaham 2010: 411). The law included nine divorce grounds for men and women: adultery (Art. 50); conversion to another religion (Art. 51); prolonged absence of more than five years (Art. 52); imprisonment of more than seven years (Art. 53); mental illness, a contagious illness, or impotence (Art. 54); serious domestic violence (Art. 55); separation due to untenable marriage conditions of more than three years or immoral or debauched behaviour (Art. 56); incompatibility (Art. 57); and joining a monastic order (Art. 58) (Shaham 2010: 411; Bernard-Maugiron 2011: 363). The divorce grounds were in line with Coptic teachings as contained in the translated version of the Nomocanon. Compiled in 1238, the Nomocanon forms the basis of ecclesial law for Coptic Orthodox Egyptians (Rowberry and Khalil 2010: 106).

Except for some religion-specific grounds, the new grounds for divorce also resembled the Muslim ones to a great extent, and future historical research should establish on what sources the 1938 PSL was based. Later, Pope Shenouda III (r. 1971–2012) clearly considered the amendments to be a deviation from the sources of Coptic law (i.e., the New Testament) and argued that they were imposed on Copts by lay persons who were inspired by reforms in Egyptian Muslim family law and whose only wish was to fulfil their own desires and lust (Shaham 2010: 409).

On the level of practice, al-Mağlis al-Millī courts were responsible for implementing the codified divorce provisions. Church leaders resented the liberal attitude of the Coptic Community Council and in 1945, Pope Macarius III claimed that the only grounds for divorce were adultery and death, as based on the teachings of Christ and Peter in the New Testament. Subsequent patriarchs confirmed Macarius' interpretation in 1962 and 1971 (Rowberry and Khalil 2010: 118). Shaham states that since the government had ratified the 1938 law, Coptic religious leaders had no choice but to accept divorce rulings made by the national courts and to allow divorced men and women to remarry (2010: 412). Further archival research should determine to what extent divorce petitions were actually granted, whether church leaders attempted to interfere in the affairs of al-Mağlis al-Millī courts, and whether they had the power to deny remarriage. According to Afifi, Coptic "champions of divorce" publicly complained in the 1940s and 1950s that only the divorce requests of those who were able to pay large bribes were granted. Claiming that both priests and the Coptic Community Council engaged in these practices, they asked the state to intervene (1996: 210).

Whatever the case, given the complicated situation surrounding divorce, Coptic men frequently recorded divorce in a *sharīʿa* court (see above) or converted to Islam to obtain an easy divorce, and in some cases, easy custody of children (Berger 2005: 401; Wakin 2000; Rowberry and Khalil 2010).[7] Influential Coptic lawyers, such as Farid Antoun, considered these 'conversions for convenience' a threat to the stability of the Coptic community. As a member of the committee responsible for drafting a new constitution for the Naguib regime (r. 1953–1954), Antoun proposed in one of the meetings "a single marriage and divorce law for all Egyptians to replace the religiously-constructed legal mosaic" (Wakin 2000: 84) alongside the abolition of polygamy and severe restriction to divorce (ibid.) to put an end to the two main enticements for Copts to change religion (Ziadeh 1968: 114). The prospects for the introduction of a unified

7 During my many visits to Egypt, I frequently listened to the stories of men and women who had converted to Islam to divorce their spouse. Sometimes men divorced their Coptic wives, in other cases they married a second wife, as Muslim men in Egypt have a legal right to marry up to four wives. Although onerous, some men and women converted back to Coptic Christianity after their divorce.

PSL for non-Muslims looked promising when socialist army officer Jamal ʻAbd al-Nasser came to power in 1954.

3. The reform of Muslim and Coptic family law compared: 1955–1971

Under the presidency of Nasser (r. 1954–1970), Law No. 462/1955 was issued. The law brought three important changes: legislative autonomy of non-Muslim communities in alimony, guardianship, and inheritance matters was abolished and they became part of the general law (i.e., Muslim family law); in mixed marriages, Muslim family law would apply; the religious courts as well as the al-Mağlis al-Millī courts were abolished, and both Islamic and Coptic religious authorities lost judicial autonomy (e.g., Linant de Bellefonds 1956). Before 1955, judges affiliated to the Coptic Community Council had been responsible for dispensing justice in Coptic family law issues, and after 1955 they were replaced by judges who were mostly Muslim, and who would administer the rules for both Copts and Muslims. According to Wakin, the judges of the former *shariʻa* courts were incorporated in the new civil court system, while the judges of the Christian courts were "put on the shelf" (2000: 89). Further research should establish to what extent this happened and why, and what the educational background of the Muslim and Christian family court judges was at the time of the disappearance of the religious courts. One thing is certain: Coptic religious leaders who had resented the judicial autonomy of the Coptic Community Council judges in applying what they considered to be the "liberal" 1938 law, were now confronted with a situation where Coptic family issues were litigated in national courts by secular-trained judges, most of whom were Muslim.

On the level of substantive law, Copts lost the right to apply the alimony, guardianship, and inheritance rules of their own community. With regard to marriage and divorce, however, nothing changed. Where, a few years earlier, lawyer Antoun had suggested the introduction of a unified marriage and divorce code applying to all non-Muslims, the Nasser regime decided otherwise for reasons that still require more research. The memorandum to the 1955 law states that the right of any group of Egyptians, whether Muslim or non-Muslim, in the application of its law should not be violated (Ziadeh 1968: 115). In 1962, Nasser gave in to demands of the Coptic Church to abolish the Community Councils. Subsequently, Coptic church leaders wrote a draft law in which the grounds for divorce were reduced to adultery only. The draft was presented to different ministers of Justice but was rejected (Shahim 2010: 412). Sezgin (2013: 172) argues that Nasser did not regard the reform of substantive PSL important, as his main aim was unification of state power, and bringing religious authorities under state control was an important element. This applied to the PSLs of non-Muslims as well as Muslims. As Bernard-Maugiron and Dupret state, the "reformist momentum in the

field of personal status was interrupted and relegated to the domain of questions of secondary importance when the Arab Republic of Egypt was declared in 1952" (2002: 2). It was only after the death of Nasser in 1970 that the reform of Muslim PSL was taken out of the closet again.

After the defeat of Egypt in the Six Day War against Israel, the country experienced a surge of religious awakening, with both Muslims and Christians feeling that the defeat in the war was a punishment of God for a people who deviated from the true path of religion (Afifi 1996: 214). While under Nasser the country had gone through a phase of secularism and socialism, and after his death in 1970 his successor, Anwar al-Sadat (r. 1970–1981), released a great number of Islamists who had been imprisoned under Nasser. He also introduced a new clause in the constitution, which turned the principles (*mabādiʾ*) of Islamic shariʿa into *a* main source of legislation in September 1971 and *the* main source of legislation in 1980. In this way, Sadat tried to engage with the new religious mood of the Muslim population, while simultaneously trying to do away with leftist and socialist political trends in the country. Around the same time, following the death of Coptic Pope Cyril VI in March 1971, Shenouda III of Alexandria was elected and consecrated as the new patriarch of the Orthodox Coptic church in November 1971. During his long papacy, which ended with his death in March 2012, he was responsible for introducing a number of important changes. In what allegedly was a strongly felt need to stabilise the Coptic family in the midst of a wave of Islamic awakening and what seemed the start of the Islamisation of the legal system, the Pope followed the lead of his two predecessors in taking a strong stance against the expansion of divorce grounds introduced by the Coptic Community Council in 1938. He issued a Papal decree (Decree No. 7) in which he instructed the Coptic clergy to allow only people who had divorced on the grounds of adultery to remarry (Rowberry and Khalil 2010: 120; Shaham 2010:413). Referring to a verse from the New Testament, he said: "*But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery"* (Matt. 5:32, KJV) (Lindbekk 2014: 179). In the early 2000s, a Coptic male litigant, who had been divorced by the court but was denied permission to remarry by the Coptic Church, took the matter to an appeal court. In 2006, Cairo's Administrative Court ruled in his favour. In response to Pope Shenouda's appeal, Egypt's High Administrative Court upheld the decision of the Administrative Court in March 2008, a decision which was firmly rejected by the Pope (Bernard-Maugiron 2011: 365–368). A few months later, in June 2008, the 1938 PSL was amended (ibid: 369).

4. The reform of Muslim and Coptic family law compared: 1971–2008

Despite the constitutional amendment that turned the principles of Islamic shari'a into the main source of legislation, as well as proposals by al-Azhar to introduce the *ḥudūd* punishments, the 1970s were also a period of increased exposure to the outside world. This led to a growing influence of international (donor) organisations and, coupled with domestic pressure to improve the rights of women, the need to reform Egyptian Muslim family law grew. An important figure in the reform process was Aisha Rateb, a law graduate from Cairo University. She had wanted to become a judge in 1949 but her application was turned down by the State Council (an administrative court) under the pretext that Egyptian society was not ready for women on the bench.[8] Instead of becoming Egypt's first female judge, she became the country's first woman law professor in 1970, first female ambassador in 1979, and first woman head of a Law Department (Mehanna and Sonneveld 2021). Rateb was interested in gender equality in a remarkable way. She thought it unfair that where men were subjected to compulsory conscription, women were exempt from making themselves available for public service. Hence, she made it compulsory for female university graduates to work for one year with nominal salary in a public service project (ibid.). She also strove to reform the laws on Muslim personal status and in the early 1970s became the head of the Committee for the Revision of Family Law.

One of the more controversial measures Rateb wanted to introduce was making a husband's unilateral right to divorce (talaq) conditional on appearance and registration in court. The then Shaykh of al-Azhar, 'Abd al-Halim Mahmud, is claimed to have said that if the divorce provision were passed, he would resign from his position. Sadat gave in and the provision was excluded from the draft law.[9] The draft law was blocked in 1975 (Esposito 1982: 62), at a time when an Egyptian delegation went to the first 1975 United Nations conference on women, held in Mexico. Feeling humiliated and with another UN conference on women on the horizon (Copenhagen, 1980), Sadat sped up the reform process. By May 1979, no consensus had been achieved and, not wanting the draft law to be blocked again by the opposition groups, Sadat looked for an alternative way of effecting legislation. Shortly after the death of the conservative Shaykh of al-Azhar, 'Abd al-Halim Mahmud (Zeghal 1999: 387), and in the absence of the People's Assembly, Sadat used his constitutional right to issue an emergency decree, in which he passed the draft into law (Sonneveld 2012: 26). The

8 It would take until 2003 for the first female Egyptian judge to be appointed (to the High Constitutional Court). In the years that followed a small number of female judges was appointed to Courts of First Instance, but out of a total number of more than 12,000 judges only 120 are women.
9 Interview with Ahmed Tawfik, Leiden, the Netherlands, 24 October 2017.

new law (Law No. 44/1979) provoked much controversy as Muslim women's grounds for divorce were expanded: in case of polygamy, they could petition the court for divorce on the grounds of harm, after which the divorce would be granted automatically. Another controversial provision concerned the right of divorced women with children to remain living in the marital home. In 1985, the High Constitutional Court declared the law unconstitutional because it had been promulgated without parliamentary approval and while no state of emergency had existed. Later that year, an adapted version of the 1979 PSL was implemented (Law No. 100/1985). While polygamy was still included as grounds for divorce, women needed to prove that the other marriage had caused them harm.

Despite the setbacks in the 1970s and 1980s, the women's rights movement in Egypt continued its efforts to make divorce for Muslim women easier. In the late 1990s, a group of seven activists, the Group of Seven, was successful in securing the support of the Minister of Justice and the Shaykh of al-Azhar for a divorce reform, and in 2000 the People's Assembly 'accepted' a new procedural law on personal status, which also included a few substantive provisions. The provision concerning a new understanding of *khulʿ* as a no-fault, non-consensual divorce provoked much controversy as it was thought that giving women the right to divorce without the consent of the husband and without the need to show cause in court went against Islamic religious principles and would destabilise the Egyptian Muslim family (Sonneveld 2012, chapters 2 and 3).

Other reforms followed in what has become known as the decade of Muslim women's rights reform: women were given the right to include stipulations in their marriage contracts (August 2000); travel (abroad) without the consent of the husband (November 2000); Egyptian women married to non-Egyptian men were allowed to pass their Egyptian nationality to their children (2004);[10] the custody age was raised from twelve for girls and ten for boys to fifteen for both, with the possibility of extending it until marriage for girls and for boys until they had reached "maturity of mind" (2005); and in case of divorce the parent with custody over the child(ren) was given educational guardianship (2008).[11] From a human rights perspective it is fair to say that in the first decade of the new millennium Muslim women's rights had improved considerably, both on paper and in judicial practice.[12] And sometimes this was favourable to Coptic women too as they had the right to request no-fault, non-consensual *khulʿ* should Muslim family law be applicable to their cases (Bernard-

10 There was one exception: Egyptian women married to Palestinian men.

11 For a more detailed overview of the reforms, see Sonneveld and Lindbekk (2015).

12 For detailed analyses of the implementation of khulʿ in the courts and everyday life, see Sonneveld (2012); Lindbekk (2013); and al-Sharmani (2017).

Maugiron 2011: 378). In general, however, the situation had taken a bad turn for Coptic men and women who wanted to end their marriages.

Despite Shenouda's Papal decree of 1971 in which the grounds for divorce were reduced to adultery only, the national courts continued applying the 1938 law. In turn, the Coptic Church refused to recognise these divorce rulings and did not give couples permission to remarry (Shaham 2010; Bernard-Maugiron 2011; Lindbekk 2014). To end this unfavourable situation, the Coptic Community Council amended the 1938 law in 2008, reducing the grounds for divorce from nine to two: adultery, including presumptions of adultery, and apostasy (Bernard-Maugiron 2011). Its application in the national courts, however, was not uniform as Lindbekk (2014) shows in her analysis based on court rulings and interviews with judges and lawyers in the early 2010s. Although most judges, most of them Muslim, were careful in granting Coptic litigants a divorce on the basis of adultery, others, the judges of the Cairo Appeal Court in particular, were more lenient and used different sources to allow Copts to divorce on the basis of adultery. Some engaged in interpretation of the Bible, while others interpreted Coptic divorce law in line with Muslim PSL or social norms, which discriminate against women (Lindbekk 2014). Again, this infuriated Pope Shenouda and he refused to remarry Copts who had divorced on grounds other than adultery.

Conclusion and epilogue

In this paper, I have focused on a comparison of the divorce rights of religious minorities. In the context of a century of PSL reform in Egypt (1920–2020), I asked how Coptic Orthodox PSL has developed in comparison to Muslim PSL and how differences and similarities can be explained.

Where Muslim women's divorce rights steadily improved, culminating in no-fault non-consensual divorce through *khulʿ* in 2000, Coptic men and women witnessed a deterioration in the right to divorce and, relatedly, to remarry. It would be tempting to explain the differences on the basis of two factors, i.e. the religious minority status of Copts and the strong position of the Coptic Pope as leader of the Coptic Orthodox Church. In the Muslim-majority country of Egypt, different popes have attempted to foster a strong religious identity, especially after the early 1970s when a period of Islamic revivalism in Egypt set in. Among the most pronounced markers of Coptic Orthodox identity is the sacrament of marriage, and its preservation by severely limiting the grounds of divorce from nine in 1938 to two in 2008 has been a major goal of popes from the mid 1940s onwards, culminating in 1971. At the same time that then president Sadat introduced a constitutional provision stating that the principles of Islamic shariʿa were a main source of legislation, late Pope Shenouda III issued a Papal Decree in which the grounds for divorce were reduced from nine to two. Thus, where

both Muslim men and women have access to no-fault, non-consensual divorce, Copts, irrespective of their gender, can only end the marital relationship on the basis of adultery or apostasy. However, inter-communal tensions alone cannot sufficiently explain the differences in family law reform trajectories (see also Scott 2020). Throughout the century, state interference in the legislative and judicial autonomy of religious communities in matters of family law has played a decisive role, in fostering both inter-communal as well as intra-communal tension.

Starting at the turn of the nineteenth and twentieth centuries, both Coptic and Muslim religious authorities gradually lost legislative autonomy in the field of family law. The first codified Muslim PSL in 1920 was drafted by a committee composed of both religious scholars, such as the Shaykh of al-Azhar, and non-religious actors, such as secular-trained judges. The 1938 Coptic law on personal status was even drafted by a body composed of lay Copts only, the Coptic Community Council, much to the chagrin of the Coptic clergy. In both cases, the interference of the state in family law matters was aimed at transferring the power of Muslim and Coptic religious authorities to lay communal leadership. This culminated in 1955 when, under Nasser, the religious courts were abolished, and religious communities lost their judicial autonomy too. Muslim and Coptic religious leaders maintained varying levels of influence but had to contend with actors with non-religious training who increasingly claimed a role in setting the parameters for divorce reform, and, given that family law in Egypt is religion-based, reform of religious law in general. The heated public debate concerning the introduction of no-fault, non-consensual *khulʿ* divorce for Muslim women makes this noticeably clear. Now one could counter that the power of the Coptic pope and Coptic clergy has increased at the expense of lay actors, such as the Coptic Community Council. After all, the Coptic Community Council was responsible for amending the 1938 law in 2008, reducing the grounds for divorce from nine to two, after the continuous refusal of late Pope Shenouda III to remarry Copts who had divorced on grounds other than adultery or apostasy. In an article on divorce and remarriage of Orthodox Copts in Egypt following the 2008 amendment, Bernard-Maugiron even states that "Even if the Coptic community is not unanimous in its support for the Pope's position on divorce, the radicalization of religion makes it difficult for liberal Copts to express their opposition to the Pope's stance and to make their voices heard" (2011: 385). This was to change soon (Lindbekk 2014; Sonneveld and Lindbekk 2015; Elsässer 2019; Scott 2020).

In the post-revolutionary period (2011–13) a noticeable development in the field of family law debate took place: the organised public opposition of individuals *directly* affected by extant Muslim and Coptic family law provisions. Demanding a bigger role for divorced fathers in the upbringing of their children, divorced Muslim men lamented Muslim women's increased opportunities to divorce for what they claimed

were frivolous reasons. Saying that the reforms went against Islamic shari'a, they arranged demonstrations in front of al-Azhar (Sonneveld and Lindbekk, 2015). Coptic men and women publicly rallied to demonstrations condemning the strict Coptic divorce laws. According to journalist Ibrahim "The Egyptian revolution has energised Egypt's Copts in more ways than one, standing up for their rights not just vis-a-vis the state, but also their own Church hierarchy" (2011). A small group of lay Copts, who named themselves 'Copts 38,' after the liberal 1938 Coptic family law, even argued that Copts who are excluded from the constitutional right to be ruled by the principles of Islamic shari'a are becoming second-class citizens (Lindbekk 2014). After the death of Pope Shenouda in 2012, the debates within the Coptic community on marriage and divorce led the new pope, Tawadros II, to implement a number of reforms, such as the establishment of regional councils to facilitate procedures for resolving family problems and more liberal provisions concerning divorce, notably the introduction of separation as a ground for divorce (Elsässer 2019). It is not clear yet whether this also led the Church to take a more lenient approach to remarriage, and whether the new measures are sufficient to stop Copts in unhappy marriages from converting to Islam (ibid.).

Can we use the observations above to understand better the situation of Muslim minorities in the West with regard to divorce? Several studies have pointed out that the lack of clear Islamic authority in the West makes it difficult for Muslim women (who have obtained a civil divorce) to obtain a religious divorce (e.g., MacFarlane 2012; Jaraba 2019; Van Eijk 2019). We have seen that lack of Islamic authority is a feature pertaining to both Muslims living in the West and Muslims living in Muslim-majority countries. Moreover, even in the Coptic Church the authority of the pope is contested, both from within (Coptic Community Council; Copts sue Church in national courts; Copts 38; general protests, people converting to Islam) and from outside (establishment of Coptic Community Council; abolition of religious courts; Muslim judges did not recognise the Papal Decree on divorce). Being religion-based, family law is a clear marker of religious identity, and, hence, its reform is hotly debated, both in countries where Muslims and Christians form a minority and a majority. There is one difference; where in Egypt, the Coptic clergy and Coptic Community Council, each in their own ways, have tried to prevent conversion to Islam in order to obtain "an easy divorce," in the West obtaining an easy divorce does not require a Muslim woman to convert to another religion.

2. Custody and the Best Interests of the Child in Egyptian Courts

Nathalie Bernard-Maugiron*

Recent legislative reforms in Egyptian family law have given paramount importance to the protection of the 'best interests of the child' in custody cases. The 2008 amendments to the 1996 Child Law set this course, later entrenched in the 2014 Constitution, when the best interests of the child made their first appearance in a constitutional provision. However, no definition of what constitutes the 'best interests of the child' is provided in these texts. The law, on the other hand, assigns significant powers to judges to allow them to ascertain such an interest on a case-by-case basis by prioritising different conflicting interests.

Through the analysis of a court decision dealing with a custody case, this contribution tries to identify the elements that Egyptian judges consider when looking for the 'best interests of the child.' In doing so, it investigates whether new trends have appeared in this field in the face of the heated debates that have been dividing Egyptian society for several years regarding custody and visiting rights of divorced fathers.

1. The Shubra Family Court case of 30 April 2011

On 30 April 2011, after Egypt overthrew its president and was going through a phase of great instability under the leadership of the Supreme Council of the Armed Forces, the Family Court of Shubra[1] accepted the request of Taymur[2] to have his two young daughters, Manal and Lubna, stay at his home once a month.[3] This decision was unexpected since divorced fathers were struggling to reform the family laws which were depriving them of custody and hosting rights of their children.

If the Egyptian personal status laws of 1920 and 1929 have often been criticised for establishing an imbalance in rights and duties within the couple in favour of the husband, custody is one of the areas, along with payment of dower and alimony, where

* CEPED / IRD / Paris University

1 Popular district of Central/North Cairo.

2 To protect the anonymity of the family all names have been changed.

3 Shubra Family Court, Wilāya 'ala-l-nafs, case No 841/2010, April 30, 2011.

the wife has been given more power than the husband. This has continued to increase up to the present day after the laws were amended several times.

2. The facts behind the Shubra Family Court case of 30 April 2011

On 12 December 2010, Taymur filed a motion in the Family Court of Shubra asking for the right to see *(aḥaqqiya fī-ruʾya)* his two daughters, Manal and Lubna, once a week as well as the right to have them stay at his home (*istiḍāfa*) once a month.

According to the summary of the facts included in the decision, the couple had married in 1996, the marriage had been consummated (*maʿa al-dukhūl wa-l-muʿāshara*) and two daughters were born to the couple, Manal in 1997 and Lubna in 1999. Both were in the custody of their mother but the father complained that his wife had deprived him without any reason of the right to see them (*manaʿathu min ruʾyatihimā dūn waǧh ḥaqq*) even though she was still under his authority (*mā zālat fi ʿiṣmatihi*) and owed him obedience (*taḥt tāʿatihi*). After failed attempts by the court's conciliation office to reach an amicable settlement (*taswiyya waddiyya*), he resolved to take legal action. The two parties, each represented by their lawyer (a female lawyer for the husband), and the representative of the public prosecutor's office had attended the hearing that took place on 27 March 2011.

The court, comprised of three judges, had proposed conciliation (*ṣulḥ*) to the parties but they refused, and the case was postponed for a month, until 24 April 2011. As it turned out, it was a holiday (Coptic Easter), so the decision was delivered on 30 April 2011.

3. The decision of the Shubra Family Court

The Court decided to allow the father to host his daughters on the first weekend of each month and to see them during the other weekends.

3.1. Regarding accommodation

In order to accept the father's request regarding accommodation, the Court referred to several legal grounds, including international law.

3.2.1. International human rights law

The Court first referred to the provisional Constitutional Declaration adopted by the Supreme Council of the Armed Forces on 30 March 2011 to replace the 1971

Constitution that had been abrogated on 13 February 2011 after the fall of Hosni Mubarak. According to Article 56 of this Declaration, the Supreme Council of the Armed Forces was to undertake the administration of the affairs of the country, including the representation of the state at international level and the conclusion of international treaties and agreements. Article 62 of the same Declaration added that all laws and regulations decided before the promulgation of the Constitutional Declaration were to remain in force as long as they had not been modified. The court considered that international conventions ratified by Egypt were therefore to remain in force too.

The court then invoked several international conventions ratified by Egypt. It referred to the Convention on the Rights of the Child and in particular to Article 3, according to which in all actions concerning children, the best interests of the child shall be a primary consideration; to Article 9, by which states undertake to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests; and to Article 18, by which states shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

The judge also invoked the African Charter on the Rights and Welfare of the Child (Art. 19) ratified by Egypt in 1999, according to which every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. The Charter also affirms that no child shall be separated from his/her parents against his/her will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

3.1.2. Egyptian legal and religious norms

The court then pointed out that the two young girls were under the age of 15 and were therefore in the care of their mother. It added, however, that it was recognised (*min al-muqarrar*) by *sharīʿa*, by *fiqh* and law (*qānūn*^{an}) that it was prohibited to deprive a child of the right to receive care (*riʿāya*) from their father, especially since he is the one who covers their expenses for food, clothing, housing, medical care and education.

The Court concluded that it saw no legal impediment (*māniʿ qānūnī*) in allowing the father to house his children, especially since the mother had presented no means of defence. The judges therefore authorised the father to receive his daughters at his home on the first Thursday of each month, for 24 hours, from Thursday evening at

seven p.m. until Friday evening at seven p.m., provided that he undertook to deliver them back to their mother.

3.2. Right of visitation

With regard to the right of visitation, the court recalled that according to Article 20 of law No. 25 of 1929, as amended in 1985 by law No. 100 and by law No. 4 of 2005, each parent has the right to see his/her child but that this right cannot be enforced by force (*qahr*[an]). However, if it is not respected without excuse (*bi-ghayr ʿudhr*), the custodial parent may have custody of his/her child temporarily withdrawn for the benefit of the following beneficiary in the list.

The court also recalled that in accordance with Article 5 of ministerial decree No. 1087 of 2000, the duration of the right of access of the non-custodial parent cannot be less than three hours per week and must take place between nine a.m. and seven p.m., preferably on a day off so as not to disrupt the child's schooling.

The court stressed that the fact that the father had brought the case to the court proved the failure of the parents to organise access rights by mutual agreement, which was also shown by the fact that the mother did not present any plea of defence.

Based on the report of the sociologist and psychologist who examined the case before it was submitted to the court, the judges decided that the most suitable time for the father to access his daughters was on Fridays from one p.m. to four p.m. and that these visits would take place at the Sharābiyya Youth Center (*markaz shabāb*), except in the weeks when the father would host his daughters.

4. Analysis of the Court decision

4.1. Custody in Egyptian law

The question of the visitation rights of the non-custodial parent has been the subject of heated debate in Egyptian society for several years.

4.1.1. Allocation of custody to the mother

Custody (*ḥaḍāna)* of the child in case of the separation of their parents is regulated by Law No. 25 of 1929 as amended in 1985 and 2005. The 1929 law (Art. 20) made a distinction according to the sex of the child: it set the custody age at seven for boys and nine for girls, after which the child should be taken from their mother and entrusted

to their father. However, the judge had the power to extend the custody rights of the mother up to nine years for boys and to eleven years for girls, when the interests of the child so required (*idhā tabayyana anna maṣlaḥatahum taqtaḍī dhālik*).[4] The law therefore followed the traditional solution in Hanafi law where the mother is entrusted with the rearing of young children before handing them over to their father, and where the duration of maternal care of daughters is longer than that of sons.[5] In 1985, the law was amended (Art. 18bis2) to extend the custody rights of the mother until the age of twelve for girls and ten for boys, with the possibility for a judge to extend this to fifteen years for boys and up to their marriage for girls, if it appeared that their interest so required. In 2005, the law was amended again (Art. 1 of Law No. 4) to raise maternal custody of both daughters and sons until the age of fifteen. After that age, the judge will ask them to choose between their mother and father but will not be bound by their opinion.

During the entire period of custody, the father must pay an alimony to the mother (*aǧr al-ḥaḍāna*) to compensate for the care provided to the children. He must also pay a pension for the maintenance of his children (*nafaqat al-awlād*). However, in the event of an extension of custody by the judge, only the child's pension continues to be paid.

If the mother, as a custodian, is entrusted with the day-to-day care of the children, the father is assigned guardianship (*wilāya*) over the person and the property of the child. He is responsible for managing the child's property until he/she comes of age and for making the most important decisions regarding him/her. Egyptian law is therefore based on the traditional distribution of responsibilities between the father who exercises guardianship over the person and the property of the child while the mother is entrusted with custody in their younger years. Furthermore, the Egyptian legislator takes it for granted that every mother is affectionate, close to her child, understanding and protective, while a father cannot have the same qualities.

If the mother can no longer provide custody, the law of 1929 (Art. 20 para. 5) as amended in 1985, specifies the order in which custody must be distributed among the relatives of the child: the mother of the mother is the first in line to exercise custody after the mother, then the mother of the father, then all female relatives of the mother and the father, then the father and all male relatives on both sides.

4 The Courts often agreed to extend a divorced mother's custody for two years when the father had remarried. See Kholoussy 2010: 120–121.

5 This traditional Hanafi solution had also been codified in the Qadri Pasha Code of 1875 (Art. 391).

The main case in which the divorced mother is deprived of custody is when she remarries with a 'stranger' to the child from the point of view of the child's kinship. Although no law currently in force in Egypt provides for the forfeiture of the mother's right to custody in the event of remarriage to a man who is not a relative of the child within the prohibited degrees, court records show that forfeiture is often pronounced by judges in application of the prevailing opinion within the Hanafi school. This is in accordance with Article 3 of the preliminary provisions to the promulgation of law No. 1 of 2000 that provides that if the law is silent on a certain matter, the judge shall apply the prevailing opinion in the Hanafi school.

4.1.2. The father's visiting and accommodation rights

Article 20 of the 1929 law, as amended in 1985, grants both parents and, in their absence or in the event of death, grandparents, a right to "see" (*ḥaqq al-ruʾya*) their minor children or grandchildren. If the meeting cannot take place on the basis of an agreement with the custodian, the judge must arrange the visit. According to Law No. 1 of 2000 on procedure in personal status cases (art. 67) an executive order of the Minister of Justice was to determine the conditions under which the visitation right takes place. The Executive Order No. 1087 of 2000 decided that the non-custodial parent is entitled to see his/her child for a minimum period of three hours per week between nine a.m. and seven p.m., preferably on a day off so as not to disturb the child's school life (art. 5). The meeting can take place in a sports or social club, a youth protection centre or a child protection house provided there is a garden, or in a public park (art. 4). There is no provision in the law regarding housing of the children by the non-custodian parent or even receiving them in their house during daytime. Legally, therefore, the father cannot claim the right to have his children visit him at his home without the mother's agreement.

Several bills have been drafted, both before and after 2011, to reform visiting rights and enhance divorced fathers' rights of access to their children. After the uprising of 2011, divorced fathers took advantage of the wave of freedom brought about by the fall of Mubarak and formed associations to expand their rights for joint care after divorce, blaming the current visitation conditions for operating in a climate of hostility and lack of privacy, not conducive to the establishment of an emotional bond with their children.[6] To pressure public opinion and institutions, protest groups went so far as to organise sit-ins in front of al-Azhar University, the Ministry of Justice and the newly elected parliament. They called for the resignation of the mufti and sheikh of al-Azhar, blaming them for having approved the laws currently in force, which were contrary to the *sharīʿa*. It may be paradoxical that they were calling for the respect of Hanafi law

6 For a study of the arguments raised by these associations, see Sonneveld and Lindbekk 2015.

with regard to the age of custody that they wanted to be seven for boys and nine for girls, while against the implementation of the same Hanafi law with regard to the list of relatives that may have custody of the child after the mother and which excludes fathers.

On the opposite side, groups of divorced mothers replied that, most often, fathers do not pay alimony for their children, do not use their visiting rights, and that giving them a right to have the child stay in their home would risk multiplying the cases of abduction of children, with fathers refusing to return them to their carers. They added that existing laws were not based on concepts imported from the West but were in accordance with the principles of *sharīʿa* and that the reforms invoked by the groups of fathers would have a negative impact on the well-being of their children.[7] The People's Assembly was dissolved in June 2012 without the draft laws having been adopted or even discussed in plenary.[8]

The debate arose again at the end of 2016. A reform bill proposed that fathers could have their children stay with them at their home two days a week as well as for one month during the summer holidays[9]. It was taken up by the opposition party al-Wafd, but the bill was rejected by parliament for violating the rights of women, without any reflection on the best interests of the child. The different parties involved each defended the interests of the father or the mother, but the best interest of the child was never at the heart of the discussions.

4.2. The reasons behind the Shubra Family Court decision

The decision of Shubra Family Court may have been taken in the euphoria of the fall of Mubarak and the high expectations of Egyptian society regarding the establishment of democracy and respect for human rights and international standards. Other reasons may be more specific to the case. Indeed, the parents were not divorced but only separated. As mentioned at the beginning of the decision, the mother was still in her husband's *ʿiṣma* and had to obey him even if they were not living together anymore. Legally, the husband could have filed a case requiring her to remain obedient to him and come back and stay with him with his daughters, on penalty of losing her

7 Sonneveld and Lindbekk 2015

8 In November 2014, al-Azhar University published a fatwa stating that the custody age as stated in the law should not be changed and that the father should not have his children to stay in his house without the mother's agreement.

9 Sayed Ahmed 2016.

maintenance (*nafaqa*) rights. It may be that this was the reason why the mother did not try to present any plea of defence.

Another reason, also specific to the case, may be the fact that the two parents lived separated but in the same district, street and even in the same complex of buildings in the popular district of al-Sharābiyya. It is therefore to be expected that both the mother and the judge were confident that the mother would be able to keep an eye on her children and that the risk of abduction was less high.

This case, however, is not isolated. Mansoura Court of Appeal, for instance, quashed a family court judgment which had denied a divorced father the right to host his son during holidays and vacations.[10] The Court held that since there was no provision in Egyptian law regulating accommodation of a child by their father, the judge had to apply the prevailing opinion within the Hanafi school, in accordance with Article 3 of the promulgating law of law No. 1 of 2000. In childhood, clarified the Court, the child needs their mother, while later they need to train themselves intellectually (*tathqīfa*) and learn discipline (*taʾdībiyya*). The Court added that according to the Hanafi school, this second stage begins when the child reaches the age of seven. The judge added that even though custody is often considered a right of the father or the mother, it must be considered as a right of the child. Their interest must prevail and has to be taken into consideration by the judge.

In this case, the Court of Appeal held that since the child was over seven and was able to dress and feed themselves, there was nothing preventing their father from hosting them two days a week as well as during holidays and vacations. Accommodation was in the best interest of the child because it allowed them to get closer to their father and to know him better, to strengthen their bonds, to make them more obedient and to forge a more virile character while maintaining contact with their relatives. The judge added that the mother would suffer no prejudice as a result of this short-term temporary accommodation.

5. The best interests of the child

In 2008, the Egyptian 1996 Child Law was amended to require that the best interests of the child (*maṣlaḥat al-ṭifl al-fuḍlá*) prevail "in all decisions and measures relating to children regardless of the party which is at their origin or which applies them" (Art. 3). The 2014 Constitution also mentioned the best interest of the child for the first

10 Mansoura Court of Appeal, Case No 280/60, 10 February 2009.

time: “The State shall endeavour to achieve the best interest of children in all measures affecting them” (Art. 80 para. 6).

Egyptian courts attach paramount importance to the protection of the best interest of the child in custody cases. However, this concept is a very difficult one to define. Neither the International Convention on the Rights of the Child, nor Egyptian law, provide a definition. Both refer to the interpretation which is given by the authorities responsible for implementing their provisions and in particular to judges.

Egyptian case law on custody rests on a very precise conception of what constitutes the best interest of a male child: he is to be raised by his caring mother during his youngest years, followed by his father who will train him intellectually and instil discipline and manhood in him. Tearing him away from his mother during this period when he is not independent would therefore be prejudicial to him. For Egyptian courts, it goes without saying that the mother should have the main responsibility in caring for a male child in his first years. It was only after finding that the child in question was autonomous that Mansoura Court of Appeal considered that he could stay with his father from time to time, implying that the father would not have been able to take care of his young child alone.

Furthermore, although the judge did not challenge this provision, a visitation right of three hours a week violates the Convention on the Rights of the Child and the other human rights instruments he mentioned, which stress the importance for a child of seeing both parents.

The law assigns significant powers to judges in determining the best interests of the child, and invites them to determine such an interest on a case-by-case basis by prioritising different conflicting interests. In practice, however, judges rarely look for the child's interest in the factual circumstances of the case submitted to them, and systematically assume that it is in their best interest is to stay with their mother during their youngest years, followed by their father in their later years.

Moreover, legislative reforms have extended the duration of maternal custody, unifying rules between girls and boys, and allowing a child of over 15 years of age to express their preference. At the same time, paternal rights to custody have been increasingly limited. In addition, since the amendment of the Child Law in 2008 (Art. 54 of Law No. 126) the right to assume educational guardianship (*wilāya taʿlīmiyya*) over her children and to supervise their education has been transferred to a mother who has custody: previously this was the responsibility of the guardian father. Although an increasingly powerful movement had been advocating for the right of

fathers to exercise joint care of their children, the law has not been amended yet. However, some judges, like those at Mansoura and Shubra courts, did not wait for the legislator to amend the very controversial rules. Instead they decided to look for what they considered to be the best interests of the child on a case-by-case basis, relying on the different legal sources available, the constitution, international conventions and *fiqh*.

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A bill amending the personal status law was introduced in parliament in February 2021 by the Egyptian cabinet.[11] Among the measures included is the proposal to modify the list of those of a child's relatives of entitled to custody: the father would now come fourth, after the mother and the two grandmothers. Furthermore, he would be granted the right of accommodation of his child but would face a prison sentence up to six months and the loss of his right of accommodation if he did not return the child to their custodian. If voted into law, the bill would also require the father's permission for the mother to travel abroad with her children. The bill also includes a provision intended to diminish the mother's financial and administrative rights over the child (*wilāya*).

The proposal sparked widespread controversy and backlash, especially from feminist and human rights organisations who complained about their complete exclusion from the drafting process of the amendment. An online campaign also criticised the bill under the hashtag "guardianship is my right" (*#al-wilāya_ḥaqqī*, in Arabic).[12] In the best interest of the child?

11 Hamed Mohammed Hamed, Mohammed Ali 2021.

12 Mada Masr, 18 March 2021.

3. The Impact and Effect of Drama on the Laws of Society

Enas Lotfy*

Why should any drama writer hold on to an idea and keep taming it for a long time until it yields and flows on paper, drawing real characters, scenario, dialogue and plot, to finally produce a tight flesh-and-blood story? Is it a passion? Is it the lust for narration that we are born with? The ideas that interest their mind and which they want to share with others? Or the change that they dream of? The change of the bitter reality in which we live in our Arab Islamic society, which suffers from ignorance, absence, obsolete customs, and traditions.

I think it is all of the above-mentioned reasons that push a writer to write their story, whether as a novel, short stories, a play for the theatre or cinema, because story telling is the origin no matter the way you tell it. That is why I always introduce myself as a 'storyteller' because I believe that telling stories strongly affects the thoughts of humans. It changes the compass of their mind and invites them to listen to different ideas, even if they reject and resist those ideas. Cinema is one of the most important means of revealing what is hidden and of fighting against ignorance and the blindness of minds, while at the same time entertaining and amusing people.

1. My *Bashtarī Rāğil* (2017) and motherhood without a husband

My essential purpose while writing my film **Bashtarī Rāğil* [Buying a Man] (produced in 2017, directed by Mohamed Ali and starring Nilly Karem and Mohamed Mamdoh), was to talk about something that had never before been discussed in our society, something that girls speak of secretly between themselves away from the judgement of society; the desire for motherhood by those who suffer from loneliness, have lost faith in love and men, and for whom having a baby will compensate for all the love that is missing in their life. Of course, due to the provision of law and religion girls cannot fulfil these desires outside the bounds of legal marriage, so they must manipulate society by having a fake marriage and giving birth through artificial insemination.

A shocking notion that had to be presented in a sarcastic comedy at a specific time in our society, which is ruled by strictly conservative ideas and rejects bold ideas. The

* Egyptian screenwriter

aim of the film is to shake up the rules of the family that govern the Arab mind, whether they be the rules of society or the rules of the situation because, of course, there cannot be a statutory law that allows a girl to have a baby without marriage. The heroine of the film therefore challenges the rules of society, causing the spectator to wonder and ask questions about societal norms. This is what is referred to as the impact of drama on society.

The reception in society of the idea behind this film was attentive listening to the issue. To decrease tension and anxiety among those with conservative ideas – which has unfortunately become one of the most prevalent groups in our society – the film was presented in comic form and its end conformed to the agreed societal norms, which is the 'natural' marriage (*al-zawāǧ al-ṭabīʿī*). I was keen to convey the ideas in the film in this way, in order to provide more space for acceptance of the idea behind it and to make people think about it without having an ideological or societal reaction. I am aware of the sensitive stage that our society is going through, in terms of reticence in proposing bold ideas, so the film caused quite a shock, followed by dialogue and reflection. Of course there was rejection, but in a sober way, and this became clear through my being invited on to several television and radio programmes, the interest of the press in the boldness of the film, and the discussions with me about the reasons for my presentation of this sensitive idea.

As for the reception by the audience, which is most important to me, it was more than wonderful, especially that of girls. I received many messages and praise for the idea. The most beautiful sentence I heard was when a girl told me that she was the hero of this film in her personal life. The desire for motherhood and the fear of association and marriage with a man are true feelings and ideas that exist in our society. There is a crisis of mutual trust between men and women. In fact, there is a crisis of confidence in the idea of love itself. In the West, this matter was resolved by giving any girl the opportunity to become pregnant and give birth without marriage and without the presence of a man in her life, but in our society the declaration of this same desire is a form of madness. However, it was not one of my goals to change the law with this film.

Of course, this was impossible given a religion — as well as a law — that rejects this. However, to announce these ideas and to embody our feelings and needs through the film is the greatest victory, and this was enough for me. It has pushed me to think seriously about writing a work requiring the changing of laws that I see as unjust in terms of the rights of women and the family. Expressing our ideas is no longer enough and we must now move to another stage that has more influence in society, which is the demand to change laws that no longer suit us temporally, socially or intellectually.

2. Egyptian cinema and family law

Therefore, I would like to shed light on the history of Egyptian cinema and highlight some of its contributions in terms of films that embodied the injustice and disadvantage of some family laws that negatively affected society in general, and how these dramas dealt with this problem. For many years, drama has had a history of stimulating change as well as raising discussions that affect family rules while expressing underlying problems and social phenomena that were never spoken of openly. Drama also rejects ideas and incorrect social judgments that are widespread among people concerning divorce cases, early marriage, circumcision, *khulʿ* and inheritance.

To provide some examples of the impact that drama has had by changing certain social rules, discussing issues regarding the implementation of social law, as opposed to statutory law, or even manipulating the law to implement obsolete social laws, I recommend a quick review of the history of Egyptian cinema and drama, which has always taken the lead when speaking of justice, human rights and the implementation of law in Egyptian society. I will present the most important family laws that were discussed in particular Egyptian films.

2.1. Divorce initiated by the husband.

Urīdᵘ Ḥallᵃⁿ [I Want a Solution], which was shown in March 1975, is the most important Egyptian film that directly achieved its goal of changing divorce law in Egypt. It is based on the story by journalist Hassan Shah, with scenario and dialogue by Saad El-Deen Wahbah, directed by Saeed Marzouk, and starring Faten Hamamah, Roushdy Abazah and Aminah Rizk. The film ranks number 21 on the list of the 100 best Egyptian films and was previously nominated for an Oscar as the best foreign film in 1975. The film revealed the disadvantages of personal status law in Egypt and helped to change it. It succeeded in showing the cruelty of society towards women who file for divorce as well as the challenges they face in court and how they are viewed by society. The film follows a woman who is unable to carry on living with her husband. As such, she files for divorce, but he refuses. She therefore files a lawsuit which propels her through a maze of courts and causes trouble between herself and her husband when he brings false witnesses against her in court. She not only loses her dignity, but the situation becomes even more complicated when she loses the case after more than four years in trial and the judge refuses to grant her divorce. This depiction made the film highly controversial and caused Jihan El Sadat, wife of Anwar El Sadat – the then serving president of Egypt – to focus on passing the personal status law. The 44 law was passed in 1979, and due to the intervention of the First Lady, it was called 'Jihan

Law'. However, it was unfortunately soon cancelled by the Supreme Constitutional Court in May 1985.

It is worth noting that *Urīd*^{u} *Ḥall*^{an} is the third film in the history of Egyptian cinema to cause a change in the law. The first film to do this before *Urīd*^{u} *Ḥall*^{an} was *Ǧa ʿālūnī Muǧrim*^{an} [They Made Me a Criminal]. It was produced in 1953, directed by Atef Salem, and starred Fareed Shawky and Huda Sultan. The script was based on the work of internationally recognised author Naguib Mahfouz, the scenario by Ramsis Naguib, and the dialogue by Elsayed Bedir. As Egyptian criminal law was reconsidered, a new law was enacted to cancel the registration of the first criminal precedent in the judicial record, to give any repentant criminal the opportunity to return to his normal life and obtain employment without difficulties or societal harassment.

The second film, *Kalima*^{t} *Sharaf* [A Word of Honour], produced in 1973 and directed by Hossam El Din Mostafa, starred Farid Shawqi, Ahmed Mazhar and Hind Rustom in a script and scenario by Farouk Sabry, with dialogue by Farouk Sabry and Farid Shawky. It precipitated the adoption of a new law that granted a prisoner the (human) right to visit their family under specific controls in specifical circumstances, particularly when their close family members were unable to visit them in prison.

The dramatic influence of *Urīd*^{u} *Ḥall*^{an} also inspired the plot of another film, *Āsifa, Arfuḍ al-Ṭalāq* [Sorry, I Refuse the Divorce], which, however, reversed the original premise. It was released in 1980 as a TV film through a television station that belongs to the Egyptian government. Involving the scenario and dialogue of Nadia Rashad, it was directed by Inaam Mohamed Ali and starred Mervat Amin and Hussein Fahmy.

The film tells of a married couple who lead an ideal life, until the husband's old love appears. He decides to abandon his current life with his wife and to divorce her. With the help of her family and friends, the wife challenges the divorce and files a suit against her husband demanding that he does not divorce her. She presents that he does not have the sole right to decide the fate of their relationship. The movie ends with the man returning to his wife. However, she refuses to return to him because her goal was to show him that the decision to divorce was not his alone to make.

This film is considered among the most significant films in which the drama has succeeded in sending an important message to society. in this case the message is that a woman has the right to reject or continue a marital relationship and that the decision is not in the hands of the husband alone, to marry or divorce at any time he wants. At the time of the film's presentation, some women's organisations demanded that divorce be granted by a judge's ruling simply by asking the woman for her consent or

refusal to divorce, regardless of whether or not the husband wanted this, so that the two were equal before the law.

Addressing the issue of verbal divorce, which is unfortunately prevalent in our society and which circumvents the law, is the comic film **Zōǧ Taḥt iṭ-Ṭalab* [Husband on Demand]. The film mocks the irresponsibility of a man who files for divorce for petty reasons, until he runs out of chances because he is legally allowed to divorce his wife three times. After the third divorce, if the former husband regrets his decision and wants to take his wife back, he first has to make his former wife marry another husband — whom he has to procure for her. This procured husband is known as the 'the intervening husband' (*muḥallil/*zōǧ it-taḥlīl*). When this *muḥallil* husband divorces her, then the previous husband is allowed to remarry his divorced wife once again. The comedy drama discusses the issue of verbal divorce, the extent of leniency in the provisions of divorce and the circumvention of the law and *sharīʿa* by men. Unfortunately, the woman surrenders to this, to the ideas of society that compel her to consent, so that her children do not get scattered. The film was produced in 1985, based on a script, scenario and dialogue by Helmy Salem, directed by Adel Sadiq and starring Adel Emam, Fouad Al-Mohandes and Leila Alawi.

The same issue is discussed in the film *Al-Sayyid Qeshta* [Hippopotamus], a tragedy, in which the director merges the dream of an eastern man of having a son, with the issue of the intervening husband to circumvent the law and *sharīʿa* due to the perpetration of three divorces by the man. The film was produced in 1985 by Ahmed Abdel Salam, directed by Ibrahim Afifi, and starred Adel Adham and Elham Shaheen.

2.2. Housing rights and divorce

Egyptian drama has also addressed the important issue of the absolute right to retain the marital apartment, a situation that creates problems after divorce. One of the most famous films that discusses this with comic irony is *al-Shaqqa min Ḥaqq al-Zawja* [The Wife Has the Right to Retain the Apartment]. It was produced in 1985, with a scenario and dialogue by Faraj Ismail, directed by Faraj Ismail, and starring Mahmoud Abdel Azeez and Maaly Zayed. The movie revolves around a newly married couple. The couple has to navigate financial problems and face the interference of the bride's mother, which leads to arguments. Divorce is encouraged by the bride's mother and a dispute over the ownership of the shared apartment arises. After the film was shown, it achieved critical acclaim and a women's union submitted a request for recommendations to the Legal Committee of the parliament, to make amendments to the Personal Status Law on the issue of home ownership post-divorce. The law allows the wife to remain in the apartment until the end of the 15-year custody period. The

film was successful in activating the addition of an important clause in recent marriage contracts: the option to determine who will have the sole right to use the marital home in the event of divorce.

Another film also addressed the same problem, but from a dramatic angle, to reveal the negative aspects of this law, namely that it stipulates the wife had the right to remain in the marital home provided she has sole custody of children by her ex-husband. If she does not, she has no right to the dwelling. The film, *Imraʾa Muṭallaqa* [A Divorced Woman], produced in 1986 and directed by Ashraf Fahmy is based on a script by Hassan Shah and a screenplay and dialogue by Mustafa Muharram, and starred Najlaa Fathi, Samira Ahmed, and Mahmoud Yassin. It is about a husband who divorced his wife after 18 years of marriage. The marriage did not produce any children. The woman helped to purchase the marital home but without documentary evidence she cannot show proof of purchase. The man marries his secretary and the first wife discovers that she is pregnant and thus moves back into her home with her husband and his new wife. After she has an abortion, her husband evicts her and she is forced to marry an illiterate man for shelter. In a strong dramatic mirroring of injustice against women, the movie discusses the issue of divorce without the wife's consent, the loss of proof of her material rights to ownership of the apartment, and that the fate of any wife who has no children at the time of her divorce is homelessness.

2.3. Divorce initiated by the wife (khulʿ)

The influence of *Urīdu Ḥallan* did not stop in the 1970s and 1980s, but extended to the issuing of the *Khulʿ* Law in Egypt, which was issued according to Law No. 1 of 2000 on January 29, 2000, where Article 20 stipulated that:

> The couple have to make an agreement between with each other over khul', if they do not agree on it, and the wife requests it, she will redeem herself and dislocate her husband by relinquishing all of her legal and financial rights, and she returns to him the dowry that he had given her, and the court rules to divorce her from him.

This law inspired the great scriptwriter Waheed Hamid to write the first film to discuss this law in a comical and ironical form: *Muḥamī Khulʿ* [The *Khulʿ* Lawyer]. The film was produced in 2002, directed by Mohamed Yassin, and starred Hani Ramzy, Dalia Al-Behairi, and Hassan Hosni. It cynically addressed the request of a woman for *khul'* for petty and irresponsible reasons, as well as the ability of her lawyer to circumvent the law to free her from her husband who refused to divorce her. The second film to discuss the law of *khul'* in a sarcastic way is *Urīdu Khulʿan* [I Want *Khulʿ*]. The film

follows a music schoolteacher who is mistreated by her husband. She requests a divorce, but he refuses, which forces her to file a suit in court, making her the first woman to file for divorce since the issuance of the law. The film was produced in 2005, written and screened by Ahmed Awwad and Mohamed Salah Al-Zahar, directed by Ahmed Awwad, and starred Hala Shiha and Ashraf Abdel Baqi.

It is worth noting that the law of *khulʿ* in Egypt has been fought since it was passed by fossilised male minds. Twenty years after the passing of this law, there are voices calling for its abolition. Indeed, some members of parliament have submitted bills to amend and restrict it, and have even requested its abolition, but until now, these requests have not been discussed. The story of a woman who frees herself from her husband according to law hurts many people who hold reactionary ideas. Even though the woman's right to divorce through *khulʿ* has been enshrined in legislation, these ideas are still resisted and rejected. Nonetheless, we hope that the Egyptian legislator will preserve this important legal acquisition of Egyptian women.

2.4. Marital obedience / Bayt al-ṭāʿa

We will now examine another law that represents, in my opinion, one of the worst laws in the list of personal laws in Egyptian courts, the *bayt al-ṭāʿa* law (house of obedience). This law requires a wife to live forcibly in a house owned by her husband, even if she refuses to continue marriage, with the allegation and legal and legitimate accusation by her husband that she does not obey him and breaks his rules and regulations. A request to cancel it was presented to parliament in January 2020, but this has yet to be discussed. I hope for the day that legal efforts succeed in repealing this law, as it forces a woman to stay with a husband whom she hates psychologically and physically. The cinema succeeded in discussing this in a successful and dramatic manner. Unfortunately, this law is used by some men to humiliate their wives rather than to discipline them, which is contrary to what many of them claim. We recall the movie *Barīq ʿAynayk* [The Light of Your Eyes], produced in 1982, which was based on a script by Samira Mohamed, directed by Mohamed Abdel Aziz, with screenplay and dialogue by Ahmed Saleh, and starring Madiha Kamel, Nour Al Sharif and Hussein Fahmy. The film tells of an air hostess who marries a pilot without knowing that he is already married to his cousin and that he has a child by her. She requests a divorce from him, but he refuses and, on one of his trips, the plane crashes and he cannot be found. The air hostess then meets another man and marries him. One day, she is surprised by the return of her husband who opposes her current marriage and files a lawsuit requesting her to return to the house of obedience. After he wins the case, he demands that his wife live with him, by the force of law, in an old, wretched house prepared specifically for her humiliation. With impressive drama, the film discusses

the disadvantages of The House of Obedience Law and the extent of the injustices that a woman faces due to the implementation of this law.

Another film that discusses the same law and the problem of customary marriage (*zawāǧ ʿurfī*) and its disadvantages, is the movie *Indhār bi-l-Ṭaʿa* [Obedience Warning]. Produced in 1993, with a script, scenario, and dialogue by Khaled Al-Banna, directed by Atef Al-Tayeb, it stars Layla Alawi and Mahmoud Hamida. The film is a love story between a poor girl and a lawyer, who decide to perform a customary marriage until the financial conditions of the lawyer improve. However, the girl is subjected to pressure from her family to marry a rich relative of hers. She yields to her family and agrees to the marriage with the rich relative. When the lawyer discovers the new marriage, he files a case to establish the existing customary marriage between them and requests her return to the conjugal house, the house of obedience.

2.5. Customary marriage / Zawāǧ ʿurfī

Customary marriage was discussed also in television drama, which addressed its status in Egyptian law, and how a wife's rights are lost through it. In particular, drama considered the severity of its effects on society and the damages that a woman suffers from this type of marriage. The successful television drama, *Ǧawāz ʿalá Waraq Sūlīfān* [A Marriage on Wrapping Paper], also discussed this phenomenon clearly and was itself widely discussed, earning for television drama a reputation for engaging with complex issues and having an impact on the public debate—the series was discussed in the press and on TV programmes. It was a warning bell to realise the contours of the phenomenon of customary marriage as the marriage that takes place between young university students. It was produced in 1998 by Egyptian TV, based on a script, scenario, and dialogue by Iqbal Baraka, directed by Ashraf Al-Ghazali and starring Mona Zaki and Ahmed El-Sakka.

On the other hand, customary marriage is considered a circumvention of the marriageable age of girls, set by Egyptian law at 18 years of age. Unfortunately, many poor families force their young girls to marry earlier than is allowed, through customary marriage. Here it is clear how customs and traditions govern and the law is rejected, and even circumvented. The exposure of these young girls to early marriages brings with it great physical and psychological damage. One of the most dramatic works that discussed these two issues together is *al-Qāṣirāt* [Underage]. A 2013 production, based on a script, scenario and dialogue by Samah Al-Hariri, directed by Majdi Abu Amira, it starred Salah Al-Saadani and Dalia Al-Buhairi.

Besides this, there are other societal reasons that push people to resort to customary marriage (*ʿurfī* marriage), For example, a widow who wants to marry again without losing her deceased husband's pension. Here we should demand a change in the law in favour of widowed women, to prevent them from rushing into marriage in this way. Another example of customary marriage is where young people want to have a relationship with a kind of religious legitimacy without incurring the huge expenses of the conventional form of marriage. Here we are prompted to talk about the somewhat exaggerated costs of completing a marriage in our Arab country. A final example of customary marriage is for the purpose of pleasure and paying money in exchange for this, which is a form of sexual exploitation of women.

2.6. Honour and gender discrimination

In conclusion, when speaking of the most important films that have affected family laws, which have provided fertile grounds for drama, I would like to mention an especially important film presented by Egyptian cinema. This is in order to discuss the issue that this film addresses, namely the extent of the cruelty and discrimination of the penal law, which rules differently for men and women in regard to honour issues.

The film *ʿAfwᵃⁿ ya ayyuhā ʾl-Qānūn* [Excuse Me, Law!], produced in 1985, discussed the issue of adultery. In this film, a woman was sentenced to 15 years imprisonment with enforced hard labour, while for the same crime, a man is charged with only a misdemeanour. There is obvious discrimination between them, and with the passage of time, continuous discrimination against the woman remains. The Egyptian law currently defines the punishment for adultery, as stated in Article 274 of the Penal Code, thus: “A married woman whose adultery is proven is to be sentenced to imprisonment for a period not exceeding two years, but her husband can stop the implementation of this ruling by his consent to her living with him as she is”.

Article 277 stipulates: “Every husband who conducts adultery in the marital home, and this matter has been proven by the wife’s lawsuit, is sentenced to imprisonment for a period not exceeding six months”. The film is written and screened by Ibrahim Al-Muji and directed by the bold director Enas Al-Deghaidy.

3. Conclusions

Concluding this presentation of the most important films that discuss various legal issues related to family, I must mention to the social and media reactions to these films. There are films that strongly attract the attention of the audience because of their great importance in discussing a law that affects every family of its time. Such a film is for example *Urīdᵘ Ḥallᵃⁿ*, which had great societal impact and took its time to

shed light on the issues of divorce and the tragedies that women endure. It gained great press and media momentum, but the most important reaction from my perspective, was the audience's sense of the drama depicted. There are films that are shown and forgotten, but real drama that expresses the feelings and problems of people exist in their memory forever and have a great place in their souls. I mentioned earlier, for example, the films *al-Shaqqa min Ḥaqq al-Zawǧa*, *Muḥāmī Khulʿ* and other films that people remember clearly and discuss among themselves. While media and jouralistic reactions to films are a product of their time — that is: the time when the films are screened — the 'real' quality of a film is always a function of its relevance, its impact on viewers, and the specific mark it leaves on the history of cinema.

On the other hand, institutions tend to react quite rarely to films; in a very few, isolated cases did films constitute a motive for institutional action and reform of laws, as mentioned earlier.

This drama emerges from life and its cruelty. It also shows how the handling of this cruelty differs from one artist to another, some of whom love to invite the public to laugh at its misery using comedy and irony, and some of whom present it tragically in a way that causes hearts to ache. However, the thing common to all of them is the invitation to think about and change the negative ideas that are prevalent in society and to try to amend laws. They also have a greater aim, which is that drama can urge humans to have more humanity, compassion and mercy, to love justice and truth and to respect the law.

References

Abdoun, Safaa. 2008. “MB: New child law follows Western agenda, says Brotherhood”, *Daily News Egypt*, 4 June 2008. Retrieved 7th July 2020: https://dailynewsegypt.com/2008/06/04/mb-new-child-law-follows-western-agenda-says-brotherhood/

Abou Ramadan, Moussa. 2009. “Transformations du droit de garde dans les pays arabes: l’émergence d’un «libéralisme patriarcal»”, *Droit et religions*, PUAM, 69–81.

Afifi, Mohamed. 1996. “Reflections on the Personal Laws of Egyptian Copts.” In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira El Azhary Sonbol. Syracuse: Syracuse University Press, 202–215.

Al-Sharmani, Mulki. 2017. *Gender Justice and Legal Reform in Egypt: Negotiating Muslim Family Law*. Cairo: American University in Cairo Press.

Amin, Qasim. 1999. *The Liberation of Women/The New Women*. Translated from Arabic into English by Peterson, Samiha Sidhom. Cairo: American University in Cairo Press.

Bano, Samia. 2012. “Muslim Women, Divorce and Shariah Councils in Britain.” In *Interpreting Divorce Laws in Islam*, edited by Rubya Mehdi, Werner Menski and Jørgen S. Nielsen. Copenhagen: Djøf Publishing, 259–288.

Bernard-Maugiron, Nathalie. 2011. “Divorce and Remarriage of Orthodox Copts in Egypt: The 2008 State Council Ruling and the Amendment of the 1938 Personal Status Regulations”, *Islamic Law and Society* 18, 356–386.

Buchler, Andrea, Amira Latiff and Firdavs Kutliev (eds). 2010. “Supreme Constitutional Court of Egypt: a commented translation of Egypt's supreme constitutional decision in case no. 125 of judicial year 27 on child custody”, Zurich Open Repository and Archive, University of Zurich, *GAIR-Mitteilungen* 2, 79–93. Retrieved 7th July 2020: http://www.zora.uzh.ch/id/eprint/47316/1/Buechler_GAIR-Mitteilungen_2010.pdf

Cherif Feller, Dina. 1996. *La garde (Hadanah) en droit musulman et dans les droits égyptien, syrien et tunisien*. Genève: Librairie Droz, 1996.

Clarke, Morgan. 2018. *Islam and Law in Lebanon: Sharia Within and Without the State*. Cambridge: Cambridge University Press.

Daily News Egypt. 2011. “Single fathers call for amending custody law”, *Daily News Egypt*, 24 May 2011. Retrieved 7th July 2020: https://dailynewsegypt.com/2011/05/24/single-fathers-call-for-amending-custody-law/

De Hart, Betty, Nadia Sonneveld and Iris Sportel. 2017. "New Perspectives on Gender in Shari'a-Based Family Law Studies. Moving Beyond the Women's Issue", *Religion and Gender* 7 (1), 42–52.

Elsasser, Sebastian. 2019. "The Coptic Divorce Struggle in Contemporary Egypt", *Social Compass* 66 (3), 333–351.

Engelcke, Dörthe. 2017. "Jordan", In *Parental Care and the Best Interests of the Child in Muslim Countries*, edited by Nadjma Yassari, Lena-Maria Möller and Imen Gallala-Arndt. The Hague: Asser Press, 121–143.

———. 2019. *Reforming Family Law: Social and Political Change in Jordan and Morocco*. Cambridge: Cambridge University Press.

Esposito, John L. 1982. *Women in Muslim Family Law*. New York: Syracuse University Press.

Geddah, Rasha. 2017. "The dilemma of child custody", *Al-Ahram Weekly*, 20–26 April 2017.

Hamed Mohammed Hamed, Mohammed Ali. 2021. "We publish the most important provisions of the Personal Status Law after it was referred to the committees of the specialized committees in the House of Representatives" (in Arabic). *Al-Ahram* 28 February 2021. Retrieved 17th January 2021: https://bit.ly/3f9Ssch

Hope, Kristen, and Yann Colliou. 2015. "Situating the best interests of the child in community-based arbitration of marriage disputes: Reflections from a pilot intervention of Terre des Hommes Foundation in Assiut, Egypt", *DIFI Family Research and Proceedings*, Vol. 1 (5). Retrieved 7th July 2020: **http://www.qscience.com/doi/full/10.5339/difi.2015.5**

Ibrahim, Ahmed Fekry. 2015. "The Best Interests of the Child in Pre-Modern Islamic Juristic Discourse and Practice", *American Journal of Comparative Law* 63, 859–891

Ibrahim, Ekram. 2011. "Unprecedented: Copts Seeking Divorce 'Resign' Orthodox Church," *Ahramonline*, 15 September 2011. Retrieved 13th November 2020: Http://english.ahram.org.eg/newscontent/1/64/21308/Egypt/Politics-/unprecedentedcopts-seeking-divorce-resign-Orthodo.aspx

Jaraba, Mahmoud. 2019. "The Practice of *Khul'* in Germany: Pragmatism versus Conservativism", *Islamic Law and Society* 26 (1–2), 83–110.

Kholoussy, Hanan. 2010. *For Better, For Worse. The Marriage Crisis that made Modern Egypt*. Cairo: AUC Press.

Leila, Reem. 2008. "Opposed but not opposed", *Al-Ahram Weekly*, 22–28 May 2008.

———. 2009. “Egypt: When and where? Changes to the law governing access to children following divorce are causing controversy”, *Al-Ahram Weekly*, 12–18 February 2009.

Linant de Bellefonds, Y. 1956. “La suppression des juridictions de statut personnel en Egypte”, *Revue internationale de droit comparé* 8 (3), 412–425.

Lindbekk, Monika. 2013. “Enforcement of Personal Status Law by Egyptian Courts.” In *Adjudicating Family Law in Muslim Courts: Experiences from the Muslim Contemporary World*, edited by Elisa Giunchi. New York: Routledge, 87–106.

———. 2014. “Between the Power of the State and the Guardianship of the Church: Orthodox Copts Seeking Divorce.” In *Eugen Ehrlich’s Sociology of Law*, edited by K. Papendorf, S. Machura and A. Hellum. Zurich: Lit Verlag, 179–202.

Macfarlane, Julie. 2012. “Practising an ‘Islamic Imagination’: Islamic Divorce in North America.” In *Debating Sharia: Islam, Gender Politics, and Family Law Arbitration*, edited by Anna C. Korteweg and Jennifer A. Selby. Toronto: University of Toronto Press, 35–65.

Mada Masr, “#Guardianshipismyright: Women call for greater legal rights over their children and themselves”, *Mada Masr* 18 March 2021. Retrieved 24th March 2021: https://bit.ly/39amety

Mehanna, Omnia and Nadia Sonneveld. 2021. “Why Aisha Rateb Could not Become Egypt’s First Female Judge, and Became Egypt’s First Female Law Professor Instead.” In *Gender and Careers in the Legal Academy*, edited by Ulrike Schultz, Gisela Shaw, Margaret Thornton, and Rosemary Auchmuty. Bloomsbury: Hart Publishing, 373–387.

Moussa, Jasmine. 2017. “Egypt”. In *Parental Care and the Best Interests of the Child in Muslim Countries*, edited by Nadjma Yassari, Lena-Maria Möller, and Imen Gallala-Arndt. The Hague: Asser Press, 1–28.

Parolin, Gianluca. 2018. “Testing the Boundaries of Religious Marriage (and Divorce) in Popular Culture: Egyptian Television Drama Reinforcing and Challenging Marriage Taboos”, *Journal of Mediterranean Studies* 27(2), 159–172.

Peters, Rudolph. 2002. “From Jurists’ Law to Statute Law or What Happens When the Shari'a is Codified”, *Mediterranean Politics* 7 (3), 82–95.

Rowberry, Ryan and John Khalil. 2010. “A Brief History of Coptic Personal Status Law”, *Berkeley Journal of Middle Eastern & Islamic Law* 3 (1), 81–139.

Sayed Ahmed, Amira. 2016. “Egypt's parliament under fire for controversial child custody bill”, *Al-Monitor* 16 December 2016. Retrieved 7th July 2020: http://www.al-monitor.com/pulse/originals/2016/12/egypt-child-custody-bill-controversy-parliament.html#ixzz4rxckwphi

Scott, Rachel M. 2020. “Islamic Law, Unitary State Law, and Communal Law: Divorce and Remarriage in Egypt’s Coptic Community,” *Exchange* 49, 215–236.

Sezgin, Yüksel. 2013. *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India*. Cambridge: Cambridge University Press.

Shaham, Ron. 2010. “Communal Identity, Political Islam and Family Law: Copts and the Debate over the Grounds for Dissolution of Marriage in Twentieth-Century Egypt”, *Islam and Christian–Muslim Relations* 21 (4), 409–422.

Sonneveld, Nadia. 2012. Khul‘ *Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life*. Cairo: American University in Cairo Press.

———. 2015. “Rethinking the Difference Between Formal and Informal Marriages in Egypt”. In *Family Law in Islam: Divorce, Marriage and Women in the Muslim World,* edited by Maaike Voorhoeve. London: I.B. Tauris, *New Middle Eastern Studies* 5, 77–108.

———. 2017. “From the Liberation of Women to the Liberation of Men? A Century of Family Law Reform in Egypt”, *Religion & Gender* 7 (1), 88–104.

———. 2019. “Divorce Reform in Egypt and Morocco: Men and Women Navigating Rights and Duties”, *Islamic Law and Society* 26, 149–178.

———. 2021. “Migration, Law, and Family Life in the Middle East and North Africa”. In *The Routledge Handbook on Religions, Gender and Society*, edited by Emma Tomalin and Caroline Starkey. Abingdon: Routledge, in press.

——— and Joseph Alagha. 2020. “Why His Photograph Was Not Taken: Reconsidering Membership in Lebanon” In *Routledge Handbook on Citizenship in the Middle East and North Africa*, edited by Roel Meijers, James N. Sater and Zahra R. Babar. Abingdon: Routledge, 336–347.

——— and Monika Lindbekk. 2015. “A Revolution in Muslim Family Law? Egypt’s Pre- and Post-Revolutionary Period (2011–2013) Compared,” *New Middle Eastern Studies* (online) 5, 1–19.

Tadros, Mariz. 2009. “The Non-Muslim ‘Other’: Gender and Contestations of Hierarchy or Rights,” *Hawwa* 7, 111–143.

Tucker, Judith E. 1998. *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley: University of California Press.

Van Eijk, Esther. 2016. *Family Law in Syria: Patriarchy, Pluralism and Personal Status Laws*. London: I.B. Tauris.

———. 2019. “*Khul*‘ Divorce in the Netherlands: Dutch Muslim Women Seeking Religious Divorce,” *Islamic Law and Society* 26 (1–2), 36–57.

Wakin, Edward. 2000. *A Lonely Minority: The Modern Story of Egypt’s Copts*. Lincoln, USA: iuniverse.com, Inc.

Yassari, Nadjma, Lena-Maria Möller, and Imen Gallala-Arndt (eds). 2017. *Parental Care and the Best Interests of the Child in Muslim Countries*, The Hague: Asser Press.

Zahraa, Mahdi and Normi A. Malek. 1998. "The Concept of Custody in Islamic Law", *Arab Law Quarterly* 13(2), 155–177.

Zeghal, Malika. 1999. "Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952–94)." *International Journal of Middle East Studies* 31 (1): 371–99.

Ziadeh, Farhat J. 1968. *Lawyers, the Rule of Law & Liberalism in Modern Egypt*. Stanford, CA: Hoover Institution Publications.

About the Authors

Gianluca Parolin is a comparative lawyer working on constitutional design, State–Islam relations, citizenship, the shifting semiotics of law, and images of law in popular culture. He holds a PhD in Public Law from the University of Turin, and is Professor of Law at the Institute for the Study of Muslim Civilisations of the Aga Khan University in London, where he also leads the Governance Programme. He is currently working on a new book on the law's *imaginaire* in Egyptian television drama.

Nadia Sonneveld has an academic background in anthropology, Arabic and law. She is an associate professor at the Van Vollenhoven Institute for Law, Governance, and Society, Leiden University, the Netherlands. The common factor in all her research activities is the focus on gender and law in Muslim-majority countries, particularly in Egypt and Morocco. In her most recent research project, *Living on the Other Side: A Multidisciplinary Analysis of Migration and Family Law*, she focuses on the rights of migrants in Morocco through the lens of family law.

Nathalie Bernard-Maugiron is a senior researcher at the French Institute of Research for Development (IRD). She is an associate researcher at the Faculty of Law of Paris University and a lecturer at the Sorbonne Law School and at SciencesPo Paris. Her main fields of interest are legal transformations in the Arab world, constitutional reforms, personal status law as well as the judiciary in Egypt and in the Arab world. From 2010 to 2014 she was the co-director of the Institut d'études de l'Islam et des sociétés du monde musulman (IISMM) at EHESS (École des Hautes études en sciences sociales) in Paris.

Enas Lotfy writes widely for Egyptian theatre, cinema, television, and radio. In 2017, one of her scripts was made into the blockbuster film, *Bashtarī Rāgil*, centred on a woman's desire for maternity while refusing marriage. In her work, she explores the societal and psychological contours of contemporary Egyptian society. She also runs labs for free writing, self-expression, and theatre of the oppressed. In 2021, her script for the short film *ʿArūsa Sharʿiyya* was nominated to the Nice International Film Festival.

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The Aga Khan University Institute for the Study of Muslim Civilisations (AKU-ISMC),

Aga Khan Centre, 10 Handyside Street, London N1C 4DN, UK.

T +44 (0)20 7380 3800 ismc@aku.edu www.aku.edu/ismc

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