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LAW IN THE SERVICE OF LEGITIMACY: GENDER AND THE POLITICAL SYSTEM IN JORDAN

A Dissertation
Submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Doctor of Philosophy
in Government

By

Catherine Warrick, M.A.

Washington, D.C.
June 6, 2002

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GEORGETOWN UNIVERSITY
GRADUATE SCHOOL OF ARTS AND SCIENCES

This is to certify that we have examined the doctoral dissertation of

Catherine Warrick

entitled Law in the Service of Legitimacy: Gender and the Political System in Jordan

submitted to the faculty of Government

in partial fulfillment of the requirements for the degree of

Doctor of Philosophy.

This dissertation is complete and satisfactory in all respects, and any and all revisions required by the final examining committee have been made.

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LAW IN THE SERVICE OF LEGITIMACY: GENDER AND THE POLITICAL SYSTEM IN JORDAN

Catherine Warrick, M.A.

Mentor: Michael C. Hudson, Ph.D.

ABSTRACT

This dissertation is a study of the relationship between culture and political legitimacy. Based on an analysis of issues of gender and law in the political system of Jordan, I argue that legitimacy, a crucial component of successful democratic systems, is significantly dependent upon cultural factors that affect the political system. This does not mean that a particular cultural basis is necessary for a political system to be legitimate, but rather that the politicization of elements of culture contributes to the ability of the regime and other political actors to claim sociocultural legitimacy. Several factors contribute to legitimacy, but the sociocultural strand of legitimation is the most fundamental, a *sine qua non* for state legitimation.

Through an examination of criminal law, nationality law, and administrative regulations and policies, I demonstrate that the state uses the legal system as a legitimation tool, incorporating traditional social practices in order to maintain the support of certain elements of society while at the same time taking measures that counter traditional practices and extend new rights and roles to women. This allows for a simultaneous claim of two kinds of legitimacy, one based on traditionalism and the other

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on democratic values. Not only does this widen the regime's appeal to various audiences, it allows the state to mobilize either rationale (protecting tradition or developing democracy) in support of its policy objectives. This is one of the key reasons for the stability of the Jordanian regime, as well as one of the chief factors explaining the character and pace of Jordanian democratization.

However, the incorporation of cultural elements into state legitimation efforts politicizes formerly "natural" social practices and values, bringing them into the realm of political contestation and demands on the state. This gives rise to a lively debate on the definition and proper role of both tradition and democracy. The significance of the politics of legitimacy as played out in issues of gender and law is not only about the content of policies and competition of interests, but the power to determine the nature of the political system itself.

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CHAPTER ONE: INTRODUCTION

This dissertation* is a study of the relationship between culture and political legitimacy. Based on an analysis of issues of gender and law in the political system of Jordan, I argue that legitimacy, a crucial component of successful democratic systems, is significantly dependent upon cultural factors that affect the political system. This does not mean that a particular cultural basis is necessary for a political system to be legitimate, but rather that the politicization of elements of culture contributes to the ability of the regime and other political actors to claim sociocultural legitimacy. Several factors contribute to legitimacy (see below), but the sociocultural strand of legitimation is the most fundamental, a *sine qua non* for state legitimation. States and particular regimes may gain or lose support on the basis of their functional administrative competence, but the issue of substantive sociocultural legitimacy is fundamental to the state's stability and, in the end, to the prospects for the development of democratic characteristics such as free contestation, equal rights, and social tolerance.

Jordan, as a developing country, is particularly suited to the present study because both the nature of the political system and the proper character of national culture are

* The field research upon which this project is based was conducted in Jordan between October of 1997 and September of 1999, with the support of a Fulbright-Hays grant for doctoral dissertation research and a grant from the US Information Agency and American Center for Oriental Research (Amman). I would like to thank Matthew DeBell, Michael Hudson, Mark Warren, Judith Tucker, Rana Taha, Nathan Brown, and all of my colleagues and interviewees in Jordan who gave generous assistance with various portions of this project.

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topics of intense and public debate. The state's pursuit of legitimacy is readily traced in its approach to gender issues and the law, an arena where the state seeks to entrench its legitimacy by engaging various social actors and appealing to more than one basis of governing authority. The debate over gender roles, particularly women's rights, has been a major contributor to the tendency of actors and scholars alike to see Jordanian society as characterized by "modern" and "traditional" forces locked into a zero-sum competition. This perception is flawed, however, because it rests upon a concept of tradition that, although often tactically useful in politics, is inadequate and misleading.

In the Jordanian case, the state is by far the most dominant actor in and shaper of the political system, and it is the question of the state's own legitimacy that brings the issue into the realm of political contestation. However, once the issue is politically salient, other actors can enter the legitimacy debate and seek to affect either the state's political position or their own by the mobilization of legitimacy issues. The sociocultural aspect of legitimacy has to do with appropriateness of the regime and state within their social setting, and thus the state finds it necessary to make and respond to claims about cultural authenticity.

Legitimacy is a concept integral to political authority; it is that which provides the distinction between the power to rule and the right to rule. A government, or more broadly a state, that enjoys legitimacy is regarded by its citizens as an appropriate governing power. This is different, of course, from popularity; people may dislike the

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government, (or its policies, or other aspects of the state), but still regard it as having the right to rule. Legitimacy is invaluable to states, not only because it reduces the extent to which coercive methods must be employed (as Gramsci argues with regard to hegemony) but because it provides a positive justification for authority that creates a bond of duty between citizens and state. Several factors may contribute to the state's legitimacy among its citizens, including its policy successes, its administrative competence and its moral standing, but the most fundamental element of legitimacy, particularly in developing countries, is the aspect of cultural appropriateness. A state structure that, in its policies or its founding principles, is culturally disconnected from its society will find it difficult to justify its political power.

Not only the presence and degree but the quality of state legitimacy is a key determinant of the course of political development. Democratic development, specifically, requires that the state not only enjoy legitimacy, but that its legitimacy be of a particular character favorable to the protection of important citizen rights and political processes. States, particularly in developing countries, may find it prudent or convenient to seek legitimacy on the basis of cultural authenticity; to the extent that this "authenticity" preserves (or creates) undemocratic social elements, the state's legitimacy and the path of democratization may well diverge. However, as states may appeal simultaneously to more than one source of legitimation, both democratic and antidemocratic elements may coexist in the political order, as is the case in Jordan. This

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phenomenon is an important influence on the character of political contestation in such systems and is particularly apparent with regard to gender issues.

An extensive literature exists on the importance of gender issues in political systems; most work has focused on such issues as they pertain to participation and contestation (the political participation of women; inclusion of often-marginalized interests into political life). In addition to these more apparent elements, gender issues, and particularly the social roles and rights of women, are connected to political legitimacy because they serve as an arena for contestation over authentic culture. This is because gender issues pervade many aspects of social life and are relevant far beyond the bounds of formal politics. It is common everywhere for women's roles to be considered most connected to the transmission of culture and the reproduction of social values through generations, and thus women become a symbol of cultural authenticity. This does not mean that women themselves have no agency; women both participate in the maintenance of cultural norms about gender roles and, in other cases, challenge these roles. But it is important to recognize that women's social roles are politicized as *women's* roles, in a way that men's are not politicized as *men's* roles.

Both culture and legitimacy are generally recognized as important to understanding political systems, although they go in and out of fashion as subjects of research. The extent to which, and the means by which, political systems and governing regimes enjoy legitimacy in their societies is an important factor in democracy,

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democratization, and political stability. Cultural variables are likewise important to political systems in a number of ways, having an effect on civil society, law, political behavior, the issues considered important in political life, and indeed upon the nature of legitimacy and the foundation of the system. However, while each of these topics has received significant attention over the last few decades, the nexus between the two has yet to be fully investigated.

Assumptions about the role of culture in politics have a marked effect on the study of the politics of the Arab world, and yet these assumptions are not always openly acknowledged nor fully explored and justified. Problems of political legitimacy are common throughout the developing world, and in Middle Eastern cases are considered by many to be a product of the cultural elements that have led some scholars to argue that the region is "exceptional," not fully explicable by the tools of regular political science. Likewise, the treatment of tradition and modernity as poles in a competitive dichotomy, an approach which long ago lost favor among many political scientists, is still practiced in studies of the Arab world, both by general comparativists and by area specialists. It is therefore useful to investigate a Middle Eastern case in the hope of elucidating further a political phenomenon that, I believe, is significant in the politics of all regions, and in so doing to challenge persistent assumptions about both the role of culture in politics and political science, and the place of tradition in Arab political systems.

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The Jordanian case is well-suited to this study because it is a system undergoing an extended process of change in which issues of legitimacy are prominent; furthermore, it has had in recent years a relatively open political sphere in which competing views and goals are publicly visible. This is not to imply, of course, that access to the political system is fully democratic or that all interests are represented in civil society, but particularly with regard to issues of cultural authenticity and gender, debate is lively and far from one-sided.

This specific focus of this project is on law and gender, in part because culture is far too broad and complex a reality to be usefully treated in its entirety in a study such as this. It was therefore necessary to conceptualize the relationship between culture and political legitimacy fairly narrowly in order to identify the issues most likely to be of explanatory utility. Gender is a cultural characteristic[1] that is both universal and well-articulated locally; it permeates many areas of society and politics, and forms a basis for both social organization and political action. Law, likewise, is a phenomenon of universal relevance which takes on specific local forms as a joint product of cultural forces and political demands. The relationship between these two issues highlights important issues for the development of political legitimacy and the role of culture in political systems. These and other methodological issues are explained more fully below.

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[1] Gender, as distinct from biological sex, is the social construction of sex-specific roles, virtues, restrictions and expectations for men and women. Gender is an element of society in itself, and other elements of society are "gendered;" politics, law, religion, economics, family structure, etc. are elements of sociocultural systems in which gender roles and associated values are reflected and carried out.

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In the view of George Washington, "the true administration of justice is the firmest pillar of good government." The relevance of law to the quality of government extends well beyond its readily apparent effects in behavior regulation and dispute resolution. Law is a means by which shared norms and values are given formal recognition and political reality. It is also an area in which state power tends to predominate over other social systems, in that it is the state that defines and enforces the law. Law is both reflective and constitutive of cultural norms and thus becomes an arena in which contesting legitimacy claims can be reconciled or disputed.

The incorporation into legal codes of social values and practices with regard to gender (see chapter 3) serves cultural as well as governmental purposes; such laws preserve particular social practices and structures as a means of regulating social order, and in so doing, they contribute to the state's ability to present itself as culturally authentic, and thus legitimate. States facing significant legitimation concerns, such as the authoritarian regimes of the Arab world, incorporate "cultural legitimacy" claims into their official political discourses and programs, just as their chief opponents mobilize such claims in criticism of the state and its authenticity. Thus elements of culture become important determinants of the development of political systems, particularly in regard to issues of rights and freedoms.

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It has been noted that the Third World state is often characterized by a political system that is neo-patrimonial in nature.[2] In such states, political authority is derived in one sphere from rational-legal sources, such as legislatures and electoral processes, and in another sphere from the maintenance of traditional social relationships and practices. Christopher Clapham identifies this as a weakness of the Third World state, and he may be correct in the long term. It seems clear, though, that states and other political actors are able to use these two sources of authority in constructing political discourses that can claim the loyalty of different sectors of society, as well as form a highly flexible framework for the presentation and justification of political choices. The Jordanian state, for example, is quite adept at presenting its "rational-legal" face to certain audiences (educated elites, liberal reformists, foreign observers) and its "traditional" face to others (tribal sectors, Islamists, etc.) in order to appeal to these different audiences on different grounds. Conversely, it can also make use of each authority type in denying the demands of particular sectors: feminists can be told that certain legal changes are impossible because they conflict with (or would be perceived as an assault on) valued traditional cultural forms, and Islamists can be told that certain policies are just because they were achieved through the proper legislative process.

The legal systems of Arab states reflect this duality, combining laws and legal frameworks of both Western and Islamic origin. The existence of dual legal systems

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[2] Christopher Clapham, *Third World Politics: an Introduction.* (Madison: University of Wisconsin Press, 1985).

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represents a strategic tool for states in their quest for legitimacy, and this paper will demonstrate that regimes and other actors make deliberate use of the dual legal systems in pursuing political objectives regarding both the nature of the system and policy outcomes. This project treats the incorporation of Islamic law in the Jordanian system as a means by which traditionalist demands are addressed, but this is not meant to suggest that Islam and tradition are not conceptually distinct. Religion and tradition appeal to different sources of authority - the sacred divine versus the sacred past. However, religion, in terms of practices and the social meaning of beliefs, is certainly a component of tradition, both in the Arab world and elsewhere. This connection between the two is, for example, the source of annual disagreements in the United States about the acceptability of Christmas decorations in government buildings, and in Jordan informs the debate over the cultural place of honor killings.

Organization of this study

In the following chapters, I will explain the theoretical and methodological bases for this study and then present evidence in support of my argument. In this introductory chapter, I will lay out my argument, provide background information for understanding the context of the Jordanian case, and situate the present study with regard to existing literature on the politics of the Middle East and of Jordan. Chapter two explains the theoretical foundations of the study, relying on a revision of Habermas's idea of

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legitimation crisis and, to a lesser extent, on Gramsci's concept of hegemony. Chapter three examines what I call the "dual legal system" of Jordan and its importance in politics. Chapters four, five and six address particular legal and policy issues that provide evidence of the complex role of gender issues in state legitimation and political contestation by actors outside the state. Chapter four investigates criminal law, focusing on the issues of rape and honor killings. I argue that in these areas, law and legal practice are constructed to endorse traditional social practices, because in so doing, the state enhances its cultural legitimacy with some sectors of the population. Nationality law, addressed in chapter five, is another example of the state's endorsement of a view of women's public roles as different from, and subordinate to, those of men. Chapter six investigates several administrative issues including government identity documents, women's rights organizations, and the role of women in the military. These issues reveal that the state does not have a single unified approach to women's rights; it both supports and constrains women's rights initiatives, while simultaneously expanding women's professional roles in the military and continuing to require women to have male intermediaries in much of their business with the state. This is not evidence of chaos or ideological confusion within the state; rather, the Jordanian state is, like other states, not a monolithic actor. There are diverse interests within the state, and these are further complicated by the state's reliance on two strands of political legitimation, which are discussed below in chapter two.

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Society and Politics in Jordan

Jordan is a small country, less than a tenth the size of Egypt in both area and population. It is formally a constitutional monarchy, but the powers of the monarch have always predominated in the political sphere. Jordan had early experiences with democratic structures and processes in the years immediately after the formation of the state,[3] but democratic life was then suspended during nearly thirty years of martial law. The exigencies of regional politics have long served as the justification for authoritarian measures such as martial law.[4] In 1989, parliamentary elections were held for the first time in over 20 years, and political parties, banned since 1957, were allowed to operate beginning in 1992, the same year that martial law was formally lifted. Elections were held again in 1993 and 1997; the 2001 elections were postponed due to unrest related to the Israeli-Palestinian conflict.

Jordan is a fairly poor country, but one that is undergoing somewhat successful economic development. King Abdullah has been very active in this area since his coronation, promising to expand the private sector and increase foreign investment. Jordan's economy faces difficulties ranging from the lack of natural resources to the loss

[3] Jordan was under British mandate control in the post-World War I period. The first unified national government of the country, then known as Transjordan, was established in 1921, but Jordan did not achieve full independence until 1946.

[4] King Abdullah's official website describes martial law as "imposed as a result of the tense security situation resulting from the 1967 War and Jordan's loss of the West Bank to Israel..."; it was also clearly

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of Iraq as a major trading partner after the Gulf War. Structural adjustment programs have represented the primary approach to economic development, but have not always been popular with poorer sectors of society, as they have led to reductions in subsidies for basic necessities like bread. The Jordanian economy also relies in part on its expatriate workers, many of whom have been employed in Gulf countries. After the Gulf War, approximately half a million such workers were repatriated to Jordan, an additional strain on the economy in terms of both income and employment levels. Government estimates of employment in 1997 were around 14%, while private estimates were as high as 28%; the government later conceded that the latter figures were probably more accurate.[5] The economy is based heavily on the service sector, and recent growth rates have been around two percent annually.[6]

Demographic issues in Jordan center around the high population growth rate and the proportion of residents of Palestinian origin. Approximately 40% of the population are under the age of 15,[7] and the annual growth rate is between two and three percent, although a recent survey identified a "rapid fertility decline affecting all strata of

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intended to facilitate the state's internal political control by eradicating contestation and dissent. See www.kingabdullah.gov.jo.

[5] The 28% estimate was produced by the University of Jordan's Center for Strategic Studies, and reportedly used a more accurate methodology (in terms of both question wording and the definition of unemployment) than the government study.

[6] World Factbook 2001, US Central Intelligence Agency, www.odci.gov.

[7] According to Jordanian government statistics at www.kingabdullah.gov.jo, the under-15 figure is 42.2%, while the CIA's World Factbook 2001 puts it at 37.23%.

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society."[8] While most estimates put the population at just over 5 million, the government's figures are significantly lower, at 4.4 million.[9] Christians constitute between four and six percent of the population, and have a protected quota of seats in the national parliament; Muslim-Christian conflict is not an issue in Jordan. The more salient social division is between residents of Palestinian and (East Bank) Jordanian origin. The proportion of Palestinians in the Jordanian population may be as high as 65%, some of whom arrived as refugees after 1948 and 1967, and many of whom were born and raised in Jordan. The government does not release official estimates on this issue because of political sensitivities, but does acknowledge that 1.4 million Palestinians are registered as refugees with the United Nations;[10] this does not account for all Palestinians in the country, as many do not live in the refugee camps or receive UNWRA services.

Jordan has numerous political parties, but these tend to be largely irrelevant in both electoral politics and the mobilization of public opinion on issues. The society is often described as a tribal one, wherein family loyalties provide the predominant basis for political identity and interest formation. The East Bank tribes are widely recognized as a major source of support for King Hussein; the state has addressed their needs and

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[8] Sara Randall and Nawaf Khalaldeh, "The Population of Jordan, " in Jon Hanssen-Bauer, Jon Pedersen, and Age A. Tiltnes, eds., *Jordanian Society: Living Conditions in the Hashemite Kingdom of Jordan* (Fafo Institute for Applied Social Science: Oslo, 1998), p. 51.

[9] The 4.4 million figure is cited at www.kingabdullah.gov.jo; the CIA's World Factbook (supra) provides a July 2001 estimate of 5.1 million. News reports sometimes put the figure as high as 6.5 million (MSNBC report, 21 March 2002) but this figure is not substantiated elsewhere.

[10] www.kingabdullah.gov.jo. The relevant agency is the United Nations Relief and Works Agency, which administers the several refugee camps in Jordan.

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promoted this special relationship by employing primarily East Bank Jordanians (as opposed to Palestinians) in the civil service and military.

A number of "women's organizations" exist in Jordan, ranging from policy-oriented organizations that seek to advise the government on various issues, such as the Jordanian National Committee for Women, to more independent groups such as the local chapter of Sisterhood is Global, International and the al-Kutba Institute for Human Development, which are oriented toward the development of women's social and economic roles. The women's movement gets mixed reviews in Jordan and is often regarded as the special province of the social elite. While this characterization is at least partially accurate, the movement has in recent years addressed itself to the interests of the "grassroots" of Jordanian women, and its effect on Jordanian political life is perceptible though not radical (see chapter six for further discussion of this issue).

Although Jordan is a predominantly Muslim society, it does not have an Islamic government, like Iran. Women are not required by law to wear *hijab* (Islamic dress) of any form. Many women wear a long dress (*jilbab*) and headscarf, while others wear more Western-looking clothing and a scarf, and some women do not wear a scarf at all. Freedom of movement and access to education and employment are in large part a function of an individual woman's family situation; women from more liberal families (which tend to be wealthier families) travel, attend university and graduate school, pursue careers, and enjoy a great deal of autonomy, while women from more conservative

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families, especially in rural areas, are likely to be less educated, employed in the home, and to be much more restricted in their movements. Poorer women are also likely to have more children; average family size is now about 6 children per woman,[11] but in poorer areas, it is not uncommon to find women with as many as eleven children.

The official government and royal position on women's rights in Jordan usually focuses on the constitution's guarantee of equal rights to all Jordanians. However, this article specifies race, language and religion as prohibited grounds of discrimination and does not mention gender.[12] There is some consensus, among lawyers and within the women's movement, that this article could be a basis for gender equality. However, it is clear that at present this is neither the intention nor the effect of this article. A great deal of Jordanian legislation would be unconstitutional if this interpretation of Article 6 were used, as many laws mandate or allow for differential treatment of women and assign particular privileges to men. It is unlikely that a challenge would be brought on the basis of this article, as it would almost certainly not succeed. Also, it is of some doubt whether full legal equality, in the sense of gender-blind laws, is something that would be welcomed even by Jordanian feminists. The few provisions in law that discriminate in

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[11] See www.kingabdullah.gov.jo.

[12] Article 6 (1). Citations are taken from the Constitution of the Hashemite Kingdom of Jordan, 1952. It is somewhat interesting that the constitution's official English translation suggests a more limited extension of equality than does the original Arabic. The official English version reads "Jordanians shall be equal before the law. There shall be no discrimination between them as regards their rights and duties on the grounds of race, language or religion." The original Arabic actually says "...no discrimination between them *even should they differ* as to race, language, or religion" (emphasis added). This difference of language was discovered in a conversation with lawyer Salah Bashir, who agrees that the actual wording of the Arabic suggests that the three named categories are examples of protected categories rather than a limiting list.

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women's favor, such as labor law provisions about working conditions, are cherished as practical protections of women's rights and status, and women would not be likely to renounce these without a significant alteration in the entire social structure, of a degree that is extremely unlikely.

The state-dominated political sphere

Ankh-Morpork had dallied with many forms of government and had ended up with that form of democracy known as One Man, One Vote. The Patrician was the Man; he had the Vote.

--Terry Pratchett, *Mort*

The most significant characteristic of Jordanian political life is its domination by the state. This domination is felt in several ways: the powers reserved to the King, including the selection of the Prime Minister and the Upper House of the legislature; the presence and activities of the internal security service, the *mukhabarat*; the legal restrictions on the formation not only of political parties, but of charitable and social-service organizations; the strategically-designed elections law, which stocks the Lower House with pro-government members much as a game warden might stock a trout pond; and the limitations on freedom of speech, felt especially by journalists, who face the prospect of arrest and detention for unwise commentary.

During the long reign of King Hussein from 1953 to 1999, the state's authoritarian controls (including the imposition of decades of martial law) could be somewhat balanced or softened, for certain sectors, by the perception of the King as a paternal figure, who

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possessed authority naturally and wielded power in the best interest of his children. This was certainly a perception encouraged by the King himself. There is little disagreement about Hussein's political skill in preserving not only his own power but the security of Jordan, and when he died in 1999, the public expressions of grief were, in many cases, sincere. Nonetheless, the authoritarian character of the system has been its most predominant feature. Whether this will change substantially during the reign of King Abdullah remains to be seen. The new monarch has indicated his interest in improving judicial independence, increasing government responsiveness and efficiency, and securing greater rights for women, but despite his sweeping formal powers, he, like his father, faces the challenge of maintaining the support of the so-called "traditional sector" of society, which may well limit his political reach as a practical matter.

King Abdullah also faces a challenge that his father did not: he must work to be perceived as a "real" Jordanian. The legacy of his father is tempered, for many people, by his British mother, his foreign education, and his distinct accent when speaking Arabic. His lack of grooming for the role of monarch is apparently less of a liability and may even help him by providing an image of a practical professional (he was a military officer before his father's death) rather than a spoilt princeling brought up to expect the throne. However, while much has been made of his military career, it is also said, sotto voce, that he was, like the sons of other kings and presidents, something of a dilettante soldier.[13]

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[13] This was a comment I heard occasionally in conversation with Jordanians, and was also suggested to me by a military official at the American embassy in Jordan who was familiar with the king's career. The king

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This may or may not be the case, but it represents the importance of various elements in the king's public persona, all of which contribute to the public's evaluation of his suitability as a monarch.

In addition to the importance of the monarch, much of Jordanian political life has revolved around the concept of national unity. While consensus on the basis of the political system is certainly a necessity in any conception of democracy, the Jordanian discourse on national unity has been more often a tool to support the stifling of unpopular or "dangerous" interests. "Harming national unity" is actually a criminal charge for which individuals can be arrested, tried, and jailed; it is used for example against public figures who advocate the return of Palestinians to Palestine, an issue of extreme sensitivity in Jordan, where more than half of the population are Palestinians. The idea of a unified nation is also supported by assertions that unrest or crime are instigated by external, foreign forces seeking to harm Jordan; this type of claim has featured in explanations of the 1998 Ma'an riots,[14] murders in Amman, and the opposition to the honor crimes law (see chapter 4).

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was trained at Sandhurst, the British military academy, and held the rank of general in the Jordanian military at the time of his succession to the throne.

[14] Tareq Ayyoub, "Ma'an riots continue; King warns Jordan will not tolerate instigation of violence," Jordan Times, 22 February 1998. King Hussein suggested that the violence was the result of "conspiracies [against Jordan]" by "malicious or ungrateful persons [who do] not believe in this country and [do] not have any allegiance to this country."

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British scholar Bernard Crick has written of the dangers of regarding politics as the pursuit of unanimity rather than the reconciling of competing interests.[15] For Crick, political claims about unanimity presage the death of politics, as they are the first step toward totalitarianism. Crick's formulation is somewhat overstated; consensus has an important role in politics and is, at the level of fundamental principles, necessary for the legitimacy of any political system. However, his point about the authoritarian uses to which "consensus" can be put are well taken and borne out by the Jordanian case. The justification for the notorious restrictions on speech, assembly, and political organization that the Jordanian state enforces is most often one of the "good of the nation," based on a concern for the danger posed by the divisiveness of political contestation. So long as the state (in its various guises) values internal security over public freedom, prospects for democratization are significantly limited.

It is worth noting that the state has not cornered the market on the "national unity" discourse; other groups, including the state's chief opponents, have made use of the concept for their own political ends. This is entirely to be expected, as efforts to benefit from the powerful effects of an established hegemony are a logical tactic in any system where openly counter-hegemonic activity carries severe penalties. To advocate something on the basis that it contributes to national unity (by reflecting shared and authentic values as opposed to foreign ones, for example) is a fairly safe approach.

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[15] Bernard Crick, *In Defense of Politics* (fourth edition). University of Chicago Press: Chicago, 1992.

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The Jordanian legal system

Jordan's legal system falls predominantly within the civil law tradition (see chapter 3 for an extensive discussion of the legal system). Its civil and criminal codes are heavily influenced by European codes, particularly the French codes as received via the Ottoman *majallah* and other laws. Aspects of Islamic law (*shari'a*) have been codified in the Personal Status Code, which regulates issues such as marriage, divorce, inheritance and child custody. Tribal law, the traditional practices of dispute resolution among family groups, was formally abolished in 1976, but it continues to operate informally alongside the system of state-created law. The constitution, which dates from 1953, is broadly similar to several other Arab constitutions and was in fact based largely upon earlier Egyptian constitutions.[16] It defines the Jordanian state and nation[17] and enumerates the rights of Jordanians. The constitution divides political power among the usual three branches of government, legislative, executive, and judicial, and gives the rules of monarchical succession.

The form of the constitution is unexceptionable, but several of its substantive contents merit comment. First, the constitutionally-protected rights of individuals, such as freedom of speech, are all qualified by a restriction limiting them to "the extent

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[16] Judicial Inspector Adel Khasawneh and retired judge Farouk Kilani, interviews, March 1999. Khasawneh also traced the Jordanian constitution to the Lebanese and Iraqi constitutions, as well as European influences.

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allowed by law," or some similar formulation. This suggests that these rights are not in fact foundational in the system, but rather subject to the regulation of statutory law. As the government's ability to make law is rather broad, encompassing emergency and "temporary" legislation that can be enacted by the executive without the participation of Parliament, the actual protection of rights in the Jordanian system has been much more a political than a constitutional question. The constitution is of little practical legal value in this area and is rarely used as a basis for challenge to such laws. In one case that did involve a constitutional claim, the courts made it clear that statutory laws do indeed trump constitutional guarantees. [18]

Second, the constitution's provisions with regard to the separation of powers are regarded with derision in many quarters. While the constitution provides explicitly for the independence of the judiciary, it is widely recognized that judges are subject to the political authority of the Ministry of Justice and generally beholden to the politically powerful. Likewise, the assignment of legislative power to the two houses of parliament, the House of Deputies (*majlis an-nawab*) and the Senate (*majlis al-'ayan*), is in practice undermined by the frequent use of "temporary laws" as described above. Finally, the parliamentary system itself departs from the usual form of such institutions, in that the

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[17] For example, Jordan is defined as "an independent sovereign Arab State," whose people "form part of the Arab nation," and whose official religion is Islam. (Articles 1 and 2).

[18] The Court of Cassation (Criminal Division) upheld the conviction of a man charged with lese majesté, explicitly endorsing the executive's power to restrain "insulting" speech about the monarch despite constitutional provisions about freedom of expression. Decision No. 171/96, cited in *Yearbook of Islamic and Middle Eastern Law*, vol. 3, 1996, page 216.

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Prime Minister is not, as in Westminster-model parliaments, drawn from the majority party in the lower house, but is an appointee of the monarch. This gives the king direct influence in the legislative as well as the executive arena.

This description of Jordanian society and politics will, I hope, provide a context in which to assess the thesis and the substantive evidence of this project.

Review of literature

Among the countries of the Arab world, Jordan has not received the most attention from scholars (a distinction that probably goes to Egypt), but neither has it been neglected. Several notable studies of Jordanian society and politics have been published, including the work of Linda Layne, Richard Antoun, Laurie Brand, Marc Lynch, Joseph Massad, Lisa Taraki, Glenn Robinson and others.[19] While it is not possible to give each

[19] For anthropological accounts of Jordanian society, particulary tribal structures and identities, see Linda Layne, *Home and Homeland: a Dialogic of National and Tribal Identity in Jordan* (Princeton: Princeton University Press, 1994); Richard Antoun, *Arab Village: a Social Structural Study of a Transjordanian Peasant Community.* (Bloomington: Indiana University Press, 1972); Andrew Shryock, *Nationalism and the Genealogical Imagination: Oral History and Textual Authority in Tribal Jordan* (Berkeley: University of California Press, 1997). Recent political science on national identity includes Joseph Massad's *Colonial Effects: the Making of National Identity in Jordan* (New York: Columbia University Press, 2001); and Marc Lynch, *State Interests and Public Spheres: the International Politics of Jordan's Identity* (New York: Columbia University Press, 1999). Laurie Brand has made important contributions on political economy (*Jordan's Inter-Arab Relations: the Political Economy of Alliance Making.* New York: Columbia University Press, 1994) and analyses of gender and the state (*Women, the State, and Political Liberalization: Middle Eastern and North African Experiences.* New York: Columbia University Press, 1998, as well as several articles), while Glenn Robinson and Lisa Taraki have written about the role of the Islamist movement in Jordan (see Glenn Robinson, "Can Islamists be Democrats? The Case of Jordan," *Middle East Journal*, vol. 51, Summer 1997, pp. 373-88, and "Defensive Democratization in Jordan," *International Journal of Middle East Studies*, vol. 30, no. 3 (August 1998), pp. 387-410; Lisa Taraki, "Jordanian Islamists and the Agenda for Women: Between Discourse and Practice," *Middle East Studies*, vol. 32, no. 1, pp. 140-58).

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of these works our full attention here, it will be helpful to discuss the relationship of the present project to the work that has already been done in this field, both in comparative politics of the Middle East generally and specifically on the Jordanian case.

A general consensus seems to exist among scholars that the most salient elements of the Jordanian political system are its tribalism, its authoritarianism, its economic woes, and the Palestinian-Jordanian split. The present study does not take issue with the importance of any of these factors; indeed, each is considered significant not only by scholarly analysts but by participants (or would-be participants) in actual politics in Jordan. My hope is to add to these an additional aspect of politics that, I will argue throughout the coming chapters, is likely to be partially determinative of the course of Jordanian political development and the prospects for democratization. Cultural explanations of Jordanian politics have not been absent from the scholarly scene, but we are lacking a theoretically-grounded (post-modernization theory) analysis of the means by which cultural issues become politically salient and with what effect on the system itself. This project is intended to be an initial step toward an analysis of political development that considers culture not merely as a context nor as an explanation of last resort, but as a powerful, flexible and significantly determinative element of system stability and democracy.

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This is not, of course, to argue that culture, in the sense of a civilizational identifier along the lines suggested by Samuel Huntington,[20] determines the nature of political systems or the substance of political outcomes; rather, I suggest that cultural elements are relevant to stability and democracy in all political systems, through their effect on legitimacy. Jurgen Habermas offered a persuasive account of the importance of the sociocultural realm to the politics of advanced capitalist countries, and I argue in this study that similar forces operate in the developing world.

In coming to this conclusion, I have of course drawn on the existing scholarship on the comparative politics of the Middle East. Michael Hudson's well-known work on legitimacy in Arab countries[21] offered an important contribution to the analysis of the phenomenon throughout the region. Hudson identifies political legitimacy as "the central problem of government in the Arab world" at the time of his writing; in my view, it continues to be so today, although under somewhat different domestic and regional circumstances. Hudson's work utilizes a generally Weberian conception of legitimacy and locates the political problem of legitimacy failure in the forces of modernization then considered to be sweeping the region. He accounts for both domestic and external factors in analyzing state legitimacy and identifies several key requirements for political legitimacy; a number of these, at least as regards the Jordanian case, have yet to be fulfilled and continue to contribute to the political failures of the state. These include the

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[20] Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

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institutionalization of political participation throughout society, a consensus on national identity (and, I would add, its implications for citizenship in the fullest sense), and shared conceptions of authority. However, not all of his assessments are still equally useful in understanding legitimacy issues; for example, he argues that "Arab society is no longer traditional in the sense that any significant sectors can be swayed by appeals to custom, status, or superstition."[22] I hope to demonstrate that currently in Jordanian politics, appeals to custom are not only popular, but integral to dominant notions of the requirements for political legitimacy. This is not because notions of modernity and rational (in the Weberian sense, as opposed to traditional) politics have had no effect on the role of tradition in politics, but because the divide between "traditional" and "rational" appeals to authority is not necessarily an absolute one.

One of the chief contributions of Hudson's work was its successful application of the tools of general political science to the study of the Arab world, a region usually (especially at that time) treated as an exceptional "special case." The most thorough recent challenge to the exceptionalist treatment of the Arab world in political science is perhaps Nazih Ayubi's *Over-stating the Arab State*, in which he argues that "Arab politics should no longer be perceived as being peculiarly and uniquely Arab."[23] To that

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[21] Michael Hudson, *Arab Politics: the Search for Legitimacy*. New Haven: Yale University Press, 1977.
[22] Hudson, p. 17.
[23] Nazih Ayubi, *Over-stating the Arab State: Politics and Society in the Middle East*. New York: I.B. Tauris, 1995. p. xi.

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end, Ayubi applies concepts developed in the study of other regions, particularly Latin America, to the analysis of Arab states.

While I am in sympathy with Ayubi's desire to eviscerate, once and for all, the thesis of Arab exceptionalism, I disagree with his position that culture must be rejected as an explanatory variable. This is not because Arab politics are somehow "more cultural" than politics in more developed systems. Rather, a great deal of politics, in both developing and developed systems, is about connecting the political order to society. Whether in choosing systems of representation, in defining basic rights, or in selecting policies that produce desired outcomes, cultural issues from shared notions of justice to preferences about the use of public space are deeply embedded in the choices offered and made.

Ayubi's work is most relevant to the present study in his treatment of the state and hegemony, a term he prefers to legitimacy.[24] Ayubi, like many other observers, sees the state as central to Arab politics,[25] but argues that it is not as strong as it is often portrayed. The state, in his view, has been weakened by a "crisis of hegemony," and this crisis is a key element in Arab political development. Ayubi draws an interesting distinction among strength, hardness, and fierceness as characteristics of states; here again his work closely

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[24] Although, like Ayubi, I find Gramsci's hegemony concept to be very useful in analyzing the state, I do not consider the term to be an alternative to legitimacy. In my view, hegemony as described by Gramsci suggests a nearly irresistible force which usually affects individuals (and thus shapes society) without their full critical awareness of it. Legitimacy, on the other hand, while largely a cultural product, is something of which people tend to be quite conscious and able to consider critically, even if they do not choose to do so

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relates to general comparative politics, as these concepts relate to the work on strong versus weak states by Clapham, Migdal and others.[26] His argument about the fierceness, rather than the strength, of the Arab state is particularly useful in the analysis of Jordan presented in this study. The Jordanian state has many of the attributes of power, such as an extensive internal security system and harsh penalties for its political enemies, but its underlying weakness is located in exactly the place that Ayubi (and, in a slightly different sense, Habermas) would expect: the need for popular legitimation.

Another major work of direct relevance to this project is Hisham Sharabi's *Neopatriarchy*. In developing a systematic framework for studying Arab society, Sharabi offers an interesting refinement of, although not a challenge to, the idea of modernity as the end product of political development. Although Sharabi deliberately excludes "culture" from his approach, on the grounds of the term's misuse by Orientalists and modernization theorists,[27] his analysis is essentially an accounting of the effect of a dependent modernization process upon an existing patriarchal sociocultural system, a combination that results in a neither-fish-nor-fowl social form he calls neopatriarchy. In order for democratic political development and true "modernity" to become possible in Arab societies, this neopatriarchy must be overcome.

(as in systems in which legitimacy is regarded as a settled question). Challenges to legitimacy may also be counter-hegemonic, but the two are not synonymous.

[25] Ayubi, p. 25.

[26] Christopher Clapham, *Third World Politics, an Introduction*. Madison: University of Wisconsin Press, 1985. Joel Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*. Princeton: Princeton University Press, 1988.

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Sharabi identifies (as do many observers) Islamic fundamentalism and secularism as the two competing discourses shaping Arab society.[28] For Sharabi, these two discourses are dichotomous, with Islamism being an "absolutist, traditionalist position" characterized by "total hegemony" and secularism a "self-limiting, rationalizing position" offering "free pluralism."[29] I suggest that this dichotomy is more perceived than actual. Both discourses must, and do, address the issue of tradition in terms of its definition, its proper role in society and thus in political life. The Jordanian case demonstrates the propensity for Islamists and traditionalists to ally on particular social issues, but also for religious justifications and arguments to be put forward by feminists and others in opposition to traditional practices such as honor killings. These issues, discussed below, demonstrate the importance of "tradition" in political contestation on both sides of Sharabi's dichotomy.

The extent to which secular positions are necessarily more pluralistic than Islamist ones is likewise debatable. Certainly in theory secularism should offer space for a wider range of interests and views, but in practice, the pursuit of culturally-grounded legitimacy tends to constrain the range of politics for everyone in the system. In combination with the authoritarian practices of even the most secular states, this produces an environment in which "free pluralism" is nowhere to be found. It could be added that few political actors, whether Islamists, traditionalists, or democrats, seem to be pursuing such

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[27] Sharabi, pp. ix-x.
[28] Sharabi, pp. 11-12.

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pluralism outside the relatively safe bounds of rhetoric. Democrats are often quite suspicious of Islamists as a political force presumably dangerous to democracy, and at least in the Jordanian case, Islamists have become fairly adept at using pluralist language to secure their own position within the political system.

A great deal of recent scholarship has focused on the role of civil society in the development and maintenance of democracy, in both developed and developing countries.[30] The often-noted tribalism of Jordanian society is generally considered, both by scholars and by activists, to be a barrier to real democratization in Jordan; the argument holds that as long as family ties are the basis of social organization and interest formation, associational life cannot develop in a way that fosters democratic contestation.[31] I find this argument generally persuasive because of the hierarchical

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[29] Ibid.

[30] See, for example, A. R. Norton, ed., *Civil Society in the Middle East* (New York: Brill, 1995), Jillian Schwedler, ed., *Toward Civil Society in the Middle East* (Boulder: Lynne Rienner, 1995), Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).

[31] Anthropologist Richard Antoun offers a counterargument to the position that traditional structures are a barrier to the development of civil society (see Richard T. Antoun, "Civil Society, Tribal Process, and Change in Jordan: an Anthropological View," *International Journal of Middle East Studies*, vol. 32, no. 4 (Nov. 2000), pp. 441-463). In his view, informal mechanisms of association, such tribal law and the practices surrounding it, should be regarded as potential elements of civil society. I agree that civil society need not be seen as constituted only by formal organizations that replace traditional forms, but while tribal conflict resolution practices may constitute part of civil society, they do not in my view contribute much to a democratic civil society, because they are predicated upon (1) a type of authority not constituted on a democratic basis, and (2) access to participation that is based upon possession of appropriate social status (e.g., usually not women). Thus not everyone is equal before the law, and not everyone has equal access to the law (of course, nor do they in democratic legal systems, because of economic, educational and other inequities, but they do both fully in theory and to a much greater degree in practice). Another commentator points out that the "emphasis on 'tribal process' might unintentionally reinforce reactionary trends" particularly with regard to those, such as Palestinians, who do not share in the tribal heritage. (See Jonathan Benthall, "A comment on Richard T. Antoun, "Civil Society, Tribal Process, and Change in Jordan: an Anthropological View,'" in *International Journal of Middle East Studies*, vol. 33, no. 4, (Nov. 2001) pp.

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nature of this form of organization and interest-definition. However, tribalism does not preclude internal differences and even competition, family structures are not static but amenable to change over time, and not all citizens of Jordan have a tribal tie as their primary identity. For these reasons, the "functional" effect of tribalism is not, in my view, fully explanatory of current political outcomes nor predictive of future ones.

Perhaps as significant as the contestation-limiting patronage relationships in tribalism, in fact, is the role of tribes in people's images of what it means to be Jordanian. In Linda Layne's 1994 study of Jordanian identity, she argues that identity is based on several elements including a constructed dichotomy of "true Bedouin"/primordial past versus advancement and modernization.[32] Thus authenticity and modernization are seen to exist in tension, with one available only at the cost of the other. The tricky task is, therefore, to secure the benefits of both. King Hussein was adept at presenting himself as able to bridge the contradiction; Layne gives the example of the dinar bill, on which

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668-670.) While the notion that traditional social structures can form part of civil society seems a valid one, it prompts the corollary reminder that not all civil societies are democratic ones.

[32] Linda Layne, *Home and Homeland: a Dialogic of Tribal and National Identities in Jordan.* Princeton: Princeton University Press, 1994. p. 14.

While not a work of academic scholarship, a recent monograph by Prince Ghazi bin Muhammad, a cousin of King Abdullah, offers an interesting example of the romantic image of the tribe as the pure and authentic essence of Jordanian society. (*The Tribes of Jordan at the Beginning of the Twenty-first Century*, Jordan: Jami'at turath al-urdun al-baqi, 1999) He wrote the work in order "to reveal the essential nobility of the tribes of Jordan," and to present a philosophy of the importance of tribes in Jordanian society. The author's position corresponds neatly to the "Bedouin versus modern" dichotomy identified by Layne; he writes of modernization as leading to the corrosion of the tribal system and the "casting away [of] solutions worked out, with wisdom and patience, over thousands of years[...]." (p. 14) For Prince Ghazi, the "nobility" of the tribes must be preserved in the face of modern threats, in order to ameliorate the flaws of the modern world. (pp. 61-62) This view of the tribal system and its meaning in Jordanian society is often echoed by those who wish to preserve particular traditional practices challenged by liberal reformers.

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Hussein appears in two images, wearing in the first a business suit and tie, and in the facing image a traditional *kufiyyeh*.[33]

The issue of tribes and identity also relates to the Palestinian-Jordanian question,[34] a distinction which as Layne points out is "often considered the most significant in Jordanian society."[35] It is, according to Layne, difficult to define the two groups precisely, either by place of family origin[36] or social characteristics, and yet the distinction has enormous social meaning.[37] The power of the state is widely seen as connected to the maintenance of the (East Bank) tribes; the army and the civil service are largely drawn from the East Bank Jordanian segment of society, and the monarchy is considered to have a symbiotic relationship in which a certain degree of political power and privilege is provided to the "tribal sector" in exchange for their support. Palestinians, who constitute over half of the population of Jordan, are largely excluded from this

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[33] Layne, p. 154.

[34] For simplicity's sake, I use the terms "Palestinian" and "Jordanian" in discussing Jordanian citizens of those origins. While it would be more accurate to call them "Palestinian-Jordanians" and "Jordanian-Jordanians," this usage is cumbersome and does not reflect the standard practice in Jordan, where both groups simply use the terms "Palestinian" and "Jordanian."

[35] Layne, p. 19. See also Laurie Brand, "Palestinians and Jordanians: a Crisis of Identity," *Journal of Palestine Studies*, vol. 24, no. 4 (Summer 1995), pp. 46-61.

[36] Layne, p. 20. Some families currently considered "Jordanian" originated in the West Bank, for example.

[37] In trying to explain the differences between Palestinians and Jordanians, a friend (herself Palestinian) pointed out university students walking past us on the University of Jordan campus, and quietly identified each of them as either Palestinian or Jordanian. She could not explain to me precisely the characteristics that made her sure of her identifications in each case, but was adamant that her labels were correct. Shortly thereafter a group of her friends joined us, and upon hearing of her efforts, set out to help her show me the difference in the two groups. They were unanimous in every identification (although of course I have no way of knowing whether or not they were correct!). This exercise did not have the intended effect of enabling me reliably to identify physical or sartorial differences in Palestinian and Jordanian students, but it did impress upon me the importance that people place upon these identities. (Jordanian friends were just as adamant about the existence, and salience, of the distinction.)

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special relationship with the state. Furthermore, the Jordanian parliament is, largely due to the purpose-built elections law mentioned above, considered by most to be a pro-tribal, or non-Palestinian Jordanian, body. On the other hand, Jordan was the only Arab country to grant citizenship to Palestinian refugees after the creation of Israel, and many Palestinian families have built secure middle-class or even wealthy existences in Jordan. This split in society is potentially destabilizing for Jordan, and so the government has partially controlled its effects by essentially forbidding the fomentation of inter-group conflict; "harming national unity" is a criminal offense with which those who would openly question the make-up of society can be charged.

Another reason that this distinction is not, in my view, a sole determinant of politics is that the two groups are fairly internally diverse. Palestinians may be destitute residents of refugee camps or wealthy businesspeople; East Bank Jordanians may be illiterate rural villagers or powerful residents of the posh section of town. Attitudes, as well as socioeconomic class, vary within the groups. Honor killings, for example, occur in both groups, and opponents to the practice are likewise to be found among both Palestinians and Jordanians. I also found that among those who were opposed to the practice or wished to minimize its publicity, some Palestinians would attribute the practice to "backward (Jordanian) tribespeople," while some Jordanians told me that such things happened "only in the (Palestinian refugee) camps." The appeal of traditionalist claims seems to have more to do with education and income levels than with

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identity as a Palestinian or Jordanian, and so the split, while politically significant, is not a prime explanatory variable for the present project.

The question of what constitutes a "true" Jordanian identity and how it incorporates tribes, Palestinians, etc., is for the purposes of this study chiefly treated as another element to be contested in the politics of tradition. Of course, the importance of defining national identity is not unique to Jordan; it has figured in nation-building projects around the world, and not always with happy results, as any number of "ethnic cleansing" atrocities will attest. The point is that, while people quite rightly expect in the era of self-determination that their government should have some meaningful connection to them and their society, the basis of the identity on which this link is to be established is itself constructed rather than a biological fact. The contingent nature of identity itself is therefore an important element in the pursuit of legitimacy and often plays out as a debate over the content and place of tradition in the public sphere.

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CHAPTER TWO: THEORETICAL AND CONCEPTUAL ISSUES

The argument about culture and political legitimacy presented in this project is derived in part from Habermas's theory of legitimation crisis, although it is not a direct application of that theory to the Jordanian case. Habermas intended his analysis to explain a problem specific to advanced capitalist states and the interaction of their political-administrative, economic and sociocultural aspects. However, the crux of the legitimacy issue lies in the relationship between the state and its sociocultural milieu, and in my view a very similar potential legitimation crisis faces states in developing countries. The study of legitimation issues in developing countries can perhaps contribute to the elucidation of the effects of culture on political development, an issue which has long been of interest in political science but which has also been the subject of some deeply flawed work. It is not the business of the present study to recreate these roundly-criticized arguments, but rather to contribute to the rescue of terms like "tradition" and "political development" from their modernization-theory ghetto.

While the heyday of modernization theory has long since passed, some of its assumptions continue to permeate aspects of current political science. Modernization theory originally regarded political development as a teleological process with one possible outcome. During the process of political development, traditional beliefs and practices would die out, to be replaced with modern forms of social interaction, modern

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institutions, and modern values. Modernity, in Gabriel Almond's structural-functionalist approach, was a matter of the degree of specialization and structural complexity of the sociopolitical system, but the concept often took on a Western character as well. In a well-known work on developing countries, Daniel Lerner characterized the problem of modernization in the Middle East as a question of having the right "state of mind" and asserted that "what the West is, the Middle East seeks to become."[38]

There were several problems with this approach to the politics of developing countries. First, "tradition" was never particularly well defined, and seemed in many cases to mean merely "that which is not modern."[39] Many writers regarded tradition as static, a view which I believe underlies continuing misperceptions among some scholars that "culture" is not a useful analytical variable because it cannot explain social and political change. Max Weber's typology of authority, while intended to identify analytical "ideal types" rather than to describe attributes of existing systems, has also probably contributed to the understanding of tradition and modernity as mutually exclusive and as stages of development, although Weber himself did not regard them that way.[40]

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[38] Daniel Lerner, *The Passing of Traditional Society* (Collier-MacMillan Ltd.: London, 1958), p. 47.
[39] For a useful review of modernization theory, its flaws and revisions, see Vicky Randall and Robin Theobald, *Political Change and Underdevelopment: a Critical Introduction to Third World Politics*, second edition. (Duke University Press: Durham, 1998).
[40] Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology*. H.H. Gerth and C. Wright Mills, editors and translators. (Oxford University Press: New York, 1946).

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Over the decades following the end of the colonial era in the mid-twentieth century, it became increasingly clear that tradition was not going to die, or at least not quietly. Many have noted the apparent persistence or resurgence of various traditional values, structures, or practices, from India's tenacious caste system to the "revival" of Islam in the Arab world. This led to revisions of modernization theory to consider the view that some cultures may simply be unamenable to democratic politics. This is the basis, for example, of the thesis of "Islamic exceptionalism" decried by Ayubi and others, and of Samuel Huntington's famous (or infamous) "clash of civilizations."

The tradition/modernity dichotomy has persisted despite its problems. For example, in a popular textbook on Middle Eastern politics, the authors begin by asserting that "the dialectical clash between the challenging forces of modernity and the persistent strength of tradition is a fundamental reality in the region."[41] They go on to identify a "growing trend to recapture important practices of the past," such as veiling, and characterize Middle Eastern social change as "marked by a bizarre blend of tradition and modernity."[42] In this view, tradition is a fixed and objectively identifiable reality, originating in the past rather than in contemporary political construction. Thus the appeal of different actors to the dictates of tradition or to the principles of democracy would,

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[41] James A. Bill and Robert Springborg, *Politics in the Middle East*, fourth edition. (HarperCollins: New York, 1994). Notably, this book is part of a series whose general editors are Gabriel Almond and Lucian Pye, two major figures in the development of modernization theory.
[42] Ibid., p. 2.

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from this perspective, be an inevitable and natural result of the nature of Middle Eastern societies caught up in modernization.

It is more useful and, I believe, more accurate to regard tradition as a basis for the construction of political appeals rather than a section of a development timeline falling before that labeled "modernity." The conscious use of tradition for political appeal and as an underpinning for political authority is very much a part of modern politics. Christian conservatives in the United States link their political goals to the characteristics of a past that, they argue, was more moral than current society; Hindu nationalists argue for an understanding of India as defined by its Hindu traditions; Scottish nationalists center their identity and political claims around civic traditions of education, religion, law, etc. that distinguish the Scots from their southern neighbors. Clearly, tradition has an important role to play in even the most modern and most democratic political systems.

The nature of tradition, and its political role, are of importance to this study not because people in Jordan are somehow trapped in tradition, or insufficiently modernized, or because tradition must necessarily oppose that which is modern. Rather, tradition is important because it has been made a subject for political contestation. Tradition as depicted by those who advocate it as a basis for political organization has the appeal of being familiar and comprehensible; it is valuable for its own sake, as a bulwark against the designs of foreign powers, and for the moral outcomes it is said to produce. For example, the practice of honor killings (see chapter four below) is justified by those who

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endorse it as a link with the virtuous and authentic past, an aspect of local culture which foreign interests (like human rights groups) seek to destroy, and a practical means of promoting morality and public decency. The appeal to "cultural authenticity" is one that is made with great regularity in Jordanian politics, and the question of defining and giving political meaning to traditions is important to the process of political development.

I find it necessary to use the term "political development" in discussing these contestational issues in Jordan. In doing so, I do not mean to endorse the "developmentalist" view that characterized the work of modernization theorists, because I do not believe that political development need follow a predetermined path or produce any particular outcome. "Political development" as used here means the ongoing process of construction, reform, and entrenchment of the political system. States and people regard the building or modification of the political system as a process not merely of change, but of directed change, toward a goal and involving increasing improvements to the system (although what constitutes an improvement is of course a matter of debate).

Hegemony

An important concept in analyzing the factors that shape political development is that of hegemony. Antonio Gramsci, in perhaps the best-known work on hegemony,

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defined it as "the 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group."[43] For Gramsci, the state is partially dependent (in fact, as dependent as possible) on this mobilization of consent, so as to avoid costly coercion. The degree of spontaneity is perhaps questionable, as his quotation marks suggest, for two reasons. First, people everywhere are socialized by the cultural and political systems in which they live, so the degree of free choice in conforming to hegemonic norms is necessarily limited. The effects of socialization are particularly notable in gender roles; practices and beliefs that would be considered objectively harmful to women, such as clitoridectomy,[44] are often largely transmitted and enforced by women themselves. Jordanian and other feminists often cite the need to radically alter socialization of gender roles in the family, particularly among siblings, as a basis for broader societal changes.

Second, where conscious choice is possible, failure to endorse the hegemony can come at a fairly high social cost. For example, women who reject or depart from the hegemonic understanding of femininity may be taunted, punished by social exclusion, rejected as a potential mate, etc. The social cost of operating outside the hegemony varies by actor, issue, and circumstance; an American woman of the early 21st century who does not wish to have children may attract only mild curiosity, whereas she would have faced

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[43] Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Quentin Hoare and Geoffrey Nowell Smith, eds. and trans. (International Publishers: New York, 1971), p. 12.
[44] Clitoridectomy, sometimes called "female circumcision," is primarily an African practice; while it is widespread in Egypt, it is unknown in Jordan.

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social condemnation in earlier times, and a woman from another culture might face significantly higher costs for this departure from the feminine norm.

Gramsci's treatment of hegemony as an alternative to coercion does not suggest that states do not also engage in coercive actions where this is considered necessary or useful. Rather, it points to the importance of sociocultural factors in the maintenance of a political system. This understanding of the relationship of consent and coercion is especially usefully applied to developing countries, which Christopher Clapham suggests are characterized by a combination of power and fragility.[45] The power, that is to say the coercive capacity, of the state is the most evident element of the two, but the success of the state rests in the final analysis on its legitimacy. Problems of legitimacy, a lack of connection between the people and the state, are the basis for the state's fragility. Thus states, particularly in developing countries where the course and content of political development is conscious and hotly contested, must concern themselves with sociocultural legitimacy based upon the hegemonic values of the society.

Gramsci's work on legitimacy has already been put to productive use in the study of culture and politics. One well-known example is David Laitin's *Hegemony and Culture*, which applied Gramsci's analysis to the issue of religion and politics among the Yoruba of Nigeria.[46] In this work, Laitin argued for the need to connect the study of culture to the study of the state. Departing from earlier treatments of culture and politics

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[45] Christopher Clapham, *Third World Politics: an Introduction*, supra, chapter 3.

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by structuralists such as Geertz, Laitin applied Gramsci's concept of hegemony to an analysis of the means by which particular cultural subsystems, like religion, are or are not brought into the political sphere. This useful approach demonstrates, among other things, that the effect of Islam on politics is not inevitable, but rather a product of particular sociopolitical forces. I make a similar argument in this study, that while the contestation over cultural legitimacy and the role of "authentic tradition" is enormously significant for political development in Jordan, this is not because of any objectively necessary "clash" between tradition and modernity.

Hegemonies affect both state and non-state actors, and represent one means by which the latter are related to the former. In the past several years, a great deal of research has begun to investigate the ways in which feminist groups in the Middle East are challenging not only established cultural practices and beliefs, but the autonomy of the state and the hegemony of state-dominated political discourses.[47] However, in the Jordanian case, we must begin by examining the premise underlying much of this research, that is, that women's rights movements necessarily represent a challenge to the state's ability to dominate the political sphere. In many cases, in the Middle East and elsewhere, the initial question should address not *how* the political hegemony is being

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[46] David Laitin, *Hegemony and Culture: Politics and Religious Change among the Yoruba.* (University of Chicago Press: Chicago, 1986).

[47] Notable recent examples of this extensive literature include Laurie Brand's *Women, the State, and Political Liberalization: Middle Eastern and North African Experiencs* (New York: Columbia University Press, 1998) and Mai Yamani, ed., *Feminism and Islam: Legal and Literary Perspectives* (New York: NYU Press, 1996).

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challenged, but *if* it is being challenged. Certainly most, if not all, women's movements exist to pursue social and political change, and that change is of a significant kind, usually requiring a restructuring of political and legal rights and implying expansion of both political participation and the nature of issues within the political arena. Yet these goals need not represent a cost to the state, and in fact can serve one or more of the purposes of the state itself, particularly in cases where the state is addressing demands for greater political liberalization. This is the case in Jordan, and therefore the Jordanian women's movement is not, strictly speaking, counterhegemonic. Rather, it works within the dominant discourse to promote improvements in women's position, and it allies itself closely with the state and utilizes existing paths of institutional and personal power. This is to a great extent a result of the nature of sociopolitical hegemony and gender in Jordan, and in particular the predominant role of the state.

In the Jordanian case, there is no feminist movement constituted as a direct opponent to a nationalist or traditionalist discourse. The movement and the dominant state discourse are both fairly moderate, as will be described below. The state itself is neither harshly oppressive of women nor an unswerving champion of their rights. Likewise, women's organizations are not outposts of radical feminism,[48] but neither are

[48] As used here, "radical" does not mean extremist, but rather refers to the school of feminist thought by that name. Radical feminism generally holds that gender oppression is the most fundamental form of oppression, extending across history and societies, and consequently that fundamental changes in the bases of social organization are needed to achieve equality for women. (For a useful discussion of the various schools of feminism, see Rosemary Tong, *Feminist Thought: a Comprehensive Introduction* [Westview

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they completely docile servants of the state. In this context, finding the counterhegemonic actor among such apparent moderation requires careful sorting of agendas and legitimation sources. It would be an overstatement to claim that women's organizations are completely co-opted by the state; nor is it true that the state can always be understood as a force countering the goals of the women's rights movement. In some cases, we even find that elements of the state itself appear to challenging the hegemonic discourse.

Looking for counterhegemony in the Jordanian case requires first finding the hegemony, which involves distinguishing different strands of authority and legitimacy. Political discourse in Jordan is dominated by the state, but the state is neither isolated nor a monolithic entity. Thus the state-endorsed and state-wielded hegemony draws on both various state elements and on societal sources in shaping the dominant discourse.

I identify two strands of hegemonic discourse in Jordan, which operate together to form the dominant discourse.[49] These strands are hegemonic in the sense that they are each the dominant and determinant discourse within their areas of application. This is a key point: the dominant Jordanian political discourse is highly sensitive to issues of actor

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Press: Boulder, 1989]). This would indeed be an extreme position in the Jordanian context, but it is not extremist in the sense of fringe lunacy.

[49] Although she does not discuss them in terms of discourse and hegemony, Mary Ann Tétreault has noted a similar phenomenon in Kuwaiti politics, which she describes as the rulers' "impossible dream: that Kuwait can be simultaneously a "developed" country and a "traditional" tribally organized social formation run by autocratic rulers." ("A State of Two Minds: State Cultures, Women, and Politics in Kuwait," *International Journal of Middle East Studies*, vol. 33, no. 2 (May 2001), pp. 203-220. As I argue in the case of Jordan, Tétreault points out that this combination of traditionalism and "developed" politics results in apparently contradictory policies on women's rights.

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and audience; thus the discourse that claims greatest authority depends to some extent on the topic in question. However, this is not to suggest that these should be understood as competing discourses. Rather, the hegemony that the state has constructed is one that claims the compatibility of these strands. Whether this compatibility is real or false is not the point; the *claim* of compatibility is what carries political force.

The two discourses that make up the general hegemony are the royal-liberal and the traditional. By royal-liberal, I mean the sphere of discourse that generally endorses liberal democratic ideals and has the support of the royal family. This is not identical to liberal discourses elsewhere, as a great deal of attention is given to constructing "locally appropriate" understandings of rights. In effect, these are liberal notions reconstructed to serve the state's needs for both domestic control and international legitimacy, and the probably sincere interest of members of the royal family in promoting more liberal notions of rights. The "traditional" sphere of discourse is that endorsed by what are considered the traditional sectors of Jordanian society, most importantly the tribal elements that are key supporters of the state and the monarchy. This discourse utilizes the appeal of tradition (as defined by its advocates) and has sufficient authority to hold other elements accountable to the claims of tradition; even those who are not themselves "traditionalists" find it necessary to adopt this language of authenticity. Thus, for example, plans to improve the status of women are often couched in terms of religious duty or cultural appropriateness, rather than feminist egalitarian rights terms. The success

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of this discourse in claiming cultural authenticity for itself serves to constrain other discourses; likewise, the royal power endorsing the more liberal discourse prevents its outright rejection by traditionalist actors. The result is a combining of the two strands into one hegemonic discourse, in which liberal and traditional elements both command authority. This makes for a highly flexible and politically adaptable hegemony, different elements of which are stressed according to audience and issue. That it is hegemonic is clear, however, as contestation outside this framework is not tolerated.

This discussion of hegemony in Jordan is a necessary basis for understanding the nature of Jordanian political discourse and the related legitimation strategies of the state and other actors. Liberal and traditional elements are combined rather than counterpoised in the dominant discourse, and thus we see them combined as well in state policy and the activities of other actors such as women's organizations.

Legitimacy

While these issues have important implications for democracy, this project is not a study of democratization, it is a study of political legitimacy in Jordan. Not just the fact but the type (or quality) of legitimacy has significant implications for the success of democratization processes and more broadly for the nature of the political system. The theory of legitimacy that undergirds the thesis of this project is based, as mentioned above, on the work of Jurgen Habermas.

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Habermas's theory of legitimation crisis was created to explain a phenomenon specific to advanced capitalist states. According to Habermas, such a state contains inherent contradictions in its required functions; these contradictions both jeopardize the state's legitimacy and make the state unable to generate new legitimacy. This legitimation problem is inherent in the nature of the advanced capitalist state, rather than situational or contingent.

Habermas's theory was not intended to explain the legitimacy problems of developing countries, but I believe that its basic explanatory principles hold true in cases like Jordan, for reasons described below. In his description of types of system crisis, Habermas gives brief attention to system types or stages other than advanced capitalism, including primitive, traditional, and liberal-capitalist systems; unfortunately, his analysis of "traditional" systems is not of use here, either descriptively or analytically. Habermas defined traditional systems as those whose "principle of organization is class domination in political form,"[50] which does not describe the Jordanian system. Nor, as he suggested was the case for traditional systems, is the legitimation issue in Jordan one of reconciling internal norms with exploitation that produces class conflict. His analysis of liberal-capitalist systems does not fit our purposes either, as it describes a society in which the "bourgeois constitutional state finds its justification in the legitimate relations of production" and a "society that no longer recognizes political domination in personal

[50] Jugen Habermas, *Legitimation Crisis*. Beacon Press: Boston, 1973. p. 18.

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form."[51] Of course, it was not Habermas's project to explain legitimacy in developing countries, and his typology was designed with the history of Europe in mind; its lack of direct application to the present case is not surprising. However, Habermas's analysis of the role of the modern state and the issue of legitimacy is, unlike the description of system stages or types, conceptually portable to systems beyond the advanced capitalist type and useful in examining the rise and operation of legitimacy issues.

Habermas (and others, like Claus Offe) sees advanced capitalist society as a system with three subsystems: sociocultural, economic and political-administrative. In advanced capitalism, the state has had to take on market-related functions that were earlier the province of the private sphere. However, while the state possesses autonomy as a decisive actor, it depends on the processes of advanced capitalism for its material content. The state can influence these economic processes, but not control them, and it must function so as to ensure their continuation.

At the same time, the state must maintain the loyalty and support of its citizens. However, the capitalist system works against the social integration necessary to produce legitimation, because it brings formerly nonpolitical issues into the arena of political contestation and justice claims. The state cannot create legitimation in the sociocultural sphere, because its attempts to do so result in the further politicization of cultural or

[51] Ibid., p. 22.

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traditional issues. This increases both the demands on the state and the probability of a crisis of legitimation.

The legitimacy problems theorized by Habermas grow out of a tension between the state's functional imperatives. While the concerns of the developing state are not identical to those of the advanced capitalist state, I argue that they are analogous: the economic processes for which the state bears responsibility are more securely established in advanced capitalist states, while the developing state must provide not merely for their continuation, but for their establishment, entrenchment, and improvement, all the while subject to both internal and external demands and constraints. Additionally, the developing state must continually justify not only the regime, especially when not democratically elected, but often the framework of the state itself, even including its borders, its administrative powers, and the identity of its citizenry.

Developing countries' states are faced with a nation-building project involving fundamental questions of political power, individual and group rights, and administrative efficiency *in addition to* their responsibilities in the economic sphere. Thus the scope of issues that can be brought into political contestation is greater, while, as I hope to demonstrate in the following chapters, the sociocultural issues that directly provoke legitimacy questions are already more visible. This is the source of the politics of legitimation that are so fundamentally important in Jordan as it engages in a deliberate and highly public process of political development. While Jordan is not an advanced

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capitalist system of the type envisioned by Habermas, the state's functional responsibilities have, in a manner similar to that he described, led to the politicization of sociocultural elements that raise legitimacy issues that the state must address.

In the Jordanian case, the potential for legitimation crisis lies in the questionable stability of the very dualities the state has found so tactically useful. Its two-stranded hegemony has allowed it to appeal to various audiences and constituents with admirable flexibility, an approach at which the late King Hussein was adept. The dual legal system, discussed in chapter three below, has served practical and political purposes by giving the state and the people access to both traditionally-valued elements of Islamic law and modern-style criminal, civil and administrative codes and courts. At the policy level, the state has both encouraged the promotion of women's rights and limited the extent to which such demands could challenge the state's policies (see chapter six). These dualities have to a great degree permitted the management of the Jordanian state in a way which safeguarded the monarchy's power by offering a way for nearly every subject to find something legitimate about it.

However, despite their tactical utility, these dualities are not necessarily stable in the long run. By offering more than one strand of hegemonic political discourse, the state has broadened the bases upon which claims and challenges must be taken seriously. If, for example, Islamic law is to have a role in the state, then why not a bigger role? If women's rights are to be protected, then why not to a greater extent? In addition to

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suggesting the forms of its own opposition, the state's approach to legitimacy has also made its legitimation task more complex. Not only are Islamists seeking a greater role for Islam in the system and women's rights activists seeking more rights for women, both using the state's own authority logic, but each also borrows from the authority of the "other side."

A notable example of this, discussed further in chapter three, arose in the 1999 municipal elections. Islamists used the logic of individual civil rights to argue that veiled women should not have to reveal their faces for identification at polling places. The government was caught unawares and had no suitable response; the issue garnered extensive public attention, and Islamists enhanced their own position as actors in a democratic system not by moderating their claims for religion in the public sphere, but by casting the issue as one of civil rights instead of portraying it as an issue of public morality.

This example suggests a potential point at which legitimation crisis could occur. Crisis is likely to take place over sociocultural rather than political economy issues; the state is more adept at portraying economic problems as technical, externally-affected, and an issue receiving the state's best efforts. The government's popularity may wax and wane with the variation of economic indicators, but legitimation crisis is likely to be oriented toward questions of values and principles that are at the foundation of the political system. In particular, crisis could occur over issues of the state's ability to

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combine, as it claims to do, respect for cultural (especially religious) values and practices with the principles and procedures of a democratizing state.

If a sociocultural legitimation crisis does develop, the state's responses are particularly likely to be felt in the areas of law and rights. Even in the absence of a full-blown crisis of legitimation that threatens to break down the political system, ongoing pursuit of legitimacy by the state and challenges from other actors will have a defining effect on the development of the Jordanian political system, again especially with regard to law and rights. Either democracy or renewed authoritarianism could result from the state's choices in seeking to resolve its legitimation dilemmas.

Choices made with regard to legitimacy will have a strong effect on the principles and practices that are necessary for democracy; if legitimacy continues to be drawn significantly from claims of cultural authenticity, and that authenticity is defined in a way that precludes political equality, then prospects for democracy are dim. This is not, in my view, a product of the salience of Islam in the political system. While I would agree that Islam generally values substantive ethical norms over norms of process,[52] This does not mean that process norms are not valued, and in fact they can be considered crucial to the ethical outcome itself. For example, there are some who justify the murder of an adulterous wife by her husband on the grounds that Islamic law provides for a death penalty in adultery cases, and so the correct outcome is achieved. Mainstream legal

[52] I thank Mark Warren for raising this question and pointing out the importance of the distinction between substantive and process norms, although we differ as to its application in the current issue.

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scholars in Islamic history, however, condemn this position, arguing that the law's procedural requirements (of evidence, judgement, and execution) are themselves essential to the ethical outcome;[53] the death of the adulterous woman is not just unless it was brought about through the correct procedures.

This would appear to be a potential basis for developing an ethics of procedure in support of democratic processes, separate from the substantive norms concerning outcomes. If this can occur, then there is no necessary contradiction between Islam and democracy, even where democracy is understood in its fullest sense as not only the implementation of the will of the people, but the safeguarding of norms of process that precede and produce political outcomes.

Therefore the risk to democracy posed in the Jordanian case does not come from Islam itself in terms of the absence of processual norms, but from the substantive ethical norms being contested by traditionalists (both Islamist and non-Islamist). If the political system incorporates an understanding of individual rights as being defined a priori by the individual's gender, and perpetuates a hierarchy in which women's rights are different from and subordinate to those of men, this is a serious compromise of the principle of equality before the law that is a fundamental element of democracy. Equality of representation, participation, rights to contest views and pursue interests in the public sphere, all are predicated upon an understanding that every individual in the system has

[53] Several such examples are cited in Mohammad Fadel, "Islamic Law Sources Against Honor Crimes," written for the Islamic Supreme Council of America, 2000. www.islamicsupremecouncil.org.

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those rights, and to the same degree. To compromise equality before the law, not merely in discrete policies but as a matter of principle, would undermine the very logic of democracy and doom it to a stunted and unstable existence at best, and create the potential for significant oppression and unrest.

The issue of legitimacy and its connection to a particular definition of cultural authenticity is thus poised to be a primary determinant of the character of the political system as Jordan continues its process of development and, perhaps, further liberalization. Other issues will certainly shape political outcomes, but none are as likely to determine the character of the system itself. The Palestinian-Jordanian split is, in my opinion, not likely to be a major factor in the character of sociocultural legitimacy in the political sphere, because while that element of identity does have a great effect on individuals' and social sectors' relationship to the state, it is not a cleavage that is salient in the traditionalism/liberalism debate. Supporters of each of the two camps can be found among both Palestinian and East Bank Jordanians. Perhaps ironically, the cultural legitimacy question could be one that helps to defuse this cleavage even as it creates others.

The following chapters examine these issues and the contestation over legitimacy that is pursued by the state as well as other actors. The subject is a crucial one for understanding political development, since the power of the state, while most obvious in its coercive features, is ultimately dependent upon legitimation.

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CHAPTER THREE : DUAL LEGAL SYSTEMS AND THE BASIS OF LAW IN JORDAN

"You are charged with having washed your clothes in the canal!"
"Your Honour -- may God exalt your station -- are you going to fine me just because I washed my clothes?"
"It's for washing them in the canal."
"Well, where else could I wash them?"

The judge hesitated, deep in thought, and could give no answer. He knew very well that these poor wretches had no wash basins in their village, filled with fresh flowing water from the tap. They were left to live like cattle all their lives and were yet required to submit to a modern legal system imported from abroad.

--Tawfik al-Hakim, *Maze of Justice*

In his novel *Maze of Justice*, Tawfik al-Hakim depicts with rather black humor the frustrations involved in subjecting a backwater Egyptian village to the new laws and procedures of the "modernizing" state. Because the new laws have no connection to local social reality, they are meaningless and incomprehensible to the people they are meant to regulate; the village prosecutor alone stands in both camps and recognizes the futility of his task. Law and administration are essential powers of the state, but their exercise outside of a meaningful social context is, Hakim suggests, worthless. It is notable that the problem is not one of the intractability of tradition, but the disconnection between two different bases of authority; Hakim is as critical of the mindless bureaucracy of the new system as of the subjective and socially-variable justice of the old one. The novel points out a vital issue in the establishment of state legal systems: the manner and degree of their relevance to the sociocultural context. The law's basis of authority must, if the state is to enjoy legitimacy, be comprehensible to and respected by the people. To this end,

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states facing legitimacy issues take conscious steps to reconcile the nature of authority with perceived social demands.

The legal systems of many Arab states, including Jordan, are characterized by the combination of two conceptually different legal traditions. In most cases, criminal and civil codes are drawn from, or heavily influenced by, European codes created by legislatures, [54] while Islamic law is the predominant source of "personal status codes" that regulate issues such as marriage, divorce, and inheritance. In the Jordanian case, the state even maintains separate court systems: one for dealing with cases based on the civil and criminal codes, and another for dealing with the *shari'a* -based personal status code. The two traditions have not, however, remained entirely separate, as Islamic principles have influenced civil and criminal law and "Western" legal concepts have helped to shape the content and creation of the Personal Status Codes. But while they have not remained isolated from one another in practice, the conceptual distinction between the two types of law has remained intact, and has in fact greatly informed the legitimacy struggle that these states have faced. This chapter investigates the phenomenon of these dual legal

[54] State law (as opposed to *shari'a*) should not, however, be seen as an entirely European development; temporal rulers in the Islamic world developed criminal codes distinct from *shari'a* well before the colonial era. Haim Gerber, citing Uriel Heyd, discusses the establishment of distinct spheres of *qanun* (state law) and *shari'a* in the core of the Ottoman empire as early as the fifteenth century, and points out that the original body of state penal law was in large part a wholesale adoption of *shari'a* penal law. The authority of temporal sovereigns in this area was furthermore not regarded as a usurpation of religious authority, but a rightful power of political rulers. See *Gerber, State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), especially pp. 61-63.

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systems[55] and their political significance. Because dual legal systems exist throughout the Arab world, and because Arab legal systems draw on many of the same legal sources and sometimes borrow directly from one another, it is necessary to discuss legal dualism in Jordan in the broader context of the regional phenomenon.

By "legal system," I mean the "operating set of legal institutions, procedures and rules," as that of a state or other political entity.[56] A legal tradition, by contrast, has been well-defined by Merryman as

> not a set of rules of law....Rather, it is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective.[57]

This is precisely the nature of the political issues of law which arise in the Jordanian case, and they go directly to the heart of the relationship between culture and politics. The two political traditions that are combined in the Jordanian legal system draw on different sources of authority, have somewhat differing orientations to the role of law in society, and construct the relationship of individuals and society in different ways. I argue below

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[55] This term as used here applies to what are elsewhere sometimes called "plural" or "mixed" legal systems. I avoid the term "legal pluralism" for reasons discussed below, and feel that "dual" more precisely describes the perception of a dichotomy between the two systems than would the term "mixed."
[56] John Henry Merryman, *The Civil Law Tradition*. Second edition. Stanford University Press: Stanford, 1985. p. 1.
[57] Ibid., p.2.

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that this dualism within the system is, from the practical standpoint and that of state legitimation, both a strength and a liability.

The presence of two legal traditions is in large part a simple result of historical circumstance: Jordan, along with Egypt, Syria and Lebanon, once came under the authority of the Ottoman empire, which instituted legal codes directly modeled upon the French Code Napoleon, and relying in part upon Islamic principles. This circumstance has had important political consequences: the generally secular authoritarian states of the region have found that their legitimacy is particularly open to challenge on grounds of cultural authenticity, and so the "imported" legal systems must be made to appear appropriate to the societies they regulate. This has been accomplished in part by defining such systems as the norm for modern states, and in part by managing national legal frameworks to allow the "preservation" of traditional social frameworks, as in the Personal Status Codes.[58]

This approach has been largely successful. The most credible opposition challenges to secular authoritarian regimes in recent years has come from Islamist movements. This is particularly the case in Jordan, where the Islamic Action Front (IAF) is the largest, best organized, and most successful of the political parties. Throughout the region, only a few, fairly extreme opposition movements have advocated the complete

[58] The political claim is that these traditional frameworks are "authentic" in that they pre-existed the state and its imported legal systems and have been left untouched, in their original form. In fact, the Islamic-law based Personal Status Codes are themselves creations of the state, rather than the simple adoption of a body of uncontested legal rules and practices. This is discussed more fully below.

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destruction of the state and its institutions and their replacement with an Islamic system of governance, relying upon Islamic law. Other Islamist opponents of the state like the IAF and its parent Muslim Brotherhood have exhibited varying degrees of willingness to operate within the existing structure, seeking to alter its policy output and some of its laws, in order to produce an acceptably "Islamic" political order. Thus it is generally accepted that such legal frameworks should exist, and the political question becomes one of how to arrange the content of the codes so that they are appropriate for Muslim society. By the demarcation of certain areas of life as appropriately regulated by Islamic law rather than the secular state, many of these demands for legitimacy can be met. The state can plausibly claim that it is properly respectful of its citizens' traditions and values, and that it maintains the necessary framework to carry out the business of governing.

Among the constitutions of the Arab states, all except Lebanon[59] proclaim Islam the official state religion. The legal implications of this official enshrinement of Islam, however, have varied greatly from country to country. A few countries (such as Saudi Arabia) base their entire political order upon Islamic law, while others (Egypt, Kuwait, Syria, Qatar, Yemen) proclaim it a source of legislation to varying degrees, and still others (Jordan, Morocco) remain constitutionally silent on the issue of how Islamic law is to operate. Even where *shari'a* is formally recognized as the primary source of

[59] Lebanon's post-Taif constitution makes no reference to Islam, except to provide that Christians and Muslims have equal representation. Syria's constitution lacks an explicit statement that Islam is the official religion, but achieves similar effect by providing that the religion of the president must be Islam, and that *shari'a* is a "main source" of legislation.

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legislation, the actual character of the legal system departs significantly from a "purely Islamic" order, incorporating laws and procedures of various origins, both indigenous and foreign. The legal systems of most Arab states are thus most properly characterized as "dual systems," in that they are neither entirely Islamic nor entirely civil or secular. (These terms and their merits are discussed in greater detail below.)

I argue that these dual legal systems are neither accidental nor anomalous, but rather represent purposive choices by state for dealing with a host of political issues, particularly the need for legitimacy. Dual legal systems provide a flexible framework for social regulation, the exercise of state power, and the maintenance of popular legitimacy in various sectors of society. In this chapter, I first examine the types of duality found in states, offering a rough typology for classification, and then examine the consequences of dual legal systems for political contestation, with particular attention to feminist and Islamist demands for legal reforms. I argue that the two elements of dual systems do not exist in isolation from one another; rather, each strand has affected the other in terms of content and procedures. This cross-pollination, even though limited, helps to shape the character and content of political contestation. If dual systems are maintained in their current forms in the states where they now exist, this will serve a limiting function to preclude certain kinds of political demands and forestall others. If, however, as I think is more likely in the long term, Islamic law becomes subsumed in the state-created legal

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systems of the region, formerly ostensibly static social practices will become subject to political reform in a new and potentially democratic way.[60]

As the purpose of this chapter is to examine the politics of legal dualism in relation to the state and its development, I have focused on the formal aspects of law, rather than treating the law in a broader anthropological sense as the entire constellation of controlling norms and consequent penalties within a society. While this second approach to law has much to recommend it as a basis for understanding social organization more broadly, the present concern with the formal political order and state legitimacy precludes this treatment of law. Also, in analyzing the potential political consequences of dual systems and their future development, I have largely excluded states, such as Saudi Arabia, in which the system relies on non-Islamic law to an extremely limited extent. Although non-Islamic law exists in these systems, it has not yet become a significant characteristic of the political order nor, consequently, an important factor in political development, and thus the conclusions I draw about the truly dual legal systems are probably of little relevance to such cases.

Legal Pluralism

This study of dual legal systems is informed to some degree by work in the field of legal pluralism. The concept of legal pluralism is one that has been widely examined

[60] A third alternative, for state legal and political systems to be replaced with Islamic ones, is an extremely remote possibility in all systems except the Sudan, and so will receive little attention here.

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in social science literature of recent years.[61] Originally, the study of law and society recognized the occasional coexistence of different systems of law within a single state, but this simple formulation of the concept of legal pluralism was soon found to be epistemologically and methodologically problematic. It was criticized for inappropriately reifying the concept of "law," and for treating it as a social phenomenon isolated, and isolable, from the rest of the social order.[62] An important corrective was provided by scholars who took a more broadly anthropological approach, pointing out the diverse forms of rules of social order in societies. The editors of a recent book on the subject characterized this distinction as between a lawyerly view of legal pluralism as merely "recognition by the state...of the existence of a multiplicity of legal sources which constitute its legislation..." and a social-scientific understanding of a "plurality of social fields, producers of norms which are in partial interaction with each other. It entails depriving the state of its capacity as a social actor (as opposed to its multiple constituents) and, consequently not considering it merely as the monopolist of legal production, be it directly or indirectly."[63]

This trend away from legal positivism calls to mind the earlier trend in political science which moved the discipline from an exclusive focus on formal institutions to a

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[61] Legal pluralism, sometimes called legal polycentricity, has been of particular interest to scholars of post-colonial studies and anthropology. For a notable example in the field of Middle Eastern studies, see Dupret, Berger and al-Zwaini, eds., *Legal Pluralism in the Arab World* (Boston: Kluwer Law International, 1999).

[62] See J. Griffith's introductory essay in *Legal Pluralism in the Arab World* for a concise discussion of this problem.

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broader and more useful understanding of politics. However, political science as a discipline later found it necessary to reinvigorate the study of formal institutions, such as the state, as respectable objects of scientific inquiry and theory. In somewhat the same vein, while recognizing the intellectual validity of the work in the field of legal pluralism, this essay will treat the concept of law in a fairly formalistic sense - not out of an affection for positivism, which I do not embrace, but in order to examine the political realities of state power and state claims to authority. This essay does not seek to define the entirety of law-like norms in Arab systems, or to assess the normative power of every social and political actor; rather, I want to investigate the ways in which states have deliberately managed legal systems to meet particular political ends, and the effect that this process has had on formal political systems.

Thus this study is about legal dualism more than legal pluralism: it is a straightforward treatment of the existence of two conceptually separate formal legal traditions within single political orders dominated by states. This is not to suggest that such legal traditions are the only social norms that serve to order society, nor that the state alone exercises the power of creating and wielding norms. Rather, the focus on dualism is meant to provide a treatment of a specific manifestation of legal pluralism, within a

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[63] Dupret, Berger, and al-Zwaini, eds., *Legal Pluralism in the Arab World*, p. xi.

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political context sharply defined by the state and its powers. A treatment of non-state legal forms in the region would be valuable, but it is not the project of the present study.[64]

Legal dualism: Islamic and "modern" law

The term "legal dualism" is not new; it has been used to describe a variety of cases in which a single state system recognizes two legal systems, whether applying to different sectors of the population or to different issues. Thus legal dualism has characterized the situation of Aborigines in Australia, blacks in Lesotho, Palestinians in the Occupied Territories, British and Chinese residents of colonial-era Hong Kong, and the relative powers of church and state in 13th-century Spain. (The term has also been applied in international relations, in the context of international versus national law.)

The legal dualism of the Arab states is fairly well-known: in nearly every state in the region, "modern"[65] law coexists to greater or lesser degree with Islamic law, or *shari'a*. In some countries, both separate bodies of law and separate court systems are maintained by the state; this is the case in Jordan and Qatar. In others, specific areas of

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[64]See, for example, Omar Razzaz, "Contestation and Mutual Adjustment: The Process of Controlling Land in Yajouz, Jordan," *Law and Society Review* 28, no. 1, 1994, in which the author makes explicit use of the concept of "autonomous social fields" developed by scholars of legal pluralism.

[65] The term "modern" is used here with some trepidation; the current manifestations of *shari'a* in these systems often have equal claim to "modernity" in content, procedure, and antecedent. However, I retain the modern/traditional terminology not only because it predominates in the literature on law in the Arab world, but because participants in these legal systems themselves see the two fields in that way, as will be discussed below. I hope to make clear in this chapter that both terms are subject to politicization. Also, modern need not be taken to mean exclusively Western, in contrast with indigenous tradition; it can indicate something about the development of particular forms of state organization. Thus one could identify a

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social life have been reserved to *shari'a*, but judicial power has been unified in a single state-created court system, as is the case in Egypt. The arrangement of code and court in a particular country is, of course, a product of historical circumstance; for example, in Jordan as in several other cases, indigenous practices of *shari'a* were combined with the reformed civil and criminal codes of the Ottoman Empire. The Ottoman codes were modeled, in form and in content, upon 19th century European codes, particularly the French Code Napoléon. Other countries, such as Qatar, received their "modernized" codes from the British, while Saudi Arabia, which was never directly colonized, maintains a legal system entirely based upon *shari'a*.[66]

In most cases, *shari'a* persisted (although usually in altered form) primarily in the area of family law. This is because, I argue below, of both the greater specificity of *shari'a* in this area compared with other areas, such as commercial law, and the desire of the state to preserve traditional social forms and hierarchies. Most states maintain "personal status codes" that govern marriage, child custody, divorce, and inheritance, and such codes are drawn (ostensibly) directly from *shari'a*. (For non-Muslims, equal provision is made for the existence of religious law governing the issues of personal status; thus countries with Christian minorities allow every recognized sect to maintain its

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modern/traditional legal dichotomy at certain periods in European legal development, when the rise of the modern state legal system began to subsume jurisdiction formerly held by the church through canon law.

[66] It is worth noting, however, that even in the case of Saudi Arabia, non-*shari'a* forms of law exist, such as international legal obligations and particular commercial provisions not covered by *shari'a*.

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own (canon-based) family law and, in the case of Jordan, its own courts with jurisdiction over such law.)[67]

Thus it seems clear to many observers that the duality that characterizes most Arab legal systems involves a clear distinction between religious and secular law, with secular law predominating in most areas of law and religious law being reserved for "private" issues such as family relations. However, I argue that the duality is in fact much more complex, and more sophisticated, than it initially appears. Both "Islamic law" and "modern law" have become symbols subject to facile treatment that does not recognize the internal complexities of the two types of law.

First, the *shari'a* embodied in family law is in no way a static artifact of "original" unaltered *shari'a*; the content and form of such laws have been subject to reform by states and, increasingly, to contestation by various political actors. Amira Sonbol characterizes this as "modern *shari'a*,"

> whereby the formal law may have been defined on the basis of Qur'an, hadith, consensus and analogy, but the actual selection and final interpretation of the law is very much the construct of modern nation-states and hence shows great affinity to laws constructed and practiced by non-Muslim societies.[68]

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[67] The Christian and Jewish family laws that exist in several states are not examined here because they are not a chief component of legal dualism. Dualism persists because of the perceived necessity of maintaining both Islamic and "modern" law; religious laws of other communities exist only as a necessary corollary to the maintenance of Islamic family law.

[68] Amira Sonbol, p. 77, "Questioning Islamic Exceptionalism: Shari'a Law," *Arab Studies Journal*, vol. 6, no. 1, Spring 1998, pp. 76-86.

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However, the image of *shari'a* as an unchanging artifact of tradition persists, not only because of Western scholars' tendency to treat Islam as exceptional,[69] but because of Islamists' political claims about the value of *shari'a* in a society and the nature of legal authority. In the context of *shari'a* versus "modern" law, such thinkers talk about "the *shari'a*" as though there is only one unified and uniform body of Islamic law, and as though this law is a direct product of divine will rather than of human interpretation and construction. In fact, *shari'a* itself contains diverse principles and rules. The practice of adapting the formulation of Islamic law to a particular social reality is not new; it has characterized the formulation of Islamic law since its origin.[70] Another important caveat is suggested by Ann Elizabeth Mayer, who points out that the discriminatory character of the *shari'a* -based family laws is not simply a function of Islam, but has to do with a dynamic that has affected the family laws of all the Mediterranean countries.[71] Therefore, not only can these laws not be taken to represent some essential and unchanging element of Islam, but their gender discrimination must be considered as a social product rather than a purely religious one.

Modern law is often considered synonymous with secular law, a treatment which of course has some basis in reality. However, the two are not conceptually the same, and

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[69] See Sonbol, supra. Also, numerous works on the world's legal systems treat Islamic (and other) religious law as minor exceptions to the reach of modern law.

[70] N. J. Coulson, "Islamic Law," in *An Introduction to Legal Systems*, J. D. M. Derrett, ed. (Sweet and Maxwell: London, 1968), and J. Schacht, "Law and Justice," *Cambridge Encyclopaedia of Islam*, vol. 2, part 8.

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the distinction is important. While modern law is predominantly secular, and its rationales of authority are entirely secular, it is distinguishable from other forms of law which might equally be called secular, such as customary law. A key feature of "modern" law is not only that it is secular, but that it is a symbol and an agent of Weberian rationality and its associated bureaucratic developments. This rationality might be more claimed than real, as modern law is certainly in part a product of cultural habit and tradition. Nonetheless, the *idea* of rationality is key to the content and operation of modern law: laws are made by human design and decision, as necessary to meet the needs of human society. They are not received from God (although moral principles which inform the law may be) but are achieved through the use of human reason.

In a comparison of Islamic and modern law, this distinction could be characterized as "legislated" versus "unlegislated" law. Modern law relies upon legislation to produce laws, and the power of legislation extends across all social issues; that is, any issue that seems to require public regulation is one that the legislature may properly take up. In contrast, Islamic law is often represented as "unlegislated," in that basic laws are a product of divine revelation, their practical interpretation is entirely in the hands of jurist-scholars, and the proper subjects and scope of legislation are determined by Islam, rather than human reason. In other words, "...God and not man is the source of law in a Muslim society....Neither any individual, although he be a king, nor any class or group of people,

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[71] Ann Elizabeth Mayer, "Reform of Personal Status Laws in North Africa: a Problem of Islamic or Mediterranean Laws?" *Middle East Journal*, vol. 49, no. 3 (Summer 1995), pp. 432-446.

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nor the state, nor even the people as a whole has a right to make law."[72] Legislatures, in this context, may not legislate as their members see fit upon issues for which there already exists Qur'anic teaching, because human reason may never supersede divine law. Where rules can be formulated, this activity is undertaken only to give practical expression to divinely-ordained law, not to create law itself.

We find elements of this distinction in many political statements about the law, which is why it is relevant to the current discussion. Both Orientalists and Islamists are often inclined to present Islamic law as entirely divine in nature and thus either (a) not suitable for use in a democracy (according to Orientalists) or (b) not subject to flaws arising from human weakness and poor judgement (according to Islamists).[73] Similarly, the element of deliberate choice in creating law has, in Western systems, been somewhat overstated, and indeed, pursued as a political goal.[74] Upon examination, we find that Islamic law is not a single cohesive body of clear prescriptions, but a collection of general principles whose interpretation and practice have varied considerably over time and

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[72] Charles J. Adams, "Mawdudi and the Islamic State," in John Esposito, ed., *Voices of Resurgent Islam* (Oxford University Press: New York, 1983). p. 115.

[73] Some Islamists, although by no means all, would agree with the argument that Islamic societies are unsuited to democracy -- because Islam ordains a more perfect social order, not because Muslims are unable to achieve democracy. It is a small irony of our field that the position that Islam is antithetical to democracy is taken up both by some who value Islam and by some who disparage it.

[74] The French Revolution, for example, had among its programs for the improvement of the political order by, among other things, reconstructing the legal system such that law would be purely a product of the people (via their chosen legislators) rather than the product of undemocratically-empowered judges. By making the legal code as explicit as possible, it was believed that the influence of judges as interpreters of the law could be entirely eradicated. This position was later relaxed in the face of practical difficulties. For a useful explanation of this development, see John Henry Merryman, *The Civil Law Tradition* (2nd ed.) (Stanford University Press: Stanford, 1985).

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space.[75] Furthermore, the existing provisions for *shari'a* are in large part a direct product of legislatures and in most cases form part of a country's collection of legal codes. Likewise, law in Western countries has been heavily influenced by tradition, rather than simply a product of legislation and other reason-based rule-making. The influence of social tradition is most clear in the area of common law, but the weight of traditional practices and community values is commonly recognized by Western judges operating within "legislated" systems. Certainly the "legislated/unlegislated" law distinction can be a useful one, but it is important to recognize that elements of tradition (and religion) and elements of human reasoning have been integral components of both kinds of system. Once this is clear, it becomes easier to recognize the political purposes of certain claims about the nature and content of law. These claims have formed an important part of the critique of the Arab state from both external and internal observers.

Thus the duality of these legal systems is more complex than it first appears. While the contrast between them is in many ways one of appeal to different types of authority (and thus political organization), the reality of political and legal development has precluded the drawing of clear lines between tradition and modernity. Certainly the partisans of the two systems see themselves as ranged on a battlefield of tradition(al religion) and modernity, and the states that have created and managed dual legal systems have used the conceptual differences to appeal to different sectors of society. However,

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[75] See, for example, Judith Tucker, *In the House of the Law* (University of California Press: Berkeley, 1998).

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the real flexibility of legal duality has been recognized and utilized by political actors in pursuit of goals on all points of the political spectrum.

Islamic law and the state

The chief variation in dual legal systems in the Arab world lies in the state's treatment of Islamic law. By and large, as described above, Arab states have civil and criminal codes, and procedural codes attached to them, which take a basically European form and derive in fact from European codes by way of the Ottoman Empire. They differ, however, in terms of the degree to which they incorporate Islamic law into the state's legal order, and in the manner of doing so.

It is generally true that Islamic law "survives" in modern Arab states in the area of family law, and has in most cases been replaced in other areas of law, such as penal codes. Among the states whose legal systems can be characterized as dual, I identify three types of treatment of Islamic law. The first, in Jordan, Syria, Lebanon, and Iraq, involves the maintenance of a separate *shari'a* -based personal status code along with a separate system of *shari'a* courts to deal with issues within the bounds of this code. The second approach, as in Egypt, Algeria, Morocco, Tunisia and Kuwait, is the maintenance of a separate personal status code but no separate *shari'a* court system. Personal status laws are enforced by the regular courts (those which also hear civil and criminal cases); in the case of Egypt, these are heard by judges trained in *shari'a*. The third type of system is

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that of Bahrain and Qatar, in which personal status law remains uncodified, but separate *shari'a* courts exist to deal with matters of marriage, divorce, child custody, inheritance - the range of issues normally treated by personal status codes where they have been codified. In this third type of system, judges are directed to apply the classical law of the relevant *madhhab*, or school of jurisprudence.[76] However, even in cases where the personal status law has been codified, the codes themselves often instruct judges to rely on the classical texts of a particular school (or the predominant principles of *shari'a*) to fill in areas not detailed by the legislation itself.[77]

What explains these forms of incorporating *shari'a* into state legal systems? Certainly one must acknowledge the role of historical circumstance; these states have colonial histories that shaped their political systems to a large degree, and the lack of a direct experience of colonization is one of the factors explaining why Saudi Arabia, for example, does not have a fully dual legal system. Another factor is simple practicality; countries such as Qatar found it administratively useful to develop non- *shari'a* based legal codes for issues of commerce, citizenship, and other topics not given detailed

[76] There are four schools of jurisprudence in Sunni Islam: Hanafi, Maliki, Shafi'i, and Hanbali. Hanafi was the predominant school of the Ottoman Empire and consequently predominates in Jordan, Egypt, Sudan, Syria, Iraq, and among Sunnis in Lebanon. The Hanbali school predominates in the Gulf (except in Kuwait, which uses the Maliki school), the Maliki in North Africa, and the Shafi'i in Yemen. There are two Shi'a schools, the Ja'fari (predominant in Bahrain) and the Zaydi, which is used by Shi'a minorities in a few countries.

[77] This is the case in the Jordanian Law of Personal Status, for example. See also Jamal J. Nasir, *The Islamic Law of Personal Status* (Graham and Trotman: London, 1986).

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treatment in Islamic law.[78] Family issues are quite explicitly organized in all the schools of jurisprudence, and so that area of law ostensibly continued to function as it always had - except, of course, that family law had not "always" operated in any single way, and significant reforms were introduced at or after independence by legislatures and executives intent on forming an administratively operable and a politically governable state. But the common perception is that family law has been "preserved" by the state,[79] and it is that perception that shapes the law's political role. I argue that these considerations influence the state's choices about maintaining an official realm of *shari'a* within its authority, and that these choices are important for the course of political contestation and development in the dual-system states.

The continued presence of Islamic law in an "official" capacity could be regarded as a mere anachronism, a holdover of tradition in societies that have not fully modernized. Orientalists in particular see the retention of Islamic law as evidence of the basic incompatibility of Western concepts of rights and freedoms with Islamic society.[80]

The maintenance of dual legal systems could be regarded, as one author argues, as a shortcoming of Arab political orders.[81] The problem, in this view, is not that dual legal systems represent an insufficient degree of modernization, but that the actual practice

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[78] A. Nizar Hamzeh, "Qatar: the Duality of the Legal System," *Middle Eastern Studies*, vol. 30, no. 1, January 1994, pp. 79-90.
[79] I base this assertion on the predominant practice in scholarly writings, and on my own observations of Jordanian political attitudes regarding the law.
[80] See Sonbol, "Questioning Exceptionalism," supra.

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regarding modern law tends to discredit both the law and the political order that "owns" it, due to inconsistencies in application and the (accurate) perception that legislators everywhere are the captive of executives, whose project the dual legal system primarily is. This promotes a disregard of modern law and a nostalgia for familiar and consistent laws, such as those arising from custom. Where possible, people may turn to customary and religious law to solve their problems; the existence of not only other laws, but other legal rationales, that are not only familiar but even endorsed by the state may create a basis upon which to formulate political demands based upon an authority distinct from that of the state.

It is clear that law is a tool for political legitimation, in all sorts of political systems. The extent to which states are able to use that tool effectively is debatable; Nathan Brown's important study of Arab law[82] suggests that states may achieve much less than they (and their observers) believe in this regard. However, while legitimation is certainly not perfectly managed by the ordering of legal systems, I believe that the deployment of particular types of law in particular areas, as is the case in the dual legal systems, serves an important legitimating function for Arab states. While this legitimation is sometimes undermined by the state's inconsistent treatment of law (and recognizing that the state itself is not an internally uniform, monolithic entity), I argue that this is because legitimation is not the state's only goal, nor the goal of every aspect of

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[81] Nabil 'Abd al-Fattah, "The Anarchy of Egyptian Legal System: Wearing Away the Legal and Political Modernity," in *Legal Pluralism in the Arab World*, supra.

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the state. States and their agents also seek to maintain executive power and (in nondemocratic or weakly democratic cases such as those treated here) to control political contestation, keeping it within manageable parameters. Thus states proclaim free speech, (although in many cases declawing the constitutional guarantee by limiting it to the "degree prescribed by law"[83]) while reserving the right to jail those who criticize the king.

With regard to the use of dual legal systems to legitimate the state, I believe that states tend to treat the two systems differently. The "traditional" or Islamic sphere is offered as a proof of cultural authenticity, which serves to help legitimate the state with "traditional" sectors of society; this legitimation serves indirectly to control contestation from that sector, as those who are satisfied with the maintenance of traditional social forms will not need to agitate or petition the state on these grounds. On the other hand, the "modern" sphere serves partly as a source of legitimation among domestic democrats and external powers by proving the state's secular character, its ability to manage modern forms of government, and (in terms of civil liberties protections and egalitarian provisions) its good faith in democratization. However, this legal arena also serves as a direct control on political order, by allowing the state to manage both participation (by organizing elections laws, etc.) and contestation (by restricting speech, etc.) to its own best advantage.

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[82] Nathan Brown, *The Rule of Law in the Arab World* (Cambridge University Press: Cambridge, 1997.)

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Two cases:

1. The state constraining Islamic law

An interesting issue regarding state power at the nexus of Islamic and "modern" law is raised by Kilian Bälz, in his study of the "battle over the veil" in Egyptian schools.[84] Readers may recall the controversy, which began with the Egyptian government's ban on face-covering veils (*niqab*) worn by girls in public schools. The government sought by this action to prevent public display of affiliation with the Islamist opposition; the law was challenged by parents who argued that it was unconstitutional to forbid their daughters to veil in public. The Egyptian constitution declares the "principles of Islamic *shari'a*" to be the main source of legislation, and also provides for religious freedom.[85] The Supreme Constitutional Court found in favor of the government, holding that the ban on *niqab* in schools was constitutional. The legal issue at stake, Bälz explains, was the understanding of "legislation" and the extent to which the state was limited by the "principles of Islamic *shari'a*."[86] Islamic law is not a "legislated" body of law, and thus the question arises of how the state is to incorporate it into its legislative duties. The solution reached by the Egyptian Supreme Constitutional Court is instructive in understanding the state's powers and purposes in the context of dual legal systems: the

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[83] As in the Jordanian constitution (1952), discussed in Chapter 1 above. This formulation also appeared in the previous constitution (of Transjordan, 1947).
[84] Kilian Bälz, "The Secular Reconstruction of Islamic Law: the Egyptian Supreme Constitutional Court and the 'Battle over the Veil' in State-Run Schools," in *Legal Pluralism in the Arab World*, supra.
[85] Articles 2 and 46, respectively.
[86] Bälz, p. 231.

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court held that, while it was indeed bound by the principles of *shari'a*, the court itself reserved the right to decide what the substance of Islamic rules is. Bälz argues that "[i]t is exactly this "substantialization" of Islamic legal rules within the secular legal order that allows the latter to maintain its autonomy;"[87] rather than Islamic law constraining the state, the state deploys Islamic law (and limits it) for its own ends.

2. The state constrained by Islamic law?

Is the provision of Islamic law, then, merely a rhetorical strategy by the state, intended hide the weaknesses of secular states beneath a cloak of religious and traditional legitimacy? I believe not; the state's relationship with Islamic law is intended to satisfy real social needs (by preserving familiar practices) and political demands. Furthermore, and tellingly, the state can find itself constrained by Islamic law even when it does not wish to be.

The Jordanian municipal elections of 1999 provide an example of this sort of effect on state administrative practice. Although the issue in question was not one of *shari'a* itself, it involved the question of proper Islamic dress for women, which is in the opinion of many Muslims a practice mandated by Qur'anic injunction. As noted in chapter one, the majority of Jordanian women wear a form of *hijab* involving a headscarf, but do not cover their faces. Some women do wear the face-concealing form of *hijab*

[87] Ibid., p. 233.

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(called *niqab*), however, and in advance of the 1999 municipal elections, a government official announced that such women would be required to remove their face veils to prove their identity to polling place officials.[88] This sparked a public outcry, particularly from the Islamic Action Front, Jordan's largest and best-organized political party. The IAF, and indeed most people, considered it inappropriate for veiling women to be forced to show their faces to unrelated men in public.

The government's plan to have women show their faces was part of an attempt to reduce electoral fraud, considered to have been significant in municipal elections of 1995. Amman Governor Qaftan Majali asserted that some male voters in that election had disguised themselves as veiled women in order to vote, and that some veiled women had voted more than once.[89] In order to prevent such fraud, therefore, election officials would match the voter's face to his or her identity documents. This would have presented no problem if polling places were staffed with female officials, but Majali made it clear that women would have to reveal their faces to the head of the polling place "regardless if the president is a male or female."[90]

The government's goal of preventing voter fraud was unexceptionable, but they did not account adequately for the intersection of administrative policy and Islamic

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[88] See "Government demands that veiled women show faces in upcoming municipal elections," *Jordan Times*, 12 July 1999, p. 3.
[89] Rana Husseini, "Governor reiterates demand that women uncover faces in tomorrow's municipal elections," *Jordan Times*, 13 July 1999, p. 3.
[90] Quoted in "Government demands that veiled women show faces in upcoming municipal elections," Jordan Times, 12 July 1999, p. 3.

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practice. Even after objections arose, the governor maintained that women would be required to unveil in front of men, rather than offering the obvious solution of providing a female official at each polling place to whom women could reveal their faces. The Islamic Action Front, an opponent of the government, might have been expected to use this issue as evidence of the government's disrespect for Islam; however, the party took the interesting position that this policy was a violation of individual women's civil rights to freedom of religion. Rather than making the issue one of public morality and Islamic authority, the IAF primarily used the language of democratic rights claims, and did so very effectively. The governor promptly amended his policy, and in the end policewomen, female army officers, and female government doctors were provided at polling places for the identification of veiled women.[91]

Certainly garden-variety political and administrative considerations were at work here in addition to the nexus of Islam and state policy. The government wanted to prevent voter fraud; the Islamists wanted to ensure the turnout of conservative women, who are some of their staunchest supporters. However, the issue is interesting here for its lesson about the constraints on the state. Even for such a widely-supported goal as ensuring fair elections, the state finds it necessary to construct its policies to allow for the operation of Islamic rules; even though most people do not choose to follow this interpretation of Islamic dress requirements, the state cannot ignore them.

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[91] Francesca Ciriaci and Mohammad Ben Hussein, "Rural residents show more enthusiasm than urban counterparts in elections," *Jordan Times*, 15-16 July, 1999, p. 3.

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"Cross-pollination" and political development

The political implications of dual legal systems stem, somewhat paradoxically, in part from the fact of separation of the codes and their historical-philosophical bases, and in part from the fact that the codes are *not* entirely separate. One political effect, the one most clearly intended by the state, is that the existence of two codes serves not only practical purposes but ideological/legitimation ones, as discussed above. Another effect, more potential in my view than actual, results from the cross-pollination between the two systems of law, and influences the process of political development in ways that suggest parallels with Western experience.

Shari'a and modern law have interacted and exerted influence over one another both in their content and in their procedures. Not only is the modern law subject to contestation on Islamic (and traditional) grounds, but the *shari'a* is increasingly structured to partake of the forms and principles of the non-Islamic system. *Shari'a* has also persisted as a "residual" category of law, as when the Jordanian civil code provides for matters not encompassed by the code to be decided according to the rules of "Muslim jurisprudence," and, in the absence of applicable rules, according to the principles of *shari'a*, custom, and equity in that order.[92] Thus there are several points at which one element of the dual legal system "bleeds over" into the other.

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[92] The Jordanian Civil Code of Muslim Jurisprudence, 1976, article 2, paragraphs 2, 3 and 4.

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It must be conceded that this blurring of the practical distinction between the two seems to have had little effect on the conceptual and rhetorical distinctions, which operate as though the two systems were isolated from one another. That is, people still think and talk about the systems as though they were entirely distinct in form and rationale, despite the willingness of activists to borrow from one another's playbooks in terms of their political competition.

However, the early signs of cross-pollination may indicate an important trend for political development: perhaps Islamic law will come to play the same role in modern Arab states that (Christian) canon law played in the development of European states. This is not to assert that Islamic and Christian law are equivalent legal forms; Christianity is not a law-based religion in the same way that Islam and Judaism are. The development of European legal systems, however, involved an initial separation not only between temporal and sacred authority, but in the areas of life assigned to the legal jurisdiction of one or the other of the two authorities. Early European temporal powers were concerned with the areas of (secular) law developed by the Romans, the law that forms the basis of modern civil-law systems such as most of those in Western Europe and Latin America (as distinct from the common-law system of England and its former possessions).[93] The authority of the state expanded over time to include issues once held to fall within the jurisdiction of spiritual authorities, and in the process, canon law became subsumed

[93] For an excellent explanation of the history of the development of the civil law tradition, see John Henry Merryman, *The Civil Law Tradition*, supra.

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within the state's legal system, combining with Roman law to produce the basis of the civil law systems in existence today. Canon law's contributions were primarily in the areas of family law, criminal law, and legal procedure.[94] Islamic law seems to play a similar role in Arab states, although in a different context: the separation of temporal and spiritual authority is more valued by the former than the latter, whereas in Europe both the church and the state regarded their spheres as separate. But the essentially secular basis of most Arab states' authority, while supplemented by claims to Islamic cultural authenticity, suggests a course of political development that should not be expected to eradicate Islamic law in order to achieve modernity. Rather, Islamic law could come to serve the law of the state by preserving cultural forms and principles that are indigenously valued, contributing to state law the most developed areas of *shari'a*. If this process is underway, Egypt is probably farther along than Jordan, having already incorporated *shari'a* courts into the civil ones, just as ecclesiastical courts were once subsumed by the civil courts of Europe.[95]

Another possible comparison between Western and Arab legal development, which I advance somewhat tentatively, is the potential similarity between *shari'a* and common law as it now operates in countries such as the United States and the United Kingdom. The tentativity stems from a recognition that the two systems are different in

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[94] Ibid., pp. 10-11.

[95] A further point of comparison between the development of law in European and Arab states could be made regarding commercial law. In Europe as in the Arab world, this body of law developed separately

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some fundamental respects: common law originated as judge-made law, whereby legal principles were "discovered" by judges ruling in particular cases; in theory, the principles already existed because of long-standing practice and common consent, and judges simply found them and applied them to cases. Islamic law, on the other hand, contains little scope for the judge (*qadi*) to create law, and requires him instead to apply pre-existing, divinely ordained principles in manners specified (insofar as possible) by jurisconsults (*fuqaha*) who were scholars. However, my comparison is not of the types of law, which are quite different, but in their potential role in the legal system. In common law countries, the project of codification of the law, begun centuries ago, has long meant that the common law itself continues to operate only as a residual category of law, where statute is silent.[96] Several Arab systems make similar provisions for Islamic law: apart from its acknowledged (whether codified or uncodified) role in family law, Islamic law is treated elsewhere as a residual category, with principles of *shari'a* to be applied in the lacunae of statutory law.[97] This practice would seem to contribute to the primacy of statutory law, which is generally (despite constitutional exhortations regarding *shari'a*) a product of legislatures. These legislatures do not, most would agree, yet represent the

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from civil, criminal and religious law, in order to serve the practical needs of merchants. This is perhaps an issue best left to specialists in that area, however, so it is not dealt with here.

[96] Statutes always take precedence over common law; thus, if a statute differs from an established common law principle, it is the latter that gives way.

[97] Bahrain (Judicature Law, 1971), Jordan (Civil Code, supra) and Yemen (Article 349 of Personal Status Law) are three countries to make such provisions.

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will of the people, but they do serve to entrench the notion of legislation as a social, rather than a divine, project.

I hasten to stress that it is not necessary for Arab legal systems to become identical to American or European systems in order for these countries to become politically "developed" or democratic. Rather than advocating a particular course or content of political development, this study is meant to examine existing forms and seek conclusions about potential future developments. Democracy will be best served, in any system, by the development of legal systems that value individual rights, free contestation, and equal participation. However, the presence of Islamic law in the realm of the state should not be taken as prima facie evidence of underdevelopment or antidemocratic intentions; the discussion above has, I hope, demonstrated that the relationship between *shari'a*, political authority, and the development of the political system is multilayered and complex, rather than a clear-cut divide between the forces of tradition and modernity.

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CHAPTER FOUR: CRIMINAL LAW

The ordinary administration of criminal and civil justice...contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence toward the government.
--Alexander Hamilton, Federalist Papers, #17

The most apparent function of legal codes is a practical regulatory one; criminal law, in particular, seeks to regulate social conflict for the purpose of public order. Laws also affect and reflect shared notions of justice and morality; these concepts are important elements of the type of sociocultural legitimacy (see above) that states seek to undergird their political rule. Contestation over the requirements of justice and morality are thus a chief means by which law becomes overtly a matter of political choices. The political implications of conflict regulation are usually invisible, as such regulation appears more practical or natural than political, but questions of justice and morality have a prominent place in many political systems.

The political purposes served by legal codes are especially apparent in the area of criminal law. In the Arab world, as elsewhere, criminal codes are markedly gendered, by which I mean that the definition of and penalties for certain crimes reflect societally-sanctioned notions of appropriate sex roles. This is most obvious in legal treatments of rape and domestic violence; statutes as well as police and judicial practice in these areas are widely recognized to reflect social mores about female and male sexuality, appropriate roles of marriage partners, etc. This is true in every criminal justice system of which I am aware; the days are not long past when American court officials accused rape

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victims of inviting the attack by their manner of dress or behavior. In a similar vein, a man who punches his neighbor is guilty of simple assault, a crime to be dealt with by the public laws, while one who punches his wife is in many countries still considered to be acting within a semi-protected "private sphere" not subject to equal public regulation.

This gendering of law disadvantages women as victims of crime in order to serve a broader sociocultural purpose. The tension between individual rights and community interests exists in all legal systems; the rights of accused criminals, issues of community standards as a restriction on individual behavior, and the state's interest in maintaining public order versus the individual's interest in limiting the power of the state are issues that all legal systems deal with in some form. It must also be acknowledged that most, if not all, legal systems seek to be appropriate to the societies they regulate, by reflecting social norms and shared beliefs. What is notable about the Jordanian system is that "concessions" to cultural tradition are reconciled with the legal system largely through altering the way the law applies in cases where crime victims are almost by definition female.[98] This is in keeping with the widespread practice, in state structures and in societies, of regarding women as the vehicles by which "authentic culture" is maintained; thus gender issues are fertile ground for efforts at cultural legitimation.[99]

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[98] I do not mean to imply in the treatment below that rape is a crime exclusively against women. However, the laws at issue here treat it that way, and the social meaning of the crime is very much about women and honor. Rape of males raises similar gender issues about power and sexuality, but these do not inform the law or politics on the issue, as such crimes are not brought into public discourse.

[99] Traditional practices not related to gender are also given occasional recognition in legal codes. For example, some codes provide for the payment of *diya*, or blood money, as partial redress for the killing of

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When gender issues are related to the nature of a crime itself (as in rape, domestic violence, and honor killings), the penal code departs from the general orientation toward the pursuit of justice for the wronged individual and privileges the social-order aspects of law. That is to say, in the case of most types of crime, the state seeks justice for the victim (and thus indirectly for society) by pursuing criminal punishment of the offender. However, in the gendered elements of criminal law that I discuss below, the state seeks social justice - or more accurately social order - by means of redefining the victim as complicit in the crime, as perpetrator herself, or simply as the available means for resolving a social conflict. Thus the victim "disappears" in that she is no longer visible as a victim to whom justice is owed, and reappears as a means by which a problematic situation can be resolved to best serve the interests of the community.

Rape

Rape law in the Arab world has long been a target of criticism by women's rights activists and others. Rape is a crime with serious penalties for those convicted. The punishment in Jordan for rape of an adult woman is ten years' imprisonment;[100] in Egypt

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another. This practice recognizes the economic consequence to a family of a person's death, and *diya* amounts are adjusted accordingly. However, such traditions supplement, rather than circumvent, the practice of "regular" criminal law; laws of homicide still apply, and the state simply recognizes an additional interest to be served by the system, rather than redefining the system's interests as is the case in the gendered legal statutes.

[100] Lawyer Asma Khader, interview, Amman, April 1998.

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the penalty ranges from 3 years to life imprisonment.[101] In several countries, rapists can receive the death penalty, although this usually requires that the crime be accompanied by special circumstances, such as when the victim is a child.[102] However, legal codes (and public attitudes) have also treated rape as a social conflict requiring resolution among all the affected parties. Reliable statistics on the prevalence of rape in societies are difficult to find, as most observers believe that the vast majority of such crimes are unreported.[103] Furthermore, marital rape, which takes place exclusively within the "private" sphere and does not raise issues of threats to social order, remains legal in Jordan, Egypt and most countries of the region.[104] It is in cases where the crime becomes public that the law steps

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[101] US Department of State, *Country Report on Human Rights Practices for 1999 - Egypt*. In 1992, President Mubarak introduced a bill to raise the maximum penalty for rape to death, but this appears to be the case only when the rape is compounded by kidnapping.

[102] In Jordan, rape of a minor child is punishable by death, although lawyer Asma Khader (interview, supra) points out that the death penalty has usually been imposed in cases where the rapist also killed his victim and thus would have received the death penalty for another component of the crime (murder). However, news reports indicated that some men have received the death penalty for rape (without other aggravating circumstances) of a child under 15 years old; two men were hanged for such rapes in 1996. See "Jordan executes two murder convicts," Deutsche Presse-Agentur, 12 March 1997. Tunisia provides for the death penalty in cases of "rape of a female with violence," Morocco in cases of "rape of a minor leading to death," and Saudi Arabia in all cases of rape. (United Nations Economic and Social Council, report on Crime Prevention and Criminal Justice, 8 June 1995, at www.un.org/ documents/ecosoc/docs/1995/e1995-78.htm)

[103] Jordan publishes official crime statistics (see the *Statistical Yearbook*, Department of Statistics, 1996); reported cases of rape numbered between 29 and 63 annually between 1992 and 1996, while cases of indecent assault ranged from about 400 to just over 500 per year in the same period. Egypt does not publish such statistics, and newspaper reports of the annual rape rate range from about 80 per year according to *al-Ahram Weekly* to 200 per year according to the *Middle East Times*.

[104] United Nations Commmittee on Economic, Social and Cultural Rights, Press Release, 12 May 2000. See also U.S. Department of State Country Reports on Human Rights Practices for 1999 (Egypt, Jordan, Syria, Algeria). It is sometimes asserted (see the Rishmawi and Jewett articles, cited below) that Egypt's rape law applies to husbands, but this is not the case.

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in, and even there, the law can provide a means for resolving the situation without prosecuting the crime.[105]

Under Jordanian law, it is possible for rapists to escape criminal prosecution if they marry their victims;[106] this was also the case in Egypt until 1999.[107] Because of family and societal pressures, rape victims often do agree to such marriages.[108] The law has permitted such a resolution out of recognition of the cultural value placed upon female virginity at marriage; despoiled girls and women are a source of shame for their families, innocent of wrongdoing though they may be. It is not unknown for rape victims to be murdered by family members in order to rectify the shame brought upon the family by the crime. In the Egyptian parliamentary debate surrounding the decree to remove the

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[105] Judith Tucker points out that the history Islamic legal practice also provides examples of the treatment of rape as a matter for compensation rather than strict criminal penalty. She cites the 17th-century mufti Khayr al-Din al-Ramli as instructing that a rapist who had abducted his victim should under some circumstances be allowed to compensate her by payment of *mahr* (dower payment to a bride) rather than face the penalty for unlawful intercourse (stoning or flogging). See *Tucker, In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), pp. 160-164.

[106] Article 308, Jordanian Penal Code. See also Mona Rishmawi, "The Legal Status of Palestinian Women in the Occupied Territories," in Nahid Toubia, ed., *Women of the Arab World: the Coming Challenge* (London: Zed Books, 1986), and IRWAW report on Jordan, 27 October 1997, submitted to the United Nations as CEDAW/C/JOR/1 and /2. A medical examiner who assists in police investigations of such crimes suggested that this provision is no longer active (Dr. Hani Jahshan, interview, June 1999), but it remains part of the legal code, and underreporting of rapes in general makes it impossible to determine how many such crimes are "privately" resolved this way. Once a rape is reported to the police, regulations require that the case be referred to prosecutors. (Family Protection Unit, Public Security Department. Interview, November 1998).

[107] Article 291, Egyptian Penal Code (Law No. 58 of 1937). This article was cancelled by Presidential Act #14 of 1999 (confirmed by Parliament), published in the Official Gazette, No. 16, p. 2 (22 April 1999).

[108] It is important to note that neither the legal nor the cultural aspects of this situation are unique to the Arab or Muslim world: reportedly, 12 Latin American countries allow rapists to avoid prosecution if they agree to marry their victims, and in Costa Rica, the rapist can avoid charges simply by offering to marry the victim, whether or not she accepts. (Charlotte Bunch, Women/Commentary: "The intolerable status quo: violence against women and girls." United Nations report, 1997). Peru amended its penal code in 1999 to

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"marriage loophole," some lawmakers objected to altering the existing law on the grounds that it provided raped women with their only chance to marry, since after having been raped, no other man would want them.[109] Rape law has, in statute and in practice, privileged the protection of social order over the provision of individual criminal justice.[110]

One possible exception involves the issue of statutory rape. Under Jordanian law, rape prosecutions are obligatory in cases of the rape of a minor, including statutory rape where the victim was a willing participant but not legally able to give consent. As the age of consent for sex is 18, while that for marriage was until 2001 15 for girls and 16 for boys, young people who have pre-marital sex faced the possibility of the male's prosecution for statutory rape, when they would in fact like, and are legally competent, to marry. This situation is complicated by the risk of an attack on the girl in such cases, whose family might consider her to have shamed them publicly through her immoral behavior (see discussion of honor crimes, below). Participants in such statutory rape cases can be detained by the police for their own protection and given to a court order to

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remove the "marriage loophole" for men who sexually assaulted girls between the ages of 14 and 18. (See report of November 1999 at www.equalitynow.org/action_eng_16_2.html.)

[109] Associated Press, 4 April 1999, "Egypt's President Voids Law Setting Free Rapists who Marry Victim."

[110] As one author put it, Egyptian rape law punishes offenders, but "while this may be an attempt to protect the psychological and physical health of women, it is more likely an attempt to maintain both the purity of women and the honor of the family." Jennifer Jewett, "The Recommendation of the International Conference on Population and Development: The Possibility of the Empowerment of Women in Egypt," 29 *Cornell International Law Journal* 191 (1996).

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marry (although not against their will) to resolve the social problem.[111] This particular statutory rape anomaly has perhaps been resolved by the recent reconciliation of the ages of consent for sex and marriage.[112] The situation of those caught up in statutory rape cases involving participants who would like to marry in no way justifies permitting violent attackers to avoid prosecution, particularly by allowing them to gain some degree of legal authority over their victims by becoming husbands.

The "marriage loophole," where it exists, is clearly a means by which to rectify a social problem (the social standing of a raped woman and her family) rather than punish a crime. In general, it is clear that the practice privileges broader social interests, especially those of the victim's relatives, over the interests of the victim herself. Arguments about the presumed benefit to the otherwise unmarriageable victim of a rape are tenuous, as marriage to a violent attacker could hardly be more suitable than remaining unmarried, even recognizing the economic and social disadvantages facing unmarried women. It is worth noting, furthermore, that even this practical solution has its shortcomings, as rapists often divorce their wife/victims soon after marrying to avoid criminal charges. Jordanian law attempts to close this avenue of escape from marriage by providing for resumption of prosecution if the rapist arbitrarily divorces his wife/victim within three years of marrying

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[111] Lt. Taghreed Abu-Sarhan, Family Protection Unit, Public Security Department, interview, November 1998).

[112] The minimum age for marriage was raised to 18 for both sexes in 2001. See Rana Husseini, "Women activists set their eyes on 2002 polls after positive legislative changes," Jordan Times, n.d. (December 2001) at www.jordantimes.com/Y2002/Y018.htm.

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her.[113] He could, however, divorce his wife for cause, such as not bearing children. The "traditional" aspect of the practice is tenuous as well, since the Egyptian law itself dates from 1904 at the earliest.[114] Nor is it an element of Islamic law, and recent statements by Sheikh Nasr Farid Wasel, the mufti of Egypt, condemn the practice of pressuring girls and women to marry their attackers as contrary to the principles of Islamic marriage. However, the "marriage loophole" was created and used for the purpose of providing social problem-solving rather than criminal justice, and it addressed the social practices surrounding raped women and family honor, rather than the crimes against individual women. The "problem" of the social existence of a raped woman is settled by having the rape victim disappear, to be replaced by a wife.

Honor Crimes

In recent years a great deal of international attention has focused on the phenomenon of "honor killings," particularly in Jordan and Pakistan. Honor killings are murders carried out by family members against girls and women who are believed to have committed a sexual indiscretion, or to have caused gossip related to sexual behavior, that besmirches the honor of the family. The concept of honor (*sharaf*) has to do with social

[113] Article 308 of the Penal Code; cited in International Women's Rights Action Watch report on Jordan submitted to the United Nations as CEDAW/C/JOR/1 and /2, 27 October 1997.
[114] Tarek el-Tablawy, "Egypt Debates Rape Law," Associated Press, no date. Other AP reports refer to the same 1904 date for the start of the practice, although the Middle East Times identified the source of the actual statute as dating from the 1930s, probably because the current criminal code was enacted in 1937. (*Middle East Times*, issue 99-7).

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standing on the basis of moral behavior; men's honor is intimately connected to the sexual chastity of their female relatives. Thus a woman's or girl's bad conduct would not only embarrass her family, but would impugn the honor of the entire family, particularly the men, who have the right and duty of defending this honor. This conception of honor distinguishes such killings from otherwise-similar "crimes of passion" that are well-known in most legal systems. While claims of reduced responsibility on the grounds of rage are often claimed as mitigating circumstances by the perpetrators of honor killings, the justification for the killing is socially understood not as the temporary loss of control produced by passionate anger, but the social harm and loss of honor caused by the woman's behavior.

This phenomenon is often regarded, in the Western media and among its local advocates, as specific to either Arab constructions of honor or Islamic values, but in fact, similar practices relating to honor and female sexual behavior are found in other regions, as well. In Brazil, for example, men who killed their wives could, until 1991, avoid prosecution through an exculpatory "honor defense;" courts are reportedly still reluctant to punish such offenders.[115] The practice is also known among Christians in Jordan and elsewhere, leading some observers to attribute it to a "tribal mentality" rather than religion or Arab culture as a whole.[116] However, despite its questionable position as an Islamic or Arab practice, the question of whether the practice is appropriate on traditional

[115] Report of the Inter-American Commission on Human Rights, 1998, at www.cidh.oas.org/countryrep/Mujeres98-en/Chapter%203.htm.

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or religious grounds is at the center of the social understanding and political relevance of honor crimes in the Jordanian case.

In Jordan, girls and women have been killed for adultery, pre-marital sex, flirtations, speaking to or corresponding with males outside their families, being seen in the presence of an unrelated male, and marrying against the wishes of their families. As with rape, reliable statistics are difficult to find, because such crimes often go unreported or masquerade as accidents or suicides.[117] Jordan's official statistics place the honor killing rate at approximately 25 deaths per year, out of a total murder rate of approximately 100 per year.[118] Many observers, including the police, doubt the accuracy of these numbers and believe that the actual rate of honor killings is much higher.[119] Reports from other countries are occasionally provided by NGOs, although they acknowledge that the data is unreliable. A Palestinian NGO identified 20 honor murders in the West Bank and Gaza during 1996, but the (then) Attorney General of the Palestinian National Authority estimated that 70% of all murders in the Occupied

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[116] Senator Leila Sharaf, interview, Amman, July 1999.

[117] Jordanian medical examiner Dr. Hani Jahshan, of the National Institute of Forensic Medicine, reports that many young female suicides are the result of direct pressure or threats by families who believe the girls have dishonored them. (Interview, 1999). Also, some alleged suicides are probably in reality homicides.

[118] Honor killings are not reported as a separate category in crime statistics, but a reliable source has for several years been provided by journalist Rana Husseini in the daily Jordan Times. Ms. Husseini tracks honor crimes by following police cases and court proceedings; she reports that officials believe that approximately 25 of the known murders in 1997 constituted honor killings, and cites an average of 25-30 such killings per year. (Rana Husseini, "New penal code to be tougher on crimes against women, children -- justice minister," Jordan Times, 18 February 1998.)

[119] Interview with officers of the Family Protection Unit (1999) and numerous statements by activists.

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Territories are honor killings.[120] Lebanese Internal Security Force statistics reported 22 honor killings between 1995 and 1997.[121] The practice is also known in Egypt, Syria and Yemen, but reliable statistics are not available. Statistics of whatever quality are in any case available only for recent years; the very issues of honor and shame that provoke honor killings have precluded the public discussion and tracking of such crimes until very recently.

The Jordanian, Egyptian, Syrian and Lebanese penal codes[122] provide reductions or elimination of penalty for murders committed for reasons of honor. The statutes generally specify that the victim is female, that the perpetrator is a male relative of a certain degree (usually brother, father or husband) and the circumstances of the victim's behavior that justify the crime (catching a wife in the act of adultery, for example).[123] The Jordanian statute, Article 340 of the Penal Code, provides that

> (i) He benefits from an exculpatory excuse who surprises his wife or one of his female unlawfuls [*muharim*, a woman related to him by a close enough degree to preclude marriage between them] in the act of adultery with another man and kills, wounds, or injures one or both of them.
> (ii) The perpetrator of a killing, wounding or injury benefits from a mitigating excuse if he surprises his wife or one of his female ascendants or siblings with another in an unlawful bed.[124]

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[120] Cited in Suzanne Ruggi, "Honor Killings in Palestine," *Middle East Report*, Spring 1998.
[121] Ranwa Yehia, "Getting Away with Murder," *Daily Star*, 27 August 1999.
[122] Article 340 of the Jordanian Penal Code, Article 237 of the Egyptian Penal Code, Article 548 of the Syrian code, and Article 562 of the Lebanese code.
[123] A more detailed analysis of the statutes themselves can be found in two very useful articles by Lama Abu-Odeh: "Comparatively Speaking: the 'Honor' of the 'East' and the 'Passion' of the 'West,' 1997 *Utah Law Review* 287, and "Crimes of Honour and the Construction of Gender in Arab Societies," in *Feminism and Islam: Legal and Literary Perspectives*, Mai Yamani, ed. (New York: NYU Press, 1996).
[124] Article 340, Jordanian Penal Code (my translation). Section entitled "Excuse in Homicide." The items above are often translated "benefits from an exemption from penalty" (paragraph i) or "benefits from a

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The terms of the law provide for reductions of penalty to male perpetrators only; women who discover husbands or relatives committing adultery are not accorded similar treatment, here or elsewhere in the law. Furthermore, the term "honor" is nowhere mentioned in the article, yet it is the basis of the social understanding of the law's role. It is widely understood that the behavior encompassed by the statute's description would discredit the honor of a woman's (male) relatives, and that the law is meant to account for the natural response to such a provocation.[125]

This is the article of law around which the honor crimes debate in Jordan is centered. However, it is interesting to note that this statute does not reflect the predominant social practice, nor is it legally relevant in terms of judicial practice. Lama Abu-Odeh has investigated the issue of court practice and found that for much of the country's history, Article 340 was rarely if ever used in the courts.[126] This is no doubt in part because of the difficulty of meeting the circumstances required by the article, which refers to catching the couple in the act. In practice, women and girls are usually killed well after whatever act they are believed to have committed, and often merely upon the suspicion of bad behavior or for causing gossip that embarrasses the family. One man

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reduction of penalty" (paragraph ii); while this is certainly the substantive outcome of the provision, the precise language of the law refers to the nature of the *excuse* as exculpatory (full) or mitigating (partial), and does not actually mention "penalty" or "punishment."

[125] In the words of parliamentary deputy Mahmoud Kharabsheh, "What do you expect from a man who walks into his house and finds his wife in bed with another man? Give her a rose?" Quoted in Rana Husseini, "Deputy accuses West, Zionists of instigating campaign against 'honour crimes,'" *Jordan Times*, 20 May 2000.

[126] Lama Abu-Odeh, "Crimes of Honour and the Construction of Gender in Arab Societies," pp. 157-159.

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who suspected his sister, a married mother of five, of "immoral behavior" waited for her outside her home and shot her repeatedly;[127] a thirteen-year-old boy strangled his fourteen-year-old sister to death with a phone cord for "talking with men over the phone."[128]

Also, by the terms of the statute, killing the male partner to the adulterous or indecent act would also qualify a man for a lighter or waived punishment, but in practice, it is almost invariably women who are killed. The law thus does not reflect the entirety of social understanding of the circumstances in which killing is a justifiable response to honor affronts, nor does it predominate in actual judicial treatments of honor killers. Nonetheless, its presence in the penal code has become a matter for political contestation and has provoked one of the most vibrant and widespread debates in Jordan in recent years.

These killings are crimes that would, under other circumstances, constitute murder. In most cases the acts are premeditated, and they are typically extremely violent: victims are not merely quietly done away with to restore family honor, they are killed with multiple stab wounds or gunshots, bludgeonings, or strangling, occasionally in public.[129] One case in the Jordan Valley involved a man who killed his pregnant sister by

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[127] Rana Husseini, "Married woman killed by brother in reported 'crime of honor,'" *Jordan Times*, 20 May 2000.

[128] Rana Husseini, "Boy, 13, claims honour crime in strangulation of sister, 14," *Jordan Times*, 24 February 2000.

[129] A Jordanian medical examiner describes honor killings as "more violent" than other murders (Dr. Hani Jahshan, interview, June 1999). One woman killed by her brothers and husband was reportedly stabbed

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repeatedly running over her with a pickup truck;[130] another pregnant woman was stomped to death by her brother and (in an unusual twist) her sister-in-law.[131] In many cases, the perpetrators present themselves to the authorities and announce what they have done, confident of a light penalty (if, indeed, they are prosecuted at all; see below). As with the marriage loophole for rapists, the law allows the crime victim to disappear; her death is redefined as a justifiable homicide, her own actions (or alleged actions) become an element in the crime, and the murder victim vanishes, leaving in her place a wicked woman who had to be killed for the honor of her family and the morality of society.

The Political Debate over Article 340

Honor crimes became an issue of public debate in Jordan in large part due to the attention the issue has received in the Jordan Times, an English-language daily newspaper in Amman.[132] Reporter Rana Husseini has made a practice of reporting honor killings and trials of such killers, relying on statements by police and court proceedings. Her reporting has become one of the most reliable sources of information on honor killings in

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fifty times (Rana Husseini, "Two women killed in reported 'honour crimes," *Jordan Times*, 14 April 1999). In one unusually gruesome case in Egypt, a father beheaded his daughter and paraded her severed head down a village street. See Tarek el-Tablawy, "Bride pays with life for 'sullying' family honor in Egypt," Associated Press, 17 August 1997.

[130] Rana Husseini, "Courts sentence man to one year after killing sister with car, three men to five months after shooting woman," *Jordan Times*, 31 July 1999, p. 3.

[131] Rana Husseini, "Deir Alla woman slain in suspected honor crime," *Jordan Times*, 4 November 2001.

[132] The Arabic-language press in Jordan has given much less attention to honor killings; when reported at all, they are usually limited to a small paragraph giving only the fact of the murder, the initials of the victim and perpetrators, and occasionally the relationship between them. The Jordan Times' audience is primarily

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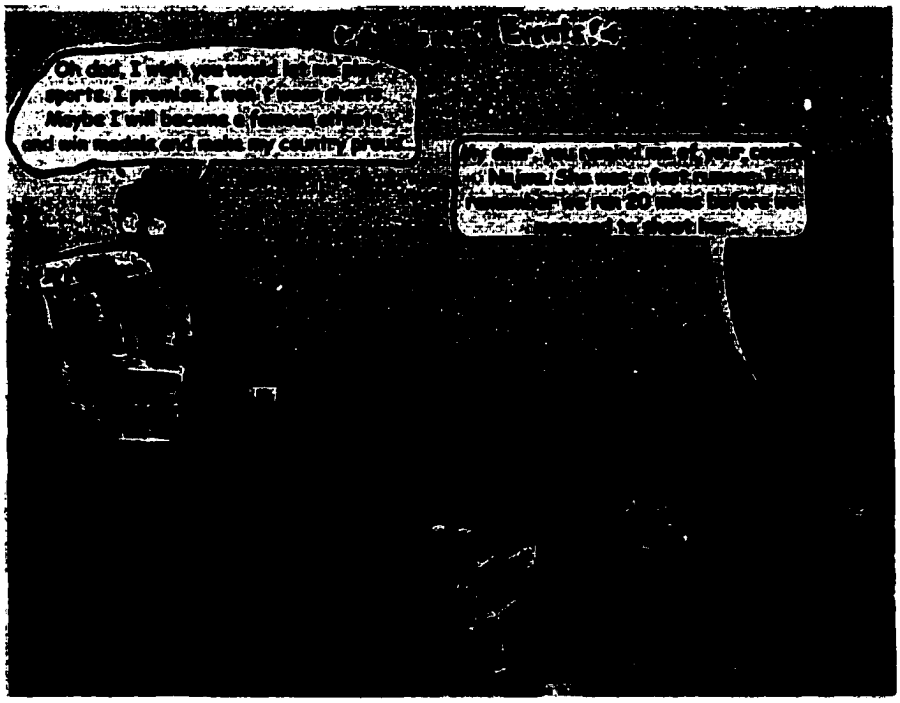
Jordan and has helped to spark public debate on the practice and the law. Other activists have also campaigned for changes in the law and in police and judicial practice, and once the issue began to receive significant attention, members of the royal family became involved as well.

An indication of the extent to which honor crimes have become a leading issue of public debate was the appearance in August of 1999 of a political cartoon on the topic. This cartoon, drawn by leading editorial cartoonist Imad Hajjaj, was published both in the Arabic-language daily Al-Rai and, in English translation, in the Jordan Times. The English version is reproduced below:[133]



well-educated Jordanians and foreigners, who are less likely to view it as a "private" matter that should remain hidden.

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The cartoon's appearance made quite an impact and was regarded as an indicator of the new public importance of the issue. Hajjaj's cartoon was also considered daring in its black-comedy take on honor killings, an approach very much in line with his other, extremely popular, work. When the cartoon appeared, the Arab games were underway in Amman, accompanied by fervent expressions of national pride; Hajjaj effectively mocks the irony that people could be proud of a nation that condones the murder of its own women.

Once the public debate over honor killings was launched, it centered around the proposed elimination of Article 340 from the penal code. In 1998, the Jordanian National Committee for Women, which is headed by the sister of the late King Hussein, Princess Basma, appealed to the government to change the law. Later that year, a group called the Campaign for the Elimination of So-Called "Crimes of Honour" was formed by Rana Husseini and other young activists in Amman; this group led a petition drive to support the cancellation of Article 340. While they collected thousands of signatures,[134] they also received condemnation from some quarters for embarrassing Jordan by inviting international criticism.

Support for the cancellation of Article 340 has come largely from liberal elites and the royal family, while opposition to it is centered in conservative sectors of society and the Islamic Action Front party. The two camps on this issue reflect the two types of

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[133] An "Abu Mahjoub" cartoon by Imad Hajjaj, published in the Jordan Times, 19-20 August 1999, p. 6.

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legitimation pursued by the Jordanian state; one appeals to the egalitarian-rights language of democracy, while the other appeals to the cultural authenticity of indigenous tradition, and to the principle of national self-determination. This is not to say, of course, that the liberal camp does not value tradition, or that the conservative camp does not value democracy; rather, the two positions represent a disagreement over how these should be incorporated into the political system. The debate over honor crimes has thus become a reflection of fundamental issues of Jordanian political development.

The arguments for canceling Article 340 include that it is inappropriate for a modern society, that it violates women's rights to equal treatment under the law, that it grants male relatives the power of extrajudicial execution, and that it violates Jordan's obligations under international law.[135] Some have pointed to the occasions on which "innocent" women have been killed as a reason to change the law,[136] but the predominant view among those who advocate change is that *no* such killings are justified, whatever the woman has done.

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[134] Over 15,000 signatures, according to news reports. Rana Husseini and Dima Hamdan, "Senate upholds decision on Article 340, reject gun draft law," *Jordan Times*, 22 February 2000.

[135] Jordan has signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women; upon ratification, this treaty became formally part of Jordanian law, although no one has yet sought legal redress under the terms of the treaty. (Professor Salah Bashir, interview, Amman, 1998).

[136] For example, former deputy Dr. Hammam Sa'eed cited the killing of innocent women in order "to silence the gossip" as a reason, along with its unIslamic character, to eliminate Article 340 (Noura Wazani, "'Article 340 of the Criminal Law is not fair to women,'" Arab Daily (Amman), 23 May 1999).

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Not all those who advocate changing the law are secularists; the king's adviser on Islamic Affairs has condemned Article 340 as contradicting *shari'a*,[137] and Nawal Faouri, a prominent (and female) Islamist, has suggested that the law has encouraged misguided individuals to kill, an act forbidden by God.[138] In February of 2000, the al-Azhar Ifta Council, a prominent Sunni religious law body, issued a *fatwa* (legal opinion) holding that individuals do not have the right to kill adulterous female relatives.[139] Religious arguments are deployed on both sides of the debate, and thus the issue does not necessarily represent a clash between Islam one hand and democracy or human rights on the other. Rather, both sides recognize the practice as a traditional one, and they differ in their views of the proper role of this tradition in society. Islam has become an important element in the debate because of views on both sides about the relationship of the traditional practice of honor killings to Islamic law and principles.

Although religious and other figures, including the late King Hussein, have condemned honor killings as contrary to Islamic law and principles, many of those who endorse the practice and advocate retaining Article 340 hold that the law is consonant with *shari'a* and suitable for an Islamic society. In February of 2000, the newspaper al-Sabeel, a pro-Islamist daily, conducted a survey and found that 78% of female

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[137] Sheikh Izzeddin al-Khatib al-Tamimi, in Rana Husseini, "Sabeel to publish survey on 'crimes of honour,'" *Jordan Times*, 22 February 2000.

[138] Quoted in Rana Husseini, "Lawyers, judges, intellectuals condemn national campaign against Article 340," *Jordan Times*, 10 March 2000.

[139] Rana Husseini, "Al Sabeel survey weighs in against amending Article 340," *Jordan Times*, 23 February 2000. This condemnation of honor killings has precedent in Islamic legal history, as well. Judith Tucker

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respondents and 77% of males were in favor of keeping Article 340 in its current form.[140] A majority of respondents agreed that the campaign against honor crimes was a result of international pressure, and 81% agreed that honor killings occur because *shari'a* is not implemented in Jordan. The survey is not a reliable indicator of general public opinion in Jordan,[141] but it may well represent the opinions of al-Sabeel's primary audience. It also conforms to the editorial position of al-Sabeel, which generally agrees with the Islamic Action Front.

The IAF's position on the honor crimes issue has strongly favored retaining the article on the grounds that it promotes a virtuous society in accordance with the principles of *shari'a*. Specifically, the practice of honor killings is regarded as a roughly equivalent substitute for the *shari'a's* death penalty for adultery. It is important to note, however, that this penalty can be applied only at the direction of a judge, after a trial in court in which four reliable witnesses to the actual act of adultery are produced. The circumstances of honor killings do not meet these requirements, not only because of the invariable absence of four witnesses to an act of adultery, but because they are extra-

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cites the 18th-century mufti 'Abd al-Fattah al-Tamimi as holding that brothers have no special role in the "chastisement of a sister suspected of zin'a" (extramarital sex). *In the House of the Law*, p. 166.

[140] See Rana Husseini, "Al Sabeel survey weighs in against amending Article 340," *Jordan Times*, 23 February 2000.

[141] This survey appears to have a number of methodological shortcomings. Participants were said to be taken from a "random sample," but the questionnaire was circulated partly via the Internet and partly in person, so the quality of the sample is questionable. (It is extremely difficult to get a random sample for a survey in Jordan, because of significant variation in people's access to communications media.) Also, of the five questions asked, four were worded to prompt responses consonant with al-Sabeel's editorial position on the issue. For example, participants were not asked what they believed causes honor killings,

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judicial and often concern "damage to family honor" from some act other than adultery, as described above. Some of those who regard honor killings as justifiable on a *shari'a* basis are simply not clear on the stringent requirements of the law and so see the death of the "adulterous" woman as the meaningful element. Others, however, are perfectly aware of the difference between honor killings and the law on adultery; their endorsement of the practice of honor killings considers them "pro- *shari'a*" rather than part of the *shari'a,* on the grounds that they serve the same end of public morality. This may not be the self-serving disingenuity it first appears, as there is certainly a basis in Islamic thought for regarding the *shari'a* as a moral as well as a legal code. Noel J. Coulson described it as follows.

> The Islamic *Shari'a* is, in our terminology, both a code of law and a code of morals. It is a comprehensive scheme of human behavior which derives from the one ultimate authority of the will of Allah; so that the dividing line between law and morality is by no means so clearly drawn as it is in Western societies generally.[142]

Thus honor killings are, like the penalties for adultery, a means by which to secure the morality of Islamic society. The *shari'a's* silence on what to do about immoral (female) behavior short of adultery is filled in with a traditional practice that seems, to its advocates, to reflect Islamic principles. Opponents of the practice may consider this a flawed argument, but it carries social weight nonetheless.

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but whether they agreed that honor killings happen because the Islamic laws on adultery are not implemented in the Jordanian code.

[142] N. J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence.* Chicago: University of Chicago Press, 1969. p. 79.

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These claims about the compatibility of honor killings with *shari'a* raise the broader issue of the relationship between Islamic law and custom. Islamic law, like other legal orders, does not exist in a cultural vacuum. Since its inception, Islamic law has existed alongside, and sometimes consciously taken into account, cultural practices that did not originate within the Islamic system itself. The payment of *diya*, or blood money, for example, was a pre-Islamic practice modified by Qur'anic teaching, and the practice continues today, recognized as having both Islamic and customary authority. Coulson explains that in the first century and a half of the Islamic era, existing customary law "remained the accepted standard of conduct unless it was expressly superseded in some particular by the dictates of divine revelation."[143] This changed as Islamic theology and philosophy grew more sophisticated, and eventually classical legal theory (from the tenth century onward) "expresse[d] to perfection the notion of law as the comprehensive and preordained system of God's commands," independent (in theory) of both social practice and human reason.[144] However, Islamic law in practice depended on the reasoning of jurists, which "served to perpetuate standards of the customary law if it did not expressly reject it."[145]

This inevitable role for human reason, situated in and reflecting real human contexts, helps to explain the diversity in Islamic legal teaching and practice over time and from place to place. Coulson attributes, for example, the differences regarding

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[143] Ibid., p. 4.
[144] Ibid., p. 7.

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women's legal capacity in the Hanafi and Malaki schools to the different social environments in which they were developed.[146] Judith Tucker describes the 17th-century *mufti* Khayr al-Din al-Ramli as "draw[ing] on his knowledge of local custom and human nature in order to fashion legal decisions that were well suited to the specific contexts of the cases at hand."[147] Not only does Islamic law as practiced come to reflect and accommodate some customary practices, but the process was apparently at least at some points a deliberate one, with custom being accommodated by legal scholars and judges particularly where it seemed to serve the good of Islamic society.

Current claims about the compatibility of certain customs, such as honor killings, with Islamic law, therefore, cannot be dismissed as mere attempts to bestow an additional source of authority upon a challenged practice. Rather, we should examine these claims in the light of the history of the interaction between Islamic law and customary law. Efforts to "Islamize" a customary practice or rule are relevant here for their importance in politics rather than in the development of Islamic legal theory, and so I cannot fully address the question of the quality of historical precedents for specific claims, as these do not generally arise in the political context. Rather, the claims are interesting for what they reflect about understandings of Islam, authority, and social practice; the fact that the same custom can be both hailed as Islamic and condemned as unIslamic reveals the contingent nature of the incorporation of both Islam and custom into politics.

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[145] Coulson, p. 19.
[146] Ibid., pp. 27-28.

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Other arguments for the retention of Article 340 suggest that to remove it would usher in widespread general sexual immorality, that the proposed changes are a conspiracy by foreign interests who seek to destroy Jordanian society by dismantling its traditions, and that, in the frank words of one member of Parliament, "if [Article 340] is canceled men will not have control over women."[148] These elements seem to be linked around the issue of what constitutes authentic Jordanian culture: in this view, it is Islamic, has certain traditions of social control of women, and is non-Western, and thus those who would preserve Jordan must do what promotes Islam, what safeguards traditions, and what resists foreign influence. Several Islamists have denounced attempts to change the law on honor crimes as a "Zionist plot." Another argued that canceling the article was a "call to spread corrupt morals and obscenity and will bring total destruction to our society."[149] Clearly, the stakes could hardly be higher.

The argument about a foreign conspiracy to destroy Jordanian tradition is one of the most popular components of the Islamist-led opposition to changing the honor crimes law; this is somewhat ironic, since the law itself is originally a product of the French criminal code.[150] When asked about the issue, Dr. Abdul Latif Arabiyyat, then Secretary-General of the Islamic Action Front, made the following argument in favor of keeping

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[147] Tucker, *In the House of the Law*, p. 16.
[148] Deputy Usama Malkawi, an attorney from Irbid, quoted in Rana Husseini, "Opposition to Article 340 driven by 'Zionists, Western interests,' says Oweideh," *Jordan Times*, 25 February 2000.
[149] Mohammad Oweidah, quoted in ibid.
[150] The Napoleonic Code contained a provision commuting the sentence of a man who killed his wife after catching her in the act of adultery in their home. This provision was eliminated from French law in 1975.

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Article 340: he insisted that it is an important marker of valuable traditions and religious prescriptions for behavior, while also stating that the law is originally French and thus should not be characterized in the foreign press as an element of Islamic law.[151] Asked to reconcile the apparently contradictory positions that the law is essential to local culture and that it is foreign in origin, he argued that, in the absence of the adoption of full Islamic law, society must do what it can to control immoral behavior, and this law serves that purpose and so serves Jordanian culture. This view that the absence of *shari'a* is to blame in honor killings is endorsed by other Islamists and even by the head of the Jordanian Bar Association, who goes further to state that "the absence of full implementation of *shari'a* is responsible for all corruption in our society."[152]

The Jordanian state, as embodied in the royal family and the king's chosen Prime Minister, has advocated the elimination of this law. One reason for this is that members of the royal family have probably sincere principles regarding women's rights. However, personal royal opinion would, in other political circumstances, be subjugated to interests of state, and so we can be confident that additional factors are at work in producing the state's new position. Opposition to the honor crimes law has reached a point where legitimation needs are no longer served, and the issue has become a divisive one placing contradictory and very public demands on the state. If the law could be eliminated, the

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Dr. George Sfeir traces the source of the early honor crimes provision in Egyptian criminal law toArticle 324 of the 1816 French Penal Code. (Personal communication, October 2000).

[151] Interview with Dr. Abdul Latif Arabiyyat, April 2000.

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reform itself might serve to legitimate the regime and political system to another segment of society, those who have generally liberal outlooks.

The royal element of the state has clearly favored eliminating the law, and King Abdullah issued instructions to the Prime Ministry in 1999 to redraft the relevant section of the law and submit the changes to Parliament for approval.[153] The appointed upper house of Parliament has endorsed the government's proposal. However, the popularly-elected lower house has twice refused to make the proposed changes, going so far as to condemn the proposed change because it "legalises obscenity and is detrimental to the morals of women."[154] It is somewhat unusual for the typically docile parliament to thwart the expressed will of the monarch and his Government so openly, but members of parliament were apparently confident that popular opinion favored keeping the law in place. The parliamentary debate centered not around the rights of women not to be killed for violating social norms, or around the number of women and girls killed who later prove to have been innocent of the acts attributed to them, but around the maintenance of legal protection for an established social custom.[155] Not the rights of women, but the nature of society was the question considered relevant in evaluating the law and its

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[152] Rana Husseini, "Lawyers, judges, intellectuals condemn national campaign against Article 340," *Jordan Times*, 10 March 2000.
[153] See Rana Husseini, "Justice ministry committee cancels article allowing reduced penalty for honour crimes," *Jordan Times*, 22-23 July 1999.
[154] Dina Hamdan, "King expected to call extraordinary session," *Jordan Times*, 23 February 2000.
[155] That the legal issue arises at all is an indication of the contestability of the social practice; presumably a universally-accepted practice would spark no such challenge. The dual nature of Jordan's legal system also raises the stakes in the legal debate, since challenges to the practice have a legal tradition of their own on which to base their authority.

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purposes. As a result, proponents of eliminating Article 340 have constructed arguments along the same lines, and thus the prevalence of statements about the injustice of such killings from the point of view of *shari'a* (discussed above). However, despite these attempts, the ability to define cultural authenticity and claim to be its protector has been most successfully demonstrated by the Islamists and their allies on this issue.

Thus, despite its marginal utility in criminal law, Article 340 has become the locus of political debates over the proper role of tradition and the protection of culture in the criminal law system. At its creation, this statute served the legitimation interests of the state by permitting the continuation of a traditional practice without burdensome state interference; if the statute is ever nullified, that legal amendment will be utilized to serve the state's legitimation interests with a different sector of society. Both the state and its opponents (internal and external) recognize that the debate over this article is a debate about cultural legitimacy, and the contestants each seek to claim it for themselves.

Judicial and Police Practice

Legal systems are more than mere collections of statute; the practice of judges and police in investigating, prosecuting, ruling, and sentencing are a significant element of the legal order. For example, while criminal codes define crimes, police and prosecutors decide with which crime an alleged criminal is charged, and judges and attorneys make decisions about the laws that may apply in terms of mitigating or aggravating

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circumstances. Thus in the area of judicial practice we find further elements of the gendered nature of the legal system.

As mentioned above, the recently-famous Article 340 of the Jordanian Criminal Code has not actually been used in court in many years.[156] Crimes of honor continue to occur, and perpetrators continue to receive light sentences (often a few months, or even less if the killer is a juvenile). However, few crimes meet the standard of Article 340, which refers to catching the woman *in flagrante delicto (hal at-talabbus bil-zina)*. Many, if not most, honor killings are carried out on the basis of suspicion, much of which proves later to have been unfounded.[157] Article 340 does not therefore apply, and killers and the courts have found another law much more useful in providing for reduced penalties: Article 98, which provides for a reduction of penalty for one who commits murder in a "furious passion caused by a bad [*ghair muhiq*, lit. unrightful] or dangerous act on the part of his victim."[158]

This law is generally equivalent to the "crime of passion" laws found in many legal systems. Article 98 makes no mention of the sex of the victim or perpetrator, and can apply to any case of murder carried out in the heat of furious passion. It has been

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[156] Abu Odeh (supra) finds no evidence of the use of article 340 after the late 1960s. Also, a Jordanian attorney interviewed said that he can recall perhaps 2 cases in the last 15 or so years in which article 340 might have been used, and agrees that it is no longer an active part of the criminal code. (Professor Salah Bashir, October 1998).

[157] Conversation with a Jordanian medical examiner, Dr. Hani Jahshan, 1999. He reports that young girls who have been accused of illicit sex nearly always prove during autopsy to have been virgins.

[158] Article 98, Jordanian Penal Code, 1961. The full text of the article reads: "The committer of a crime who undertakes it in a furious passion produced by a bad (*ghair muhiq*) or dangerous act performed by his victim, benefits from a mitigating excuse." (My translation.)

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applied in honor cases on the grounds that men (and boys) who suspect a female relative of shameful behavior would obviously be overcome with rage and unable to control their actions. I can find no evidence that the courts give critical consideration to the "bad or dangerous action on the part of the victim" that, according to the statute, must have occurred to justify the fit of fury. Apparently, the suspicion of a bad act is sufficient to cause a murderous rage.

I believe that insufficient attention has been given to this statute thus far. A number of observers have noted that Article 98 is more important than Article 340 in the actual prosecution of honor killers, but an interesting point has generally been overlooked. The murder victim is essentially redefined by this law as a guilty party herself: the committer of a "bad or dangerous act." In a 1999 case, the court granted an Article-98-based reduction of penalty because the murdered woman engaged in "wrongdoing" by "going out with strangers and engaging in sexual activity, considered a risk in our conservative society."[159] In another case, a man with a long history of domestic conflict had an argument with his wife in which she threatened him with a knife if he did not leave the house. In response, he took the knife from her and stabbed her repeatedly, killing her. The court eventually decided that he should benefit from a reduced penalty, and held that "the victim's actions violate the traditional and religious beliefs and marriage duties which stipulate that the wife should respect, obey and serve

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her husband, and thus constituted dangerous actions against her husband."[160] The husband's act was not considered by the court to be one of self-defense in response to an assault with a knife, but one of justifiable rage at his wife's violation of her proper role.

A victim need not even have been literally guilty of a "bad act," as in many cases the woman or girl suspected of an affair later proves to have been a virgin. It is the man's rage that is the active component of this law, and his suspicion of the woman's guilt justifies that rage and its consequences. The victim becomes not only responsible for her own murder, but a perpetrator of a "bad act" herself, and so no longer a real victim. This point is made explicitly by the chief judge of the High Criminal Court in Jordan, Mohammed Ajjarmeh, who said:

> Nobody can really want to kill his wife or daughter or sister. But sometimes circumstances force him to do this. Sometimes, it's society that forces him to do this, because people won't forget. *Sometimes, there are two victims -- the murdered and the murderer.*[161]

The effect of Article 98 in reducing penalties for honor-related murders is substantial. The penal code's rules regarding mitigating circumstances suggest that they

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[159] Rana Husseini, "Courts sentence man to one year after killing sister with car, three men to five months after shooting woman," Jordan Times, 31 July 1999. The woman in this case was killed by her uncle and father after being released from protective custody, an issue discussed below.

[160] Court ruling quoted in Rana Husseini, "Man released after serving one year for murder of wife," Jordan Times, 21 March 1999. The Criminal Court originally found that the man did not benefit from an Article 98 excuse because he was known to have frequent violent quarrels with his wife. The Court of Cassation (appellate court) ruled that he should benefit from a reduced penalty and returned the case to the lower court, which issued the finding cited here. It is interesting to note that, in the judges' view, the "danger" posed by the wife lay in her violating of traditional norms about wifeliness, not in the physical harm posed by the weapon.

[161] Quoted in Douglas Jehl, supra. Emphasis added.

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should reduce a death sentence to imprisonment with hard labor or life imprisonment, a life imprisonment sentence to a limited-term imprisonment, etc.[162] However, in the cases involving "fit of fury" arguments that apply to honor killings of women, sentences are especially light, sometimes only a few months' imprisonment.[163] Also, although the basis for an Article 98 claim concerns passion rather than honor, the distinction between the two is sometimes blurred by the courts. In one case, the court reduced a charge of premeditated murder to manslaughter because "the defendant committed his crime in a fit of fury to cleanse his honour,"[164] suggesting that the fury and the honor problem are functionally, if not legally, linked.

In the Jordanian legal system as in others, judicial practice is shaped by both text and context; the interpretation of statutes is inevitably affected by dominant social mores and the shared values of a culture. This is perhaps even more evident in countries like Jordan, which operates largely within the civil law tradition and thus does not rely on precedent as a controlling factor in judicial decisions. Earlier court decisions can have an advisory effect on a case, but not a binding one. [165] This is meant, in civil law countries, to give the (legislatively-created) text of the law a paramount role, in order to limit the

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[162] Jordanian Penal Code, Article 99, regarding reasons for lightened sentences.
[163] Rana Husseini, "Criminal Court upholds 'fit of fury' arguments," *Jordan Times*, 25-26 March 1999. An adult man killed his sister after hearing rumors about her "immoral behavior" and learning that her husband planned to divorce her; he served five months in prison. Sentences of a year or less are common in such cases.
[164] Rana Husseini, "Courts sentence man to one year after killing sister with car, three men to five months after shooting woman," *Jordan Times*, 31 July 1999.
[165] Information on the role of precedent in the Jordanian system was provided by attorney Salah Bashir and retired judge Farouk Kilani.

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undemocratic power of judges to make law.[166] However, judges' decisions are not make in a vacuum containing only the facts of the event and the text of the law, and so it is to be expected that judges' own attitudes and principles, shaped not only by their profession but by their social surroundings, will affect the treatment of crimes in the courtroom. This has long been a complaint of those concerned with honor killings, for example, who attribute the light sentences for such murders to judicial discretion as much as legal text.[167] There is also a widespread perception that judges must make decisions consonant with the wishes of the regime; one rare attempt at judicial review, in which a judge criticized the regime's handling of a "temporary law," resulted in the judge's subsequent removal from the bench.[168] Consequently, judicial decisions are believed to represent the interests of the politically powerful as well as the social force of traditional values.

Additional examples of judicial or prosecutorial "redefinition" of the victim can also be found. A noteworthy example is the issue of "protective custody." As a matter of police and government practice, a woman or girl who is believed to be a likely victim of an honor crime (for example, one who has run away from home or who has engaged in pre-marital sex) can be placed in "protective custody" to prevent her relatives from

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[166] See Merryman, *The Civil Law Tradition*, supra.

[167] Lawyer Asma Khader and medical examiner Dr. Hani Jahshan, among others, attributed the lenient treatment of honor killers to attitudes of judges (interviews, cited above).

[168] This was the well-publicized 1998 case involving the Press and Publications Law. Judge Farouk Kilani of the Court of Cassation was transferred and then "involuntarily retired" after he ruled that the law was invalid because the government had exceeded its authority in enacting it while Parliament was out of session. Government statements denied that Kilani's retirement was a punishment for the ruling, but it was generally regarded as such, and as an example of the lack of judicial independence from the executive power. Interview with Farouk Kilani, March, 1999.

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harming her. (This decision is made by the district governor and not by the courts.) After a period of time, her father or other male guardian may be allowed to sign a statement for the governor promising not to harm his daughter, and she will be released into his custody. In practice, women and girls are sometimes killed after being returned to their families.[169] In a 1998 case, a 17-year-old girl ran away from home in connection with an affair with her boyfriend (who was later charged with statutory rape).[170] When her father came to claim her from police custody, they were reluctant to release her because it was believed that he would kill her. Despite police objections, the governor released the girl to her father, who took her to a park and slit her throat and then turned himself in to the police, claiming that he had killed his daughter in the name of family honor. One police officer involved in the case deplored the lack of effective protection for such girls, saying that she would like to ask the governor how he felt now that the girl was dead.

Women and girls who are not released into a relative's custody must remain in detention, even if they are adults and wish to be released. The police currently responsible for many cases of protective custody report that most girls and women in this

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[169] For example, a woman was shot repeatedly by her brother after being released from police custody resulting from allegations of an extra-marital affair. (Rana Husseini, "Man Kills Married Sister in Irbid," *Jordan Times*, 18 November 1999.) In another case, a girl was kept in protective custody at the Juweideh prison for three years, until her father signed a pledge not to harm her and she was released into his custody. One month later she was murdered in her sleep by her brother, who claimed to have been acting on his father's instructions and to protect the family's honor. ("Brother waits three years to cleanse family honor," *Arab Daily* (Amman), 23 May 1999.

[170] Lt. Taghreed Abu-Sarhan, Public Security Department's Family Protection Unit, interview, November 1998. She expected the man to receive a penalty of approximately three months' imprisonment for the murder. This story was also reported in the Jordan Times (Rana Husseini, "Criminal Court uphold 'fit of

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situation are detained willingly, as they have no other option.[171] However, some are held for a period of several years and have little hope of release: honor killings have been known to occur many years after the original offending incident, which makes releasing these women from custody at any point a risky option in many cases.

The legal basis for this practice is not entirely clear. A legal statute gives district governors the power of "preventive detention" to temporarily incarcerate persons believed to be on the point of committing a crime.[172] However, the text of this statute clearly refers to the prevention of crime by detaining the potential perpetrator, not his potential victim. That this statute is the legal basis for the practice has been confirmed by several observers, who attribute the broadening of the law's application to both the power of governors to order administrative detentions and to the lack of practical options that police and other authorities have in such cases. Jordan has had no women's shelters (a single shelter recently opened in the capital) and it is generally believed that if the police detain one male relative to prevent an honor crime, the killing will simply be carried out by someone else. It is therefore far easier to detain the woman herself. Placing the woman in custody requires, in order to conform to the letter of the law, that she be redefined as the potential criminal, rather than the potential victim. While it is clear that

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fury' arguments," 25-26 March 1999); the father was found guilty of manslaughter and sentenced to nine months in prison.

[171] Ibid.

[172] This is among several executive powers held by governors that enable them to enforce social order and prevent conflicts from spreading, as when one family retaliates against another and personal incidents become grounds for communal strife.

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the specially-trained police of the new Family Protection Unit do see these women as victims, it is also acknowledged that in most cases the woman has done "something" to have caused her family to want her dead. This negotiated understanding of the victim as criminal goes well beyond the rhetorical - women and girls in "protective custody" are held at a women's prison, and until very recently were simply mixed in to the regular female criminal population. Again, the victim vanishes, this time literally, as she disappears behind the walls of a prison, administratively if not legally reconstructed as a perpetrator rather than a victim.

The Family Protection Unit

The Jordanian state has recently taken some steps to mitigate the effects of these criminal-law issues on women. One of the most important developments has been the creation of the Public Security Department's Family Protection Unit, which deals exclusively with crimes against women and children. The political stimulus for the project came not from the police themselves, nor from a government program intended to address sex crimes or domestic violence. Instead, the policy was shaped, originally, by personal political connections; it has since become more institutionalized, but as in the case of women in the military (see chapter 6), the personal support of powerful individuals was a chief consideration.

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The impetus for the unit came from a crime committed in Jordan in 1996, when a British-Iraqi woman was raped and subsequently treated badly by the Jordanian police officers investigating her complaint.[173] A British newspaper reported on the incident, and the story caught the attention of Patricia Salti, a woman of originally British nationality who worked on the staff of (then-Crown) Prince Hassan. Mrs. Salti pursued the issue and arranged, with the support of the prince and others, a training relationship between the British Embassy and the Jordanian police. Two officers (one male and one female) were sent from the United Kingdom to teach a short course to 21 Jordanian officers (both male and female) on sex crimes and child abuse. The British police explained the Family Protection Units that exist in British police forces, and Mrs. Salti secured the support of Prince Hassan for the establishment of such a unit in Jordan. Ongoing training and developmental assistance has been provided by the British Embassy in Jordan, and officer exchanges have continued between the two countries.

The Jordanian unit opened on February 7, 1998.[174] It is fully incorporated into the Public Security Department and is staffed by regular police officers, male and female, who have received special training on techniques for dealing with sex crimes and cases of abuse. Currently the unit has only one office, in an upper-middle-class neighborhood of Amman; this reduces both its visibility and women's access to it as a practical matter.

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[173] This account of the unit's establishment was given to me by Mrs. Patricia Salti in an interview, May 1999. Its main points were confirmed in an interview with officers of the unit.

[174] Information on the operation and staffing of the unit was provided by FPU officers in interviews in 1998 and 1999.

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However, all police stations in Amman are reportedly required to refer sex assault and child abuse cases to this unit, so the officers have a broader effect than they otherwise would. Future units are planned for other areas. In addition to the police officers assigned to the unit, two social workers are provided by the Ministry of Social Development, and one is supplied by the NGO Jordan River Designs. A forensic physician from the national Institute for Forensic Medicine is also attached to the unit; he conducts physical exams and autopsies.

It is interesting to note that the FPU is the only police unit in which female officers can work as investigators. Elsewhere, they are confined to clerical and, recently, traffic duties. The unit's commander and second-in-command are male officers, and the staff comprises three female and five male officers in addition to three lower-ranking personnel.[175] In addition to criminal investigation work, the officers also do lectures and school programs about violence. The unit's small size and the underreporting of such crimes mean that the most perceptible effect of the unit may well be in terms of public perception surrounding issues of sexual violence. It also seems that the "Family Protection" name makes the project more broadly acceptable. While opinion is divided on honor killings and other crimes against women, there is of course no support for child abuse, and thus the strategy of combining the two under the "family" rubric is a sensible one.

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[175] Ibid.

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In addition to sex crimes and child abuse, the unit was originally instructed to deal with domestic violence complaints. However, the influx of such complaints was so overwhelming that the unit's staff were unable to deal with them; they also felt that they lacked effective training on this issue.[176] The director of Public Security instructed the unit to stop taking domestic violence cases; local police offices remain the only place to report such crimes, but few women choose to do so. The FPU hopes to deal with domestic violence cases again in the future, but it is a particularly thorny issue. There are no shelters to which women can be referred,[177] and women often fear reprisals from their families if it becomes known that they have complained to the police.

This unit is the most promising and well-organized government strategy for dealing with violence against women. While activists and others have well-founded complaints about police attitudes toward rape, honor killing, and other crimes, the officers of this unit are clearly sensitive to these issues and prepared to deal with them. Their attitudes toward victims of such crimes seem to be sympathetic and professional; having met some of the unit's officers, it appears to me that female crime victims now have a means of receiving fair treatment from the police. The officers themselves say that they believe their presence and training is having a gradual sensitizing effect on the police department as a whole, but it is unlikely that radical changes will take place in the near future.

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[176] Ibid.

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Despite this promising new development, however, much police practice in the areas of domestic violence and honor crimes reinforces traditional social practices at significant cost to female crime victims. Women are reluctant to report domestic abuse to the police out of a belief that the police will not help them (and some believe that abusive behavior is acceptable), and in fact women who do report such crimes have sometimes found that the police are reluctant to intervene in a "personal matter." In some cases, the police reportedly simply phone the woman's husband or father and ask him to retrieve her from the police station, thus releasing her back into the custody of the person against whom she made the complaint. [178] The situation is similarly deplorable with regard to honor crimes; reports are common of police stations treating confessed honor killers as heroes who carried out a disagreeable but worthy task. According to one officer, most police officers tend to see the victim as the offender, and behave accordingly.[179]

Conclusion

An analysis of criminal law and judicial and police practice demonstrates the persistence of areas of law that disadvantage women by privileging social interests, including the interest in maintaining traditions, over the interests of the individual crime victim when that victim is female. While traditional elements of culture necessarily, and

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[177] A shelter operated by the Jordan Women's Union was originally expected to open in 1998 and then was repeatedly delayed; reportedly it is still not operational.

[178] Interview with Umm Safyan, social worker, Pontifical Mission for Palestine medical clinic, Zarqa, Jordan, May 1999.

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perhaps properly, affect the legal system governing a society, it is notable that in regard to gender issues, cultural practices generally trump legal rights that would otherwise operate. In order to preserve specific cultural practices regarding the social control of women, female crime victims are essentially redefined as perpetrators or as means of social problem resolution, such that the victim disappears and her interests can be sublimated to those of other actors. The state not only permits these practices to continue, it creates and manages the legal system in such a way as to seek legitimacy from the combination of different kinds of legal authority. Other actors, such as the state's opponents, make use of these legal elements in similar ways. Thus we find that the law on murder does not merely serve the interest of public safety; it also feeds a debate about the permissibility of the extrajudicial killing of women in order to benefit society by preserving certain norms of sexual behavior and social control.

The extent to which gendered legal systems serve legitimation claims has important implications for the process and outcome of the development of political systems. Personal rights and freedoms, equality before the law, and the proper sources of authority in the legal and political order are contested issues whose resolution will be strongly determinative of chances for the future of political liberalization and democratization in Jordan.[180]

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[179] Lt. Taghreed Abu-Sarhan, Family Protection Unit, November 1998

[180] Of course, the existence of legal discrimination against women does not preclude the eventual development of democracy in a political system. The extension of rights to women long after they have been secured by men is a pattern long established in other countries; throughout Europe, the Americas and

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elsewhere, legal systems shed their discriminatory elements only gradually. However, this is a circumstance of history and not integral to the development of democracy itself; there is no logical necessity for women's rights to appear only after those of men. The current process of development in the Jordanian system is based upon political demands for individual rights, participation, and the transfer of political power to the people. To perpetuate legal disadvantages of the female half of the population can only undermine the very logic of the development process itself.

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CHAPTER FIVE: NATIONALITY LAW

Nationality law exists to define the state's citizenry; it establishes a formal relationship that is the basis of claims of rights and duties between state and individual. Thus this is an area of law that would seem to be entirely within the purview of the state in terms of its creation, content, and objectives. Deliberate choices by the state can be expected to operate here to a great degree, and this area of law is tied quite directly to state goals rather than serving additional primary purposes, as is the case with criminal law and social order. An investigation of nationality law provides important information about the state's own understanding of its relationship to individual citizens and their rights. Nationality law, like criminal law, is notably gendered, and this provides a further basis on which to evaluate the state's choices in pursuit of cultural legitimacy.

This chapter investigates Jordanian nationality law and related laws of other Arab states in order to demonstrate that the unequal treatment of women in these laws is a deliberate element of policy in pursuit of state interests, rather than only a result of latent traditionalism or legal inertia. Female citizenship is, in Jordan as in much of the world, a significantly different quality than male citizenship, and this difference reflects not only the attitudes of the state's agents and supporters, but the state's perception of its interests in the areas of demographics and legitimation.

The gendered aspects of many Arab nationality laws are fairly well-known: for example, in Jordan (as well as Egypt, Lebanon and elsewhere), women (but not men) who

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marry noncitizens cannot pass their own citizenship on to their children or their spouses. The practical problems arising from such laws, in particular regarding residency, state services, and civil rights, have been well-documented. However, the various political purposes that such laws serve, and the reasons for their continued existence, require further investigation.

These laws, and their seemingly firm entrenchment in state legal systems, may appear at first glance to be explicable either as remnants of earlier social practices or as tokens of traditionalism, but neither of these explanations is sufficient to explain the existence and purpose of such laws. I argue that gendered nationality laws, which have several sources, serve a dual purpose: they facilitate state claims to legitimacy through the maintenance of traditional practices, and they serve a demographic purpose in managing the perceived nature of the citizenry. In the Jordanian case, for example, officials claim that the law is meant to prevent an influx of young Palestinian men. Upon analysis, the demographic arguments reveal that the state's (and its agents') view of female citizenship precludes the equal treatment of women, as they are not the same kinds of citizens as men.

This chapter addresses (1) the historical development and current content of nationality laws, (2) implications of current applications of the laws, and (3) state choices about nationality law. I then analyze the laws in terms of their political effects and purposes and the state interests that are addressed by maintenance or reform.

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Citizenship and Nationality

There is an extensive literature on women's political rights in the Arab world[181] and elsewhere, and abundant evidence that women's citizenship rights are, across the globe, generally inferior to those enjoyed by men. The issue of citizenship itself is an expansive one, ranging from electoral participation to civil liberties to access to state services to military service. Thus, studies of women's citizenship often cite the levels of female participation in voting, the proportion of female members of legislatures, the protection of women's rights, the state's provision of social services such as health child care, and so forth.

The aspect of citizenship upon which I have chosen to focus in this study is nationality, as it is the most basic element of an individual's relationship to a state and is a consideration prior to the fuller expressions of citizenship in public and political life. The question of whether a person is a citizen of a given state is the initial question in determining that person's civil and political rights, and an assessment of the quality of a person's nationality is the basis for understanding the nature of citizenship and its variation within a state's population. It is important to clarify the terms used here, as diverse understandings are possible. By "nationality," I mean the formal relationship

[181] Recent works include Laurie *Brand's Women, the State and Liberalization: Middle Eastern and North African Experiences* (Columbia University Press: New York, 1998), Selma Botman's *Engendering Citizenship in Egypt* (Columbia University Press: New York, 1999, and Suad Joseph, ed., *Gender and Citizenship in the Middle East* (Syracuse University Press: Syracuse, 2000).

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between a person and a state, what is termed in Arabic legal codes *jinsiyya*. In English, the word "citizen" (Arabic *muwatan*) describes this relationship, and in international law the term "national" is commonly used; the distinction between the two is often rather imprecise.[182] I use the former in order to avoid the inadvertent implication that nationals may be members of nations as distinct from states, as the focus of study here is the latter. The term "citizenship" can mean, in a limited sense, this formal connection between person and state, but in political science and other scholarship it generally denotes the whole range of a person's political standing and consequent rights and duties. Thus I have attempted to be consistent in distinguishing the narrow concept of nationality from the broader concept of citizenship, while pointing out the necessary connection from the former to the latter.

The history of nationality is characterized by two approaches whose predominance has varied over time and location. *Jus sanguinis* is the concept that ties nationality to blood, as when Germany, for example, recognizes as Germans all those who are born to a German parent, even if they are born in another country. *Jus soli*, by contrast, is the concept of territorially-based nationality, wherein one derives citizenship by virtue of having been born within a state's territory, as is the case in the United States. Examples of both approaches can be found throughout the world, with many countries now recognizing both types of claim. The United States, for example, grants nationality

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[182] For an interesting treatment of the difference between *jinsiyya* and *muwatana*, see Uri Davis, "*Jinsiyya* versus *Muwatana*: The Question of Citizenship and the State in the Middle East: the Cases of Israel,

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to all those born on its soil, and also to those born to American parents abroad.[183] The reliance on one concept or the other can serve political purposes, such as the preservation of a particular ethnonational group or the management of a multiethnic state. *Jus sanguinis* is the approach that receives preferential treatment in Jordan, but as will be discussed below, some provisions have been made for *jus soli* claims to a limited degree. It should be noted that these concepts of nationality both refer to claims by right of birth; the acquisition of new nationalities by adults is a separate issue, and most states provide for some means of naturalization after the fulfillment of certain criteria.

Nationality Laws

Ottoman Law

The earliest law establishing rules for nationality in Arab states was the Ottoman Nationality Law of 1869.[184] This law provided that "every person born of Ottoman parents or whose father was an Ottoman is an Ottoman."[185] This article is similar to provisions found in current Arab nationality laws, establishing a right of nationality based

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Jordan, and Palestine," *Arab Studies Quarterly*, vol. 17, nos. 1 and 2 (Winter/Spring 1995), pp. 19-50.

[183] However, one element of gender discrimination persists in American nationality law. A child born abroad to unmarried parents has an automatic claim to American nationality if the mother is American, but proof of paternity before the age of eighteen is required if it is the father who is American. This policy, upheld by the courts in recent years, appears to be based on assumptions about the nature of maternal versus paternal ties to children; it is probably also meant to limit potential citizenship claims from the offspring of American servicemen abroad. (This provision may no longer be enforced, as some federal courts have recently held that the different standards for citizenship are unconsitutional.)

[184] 19 January 1869 Law Concerning Ottoman Nationality (Arabic). In all citations of French- and Arabic-language sources herein, translation is by the author.

[185] Ibid., Article 1.

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on paternity. The Ottoman law differs from later laws by mentioning both parents, but the article makes it clear that the father's Ottoman nationality is both necessary and sufficient for a right-of-blood nationality claim by the child. A more significant difference between the 1869 law and current Arab laws is found in the provision that every individual born in Ottoman territory to foreign parents could obtain Ottoman nationality by request within three years of reaching the age of majority. This territorial basis for nationality is not reproduced in the nationality statutes of the Arab states in the post-Ottoman period. The Ottoman law also provided general rules for the acquisition of Ottoman nationality by adults (by special act or by virtue of request after a period of residence within Ottoman territory) and the obtaining of foreign nationalities by Ottoman subjects.

The Ottoman law also made provisions for the nationality of married women. Article 7 provides that

> The Ottoman woman who marries a foreigner may recover her Ottoman nationality if she is widowed, by a decision to that effect on her part within a three-year period of the death of her husband. This rule applies only to her person; as for her property, it remains subject to the laws and regulations that governed it before.[186]

The law assumed that a married woman would automatically acquire the nationality of her husband and lose her original nationality; this was the practice throughout the world, including the United States, at that time. There were no provisions for a married woman

[186] Ibid., Article 7.

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to retain her own nationality, making her citizenship derivative of her husband's rather than held by the woman in her own right.

Ottoman nationality law was replaced by the laws of various states after the Treaty of Lausanne (1923), which provided that residents of the former Ottoman empire should have their nationalities transferred to the states governing each country. The treaty stipulated that married women would follow the condition of their husbands, and that minor children would follow the condition of their fathers in all nationality matters.[187]

Egyptian Law

As is often the case, Egyptian law is important here because of its influential effect on Jordanian and other Arab statutes. The earliest Egyptian law of nationality dates from 1926 and designates former Ottoman citizens as Egyptians.[188] It further provides that children born, in Egypt or abroad, to an Egyptian father shall be considered Egyptians; this formulation has remained constant throughout amendments to the Egyptian nationality law and is used in other Arab laws in nearly identical language. The law also grants Egyptian nationality to children born to Egyptian mothers and unknown fathers, to unknown parents, and to a foreign father who was also born there, when the father has ties to an Arabic-speaking or Muslim country.[189]

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[187] Treaty of Lausanne, 1923, Part 1, Chapter 2, Article 36 (Arabic).
[188] Decret-Loi sur la Nationalité Egyptienne du 26 mai 1926.
[189] Ibid., Article 10.

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Article 18 granted Egyptian nationality to foreign women who married Egyptian men, and allowed this nationality to be retained even after dissolution of the marriage unless the woman lived abroad and regained her original nationality. Egyptian women who married foreign men were held to lose their Egyptian nationality for the duration of the marriage, if by marrying they acquired a foreign nationality; Egyptian nationality could be recovered on request after the marriage ended.[190] (The law did not make provisions for Egyptian men who acquired a second nationality by virtue of marriage to a foreign woman, as that would have been an extremely rare case at the time.) Furthermore, a foreign man's acquisition of Egyptian nationality conferred it upon his wife unless she declared within one year that she wished to retain her original nationality, and the acquisition of foreign nationality by an Egyptian man likewise caused his wife to lose her Egyptian nationality (which was replaced by the new nationality) unless she declared that she wished to retain it.[191]

The provisions relating to nationality by birth remained fairly constant over time even as the nationality law was amended, while those governing the nationality of married women have undergone some modifications. Law Number 160 of 1950 provided that Egyptian women who married foreigners could retain their Egyptian nationality unless they declared an intention to acquire their husbands' nationality,[192] and an amendment provided for foreign women married to Egyptians to maintain their original

[190] Article 18.
[191] Article 19.

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nationality unless they petitioned to have it changed (instead of having to petition to keep it).[193]

The most recent Egyptian nationality law, Law Number 26 of 1975, maintains most of the earlier provisions regarding nationality by birth, with the exception that nationality granted through an Egyptian mother (as in cases of unknown fathers or fathers of unknown nationality) is available only to children born in Egypt, and not to children born to Egyptian mothers abroad.[194] As in the 1950 law, women's nationality is changed at marriage only if they request it, and not automatically to follow the nationality of the husband.

The regulations regarding married women's nationality could appear as practical safeguards against the complication of dual nationality, except that the same laws provide rules by which Egyptians who are male can maintain both Egyptian and foreign nationalities. Furthermore, even the recent law does not treat as problematic the acquisition of a second nationality by a husband who marries a foreign wife. It is not the loyalty to two states which appears to be problematic for the framers of the law, but the possibility that a wife could owe loyalty to a different state than her husband. Thus nationality laws both reflect and reinforce social values about family structure, and they translate family hierarchies into the realm of the state.

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[192] Loi n. 160 de 1950, relative a la nationalité égyptienne, Article13.
[193] Ibid., Article 9, as modified by law no. 194 of 1951.

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Jordanian Law

As indicated above, nationality laws of the Arab states are markedly similar due to the borrowing that takes place among the legal systems of the region. In addition, in the 1950s, Jordan, Iraq, Saudi Arabia, Yemen, Egypt, Libya, Lebanon, and Syria signed an agreement on nationality law in order to regularize practices in the region.[195] One of the topics of the agreement was the nationality of married women; the agreement provided that Arab women who married Arab men from other countries would automatically acquire the husband's nationality unless they requested otherwise, but could reclaim their original nationality and residence in their country of origin upon the ending of the marriage. No provision was made at the time for Arab men to acquire the nationality of their (Arab) wives, nor does any such provision currently exist.

Jordan's nationality law of 1928, like Egyptian law, based nationality upon the father's possession of Jordanian nationality at the time of the child's birth. It also contained an entire chapter on the nationality of married women and minor children, a telling category. While every individual (except in the rare cases of statelessness) acquires a nationality by right of birth, only those who are legally subordinate to another individual require special rules regarding how their nationality can be altered by subsequent circumstance. That is, women and children may have their nationality altered by the acquisition or loss of the "head of family's" nationality; an adult male could have

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[194] Law No. 26 of 1975 Concerning Egyptian Nationality (Arabic), Article 2, paragraphs 2 and 3.

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his nationality altered only by voluntary naturalization into a new nationality and renunciation of a former one. Arab nationality laws gradually came to permit married women the right to retain their own nationality during marriage, if they wished, a process similar to that in other areas, but the presumption of nationality rules remains that the wife's nationality will generally follow that of the husband (and that the converse is not considered).

The nationality of children remains absolutely determined by that of the father. According to the Jordanian Nationality Law of 1954 (currently in force),

He shall be considered Jordanian:[196]

[...]

3. Everyone born of a father who enjoys Jordanian nationality.
4. Everyone born in the Hashemite Kingdom of Jordan from a mother who bears Jordanian nationality and a father whose nationality is unknown or who has no nationality or whose paternity cannot be legally proven.
5. One born in the Hashemite Kingdom of Jordan from unknown parents and who is considered a foundling in the Kingdom as a newborn and nothing can be proven to the contrary.

The importance of the father in determining an individual's claim to Jordanian nationality is reinforced elsewhere in the law. Article 9 provides that "the children of a Jordanian are Jordanian, wherever they are born."[197] Although Article 2 of the law defines the word Jordanian (*urduni*) as "every person possessing Jordanian nationality in accordance with

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[195] Agreement of 5 April 1954 Concerning some of the Rules of Nationality among the States of the Arab League (Arabic).
[196] Law Number 6 for the year 1954, Law of Jordanian Nationality; Article 3.
[197] "*Awlad al-urduni, urduniyeen aynama wulidu.*"

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the rules of this law," the meaning here is specifically masculine and is not understood to be gender-neutral as it is elsewhere in the law.

As in the Egyptian law, Jordanian nationality can be claimed through the mother only in the effective absence of a father, but the child must be born on Jordanian soil. Effectively, foundlings and children of Jordanian mothers are in the same position with regard to their claim to nationality. Thus, on examination, we find that a woman's nationality is not transmissible to her child even as a secondary option; rather, the nationality of such children is based on their birth in Jordan without a known automatic (father's) nationality. While some have characterized this as a case where maternal nationality is allowed to be transmissible, I consider it a case where the state allows *jus soli* claims to nationality where no *jus sanguinis* claim, to any nationality, would be possible and the individual would consequently be stateless. That is, it is the fact of birth within Jordanian territory without a father's nationality that gives the child a claim to Jordanian nationality, not the child's relationship to a Jordanian mother. Uri Davis has written that "[m]odern citizenship in the Middle East is predicated, as it ought to be, on *jus soli*"[198]; I must disagree, as a *jus sanguinis* claim to nationality not only appears in all

[198] Uri Davis, "State, Nation, and People," in *Citizenship and the State in the Middle East*, Butenschon, Davis, and Hassassian, eds. (Syracuse University Press: Syracuse, 2000), p. 62.

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the codes, but is in fact the chief and standard means by which nationality is currently granted.[199]

International Law: CEDAW

Jordan and several other Arab states are parties to the United Nations Convention on Elimination of All Forms of Discrimination Against Women.[200] This treaty obligates parties to grant women and men full political and social equality, and it contains in Article 9 a specific requirement regarding equal nationality rights for men and women. The article states that

> 1. States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall insure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband.
> 2. States parties shall grant women equal rights with men with respect to the nationality of their children.[201]

This article was not popular among the Arab signatories. Like other Arab signatories, Jordan specified several reservations to particular articles of the treaty, including Article 9, paragraph 2. No explanation was provided with the reservation, but subsequent comments make clear that the state does not wish to be required to alter its nationality law to conform with this treaty provision. Numerous statements by Jordanian representatives

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[199] Some laws, such as those of Jordan and Egypt, also contain articles declaring the nationality of those who received nationality under previous laws, etc., but this does not infringe upon the basic jus sanguinis foundation of the nationality law.
[200] Jordan signed the treaty on 3 December 1980 and ratified it on 1 July 1992.

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to the United Nations make clear that, in cases of conflict between Jordan's domestic laws and its treaty obligations, the latter take precedence.[202] Consequently, treaty obligations could, in theory, provide grounds for a successful court challenge demanding the alteration of the nationality law, and so it was important to exclude equal nationality rights from Jordan's CEDAW obligations in order to preserve the existing disparity in domestic law.

Other countries have expressed similar reservations to Article 9, paragraph 2. Iraq and Lebanon exempted themselves without explanation.[203] Algeria, Kuwait and Tunisia stated that the article would conflict with their domestic nationality laws but offered no substantive explanation. Morocco likewise cited its Nationality Law, further claiming that the provisions for nationality to be transmitted from the mother in the case of a stateless or unknown father served to guarantee each child the right to a nationality, but did not specify the reasons for preferring paternal to maternal nationality.

Egypt provided the most explicit statement of reasons for its reservation to Article 9, claiming that it did not wish to prejudice the

> acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities, since this may be prejudicial to his future. *It is clear that the child's acquisition of his father's nationality is the*

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[201] Convention on the Elimination of All Forms of Discrimination Against Women (1979), Article 9.
[202] See, for example, documents filed by Jordan in connection with its obligations under the International Covenant on Civil and Political Rights (CCPR/C/SR.332 and CCPR/C/1/Add.55, both 1981). The precedence of treaty obligation over domestic law was also confirmed by a Jordanian law professor (Salah Bashir, interview, October 1998).
[203] Iraq, alone among the Arab countries, also objected to paragraph 1 of Article 9. Libya and Yemen registered no reservations to Article 9.

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procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.[204]

This statement reflects attitudes about paternal importance widely endorsed by governments (and people) in the region, and it raises several interesting questions. First, it is unclear in what way dual nationality would be prejudicial to a child's future; it might more readily be regarded as an advantage. Egypt recognizes dual nationality, particularly for the children of Egyptian fathers and non-Egyptian mothers, and makes special provisions for such dual nationals in its consular practice and immigration regulations.[205] Clearly the state is not, in general, interested in preventing "a child's acquisition of two nationalities," since its own law and supporting procedures provide for exactly this circumstance. Second, despite the state's assertion, it is in fact *not* clear that the acquisition of the father's nationality is most suitable for the child. The cases in which the issue of maternally-transmitted nationality has become most salient involve children born and continually resident in Egypt, for whom Egyptian nationality and the consequent access to public facilities and civil rights would be preferable to the foreign nationality of their fathers. Finally, it is unclear upon what basis the final assertion of custom rests; the question of a woman's agreement or disagreement on the nationality of her children does

[204] Reservation filed by Egypt upon signing the treaty, 16 July 1980. Emphasis added.
[205] Facilities Offered by the Ministry of Interior to Egyptian Nationals Living Abroad (2000) specifies the procedures for Egyptians to register the acquisition of a second nationality (while retaining their Egyptian nationality) and for dual nationals to enter and exit the country via expedited procedures.

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not arise in Egypt, since the law does not provide a choice, and in any case the existence of a custom is not evidence of the neutrality or desirability of that custom.

What seems clear is the devotion of the state to the principle that fathers, and fathers alone, are heads of household. The state is willing to allow women to determine the nationality (and consequent residency and civil rights and status) of their children only in the effective absence of a father, and, as I pointed out above, even these limited rights of maternal nationality transmission are territorial at heart, as they generally now require that the woman give birth within the state's territory.

Situations created by the law; state responses

The practice of denying women the right to transmit nationality to their children has led to a host of social problems for families and individuals affected by these laws. These non-citizen children are denied many of the services of the state, such as education and employment, and may even be ineligible for permanent residence in the country of their birth. This has led to situations wherein women must periodically apply for residence permits for their children or even take them out of the country and re-enter, and is a particular burden for poor families who cannot afford private education and health care. Reportedly, some women are driven to circumvent the law by denying knowledge of their child's paternity, or of the nationality of the father, so that the child can claim

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citizenship.[206] Estimates of the number of children affected in Egypt alone suggest that nearly one percent of the population could be in this situation.[207] Reportedly, a human rights organization was planning a legal challenge in the Egyptian courts; no such challenge has yet been mounted in Jordan, although it would be theoretically possible to make constitutional arguments against the current law.[208] That the situation is considered an important one is clear from the attention it receives from women's rights organizations.[209] The General Federation of Jordanian Women voted on a "Women's Agenda" for the 1997-2001 period; of 26 identified priorities, changing the nationality law to allow Jordanian women to give nationality to their non-Jordanian spouses and children (as Jordanian men can do) ranked fourth.[210]

The burdens resulting from these situations have been amply documented; while many have mentioned the issue of women's rights in this context, the focus is generally on the problems facing the children and families as a consequence of the law. My purpose here is to examine the phenomenon not as a social problem, but as an issue of

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[206] Nadia Wassef, "Taking after Father: Recently introduced legislation regarding children born to Egyptian mothers and foreign fathers stops well short of extending citizenship," Cairo Times, n.d. (at www.cairotimes.com/content/issues/women/constit9.html).
[207] Cynthia Johnston, "Egyptian law penalises children of foreign men," Reuters, in Jordan Times, 22 May 1999, p. 7.
[208] Professor Salah Bashir, interview, Amman, November 1998.
[209] Although, as I have argued elsewhere and Laurie Brand has demonstrated eloquently in her work, in the Jordanian case at least, the women's organizations are sufficiently co-opted by the state that they rarely pursue agendas that contradict state-endorsed policy goals.
[210] General Federation of Jordanian Women, Women's Agenda for the Next Parliamentary Period 1997-2001 (15 September 1997). The agenda specified that this desired change was "in order to keep families intact." The top-ranked concerns were the rights of divorced women, access to health care, and child protection; the nationality law outranked other issues such as a quota for women in parliament (#6),

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legal equality. Certainly it is important that the children cannot receive citizenship, but the concern here is the implications of women's inability to transmit it. I argue that this indicates that women's nationality is different not only in degree but in quality from men's, and that the state regards the two sexes as very different kinds of citizens.

It is difficult to assert a single clear objective by states in maintaining different provisions for men's and women's nationality; one can find in different sources arguments ranging from national security to economic pragmatism to burdens on state resources to custom and tradition. Jordanian Interior Ministry officials have told me that the nationality law is designed to prevent an influx of Palestinian men seeking jobs, as the country cannot bear the pressures of an increased population.[211] When I asked what the difference was between population growth from female citizens and male citizens, they replied that women might marry foreign men who are too poor to support them and thus place a burden on welfare resources; they were also concerned that foreign workers (who are not well-regarded in Jordan) would want to marry Jordanian women just to get citizenship. The officials went on to argue strongly that the Jordanian state does not discriminate between male and female citizens, that the nationality law would probably soon be changed, and that the chief obstacle was culture and traditions.

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cancelling the honor crimes law (#26) and entitling women to their own passports without male approval (#9).

[211] Interview with Dr. Barakat Nimr and Mr. Adil al-Hadeed of the Interior Ministry, Amman, 24 August 1999.

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However, when I asked if the law was meant to reflect an Islamic understanding of the family, they stated that there is no connection between religion and nationality, and also that customs and tradition have nothing to do with law. Nonetheless, it seems to me that the rules on paternal transmission of nationality are almost certainly related to Islamic practices such as the requirement (also incorporated in Jordanian law) that children be named after their fathers.[212] Judith Tucker likewise suggests that nationality rules can be seen as analogous to the transmission, in Islamic law, of an individual's status as free or slave through his father rather than his mother.[213]

The inconsistency in claims about the purposes of the law seems to arise from attempts to articulate the several interests served by the current law; the law's discrimination against women is not merely a patriarchal artifact, but serves numerous state interests (which themselves may be formulated on the basis of patriarchal assumptions about women's roles). A representative of the Ministry of Justice suggested in March of 1999 that the ministry planned to change the law and would draft a new proposal, but no such proposal has been publicized.[214]

To be fair, one must acknowledge that the state is not a monolithic entity, and that different agencies may well pursue separate and even conflicting interests. This internal

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[212] Further support for this position is provided by a citation in Abla Amawi, "Gender and Citizenship in Jordan," in Suad Joseph, ed., *Gender and Citizenship in the Middle East* (Syracuse: Syracuse University Press, 2000), p. 162. Amawi describes a commentator in favor of Jordan's CEDAW reservations as saying that transmission of nationality by mothers is "rejected by Islam. Almighty God says: 'Call them by the names of their fathers: that is [more just] in the sight of God," (Sura 33, verse 5).

[213] Personal communication, June 2002.

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diversity, combined with varying pronouncements to different audiences, complicates the identification of a state's interests. However, in the Jordanian case, the issue of the proportion of the population who are of Palestinian origin is clearly salient, although still somewhat puzzling in terms of its effects on nationality law. The high proportion of Palestinians among the Jordanian citizenry (most estimates place it at about 60%) has long been a concern for the state, and this concern has occasionally been publicly advanced as a reason for preventing women from transmitting nationality to their spouses and children.[215] The logic, apparently, is that Palestinian women would bring in Palestinian men from outside Jordan, and produce children who would increase both the population size and the proportion of Palestinians among the citizenry. If, however, the only concern were the expansion of the Palestinian segment of the population, the problem of Palestinian men with Jordanian citizenship marrying Palestinian women from abroad would be considered equally problematic, which it is not.[216]

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[214] Interview with judicial inspector Adel Khasawneh, Ministry of Justice, Amman, 15 March 1999.

[215] An NGO conference on nationality, held in Amman in the summer of 1997, was attended by representatives from the ministries of Justice and Foreign Affairs, who spoke up to persuade the attendees that the nationality issue was one of national security and they should not place it on their agendas for political action. This was reported to me by a conference participant.

[216] Economic and national security concerns are also cited in the Egyptian case as reasons for limiting the transmission of nationality. I could find no evidence that the Egyptian government is concerned about children of fathers of a particular nationality, as Jordan is concerned with Palestinians, and reports suggest that the foreigners married to Egyptian women come from any number of European, African and Arab countries. However, government officials have argued that children of foreign fathers in general would be more loyal to the father's country and thus potential spies, or fifth-columnists if they joined the military. See Neil MacFarquhar, "Egyptian Mothers Fight for Foreign Offspring's Rights," *New York Times* (online), 14 May 2001. One activist characterizes the Egyptian government's position as "exactly a clan punishing their daughter for marrying a man from outside the clan. This is a completely backward, tribal patriarchal mentality." Quoted in Hossam Baghat "Living on the Margins: a parliamentary proposal brings the long-ignored issue of citizenship to the fore," *Cairo Times*, 10-16 May 2001 (vol,. 5, issue 10).

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The patriarchal state: an insufficient explanation

Clearly, even acknowledging the Jordanian government's concern over the Palestinian/Jordanian split in society, the fundamental idea is that children have a greater connection to the identity of their fathers than of their mothers. This is reflected in many aspects of social life, of course, including the naming of children after their fathers[217] and the greater authority given to fathers in law. On its face, this would seem to indicate that the state is reproducing and endorsing traditional social forms that exist separately from the state itself, rather than deliberately creating a system that privileges men over women.

However, while the effects of the nationality law support aspects of patriarchal social forms, it is worth noting that even the desire to perpetuate such forms does not require the approach taken in the nationality laws. One could find an equally sound traditionalist, patriarchal basis for favoring the transmission of nationality by women to their children. The view that women are inherently the chief vehicles and transmitters of culture is well-established; both nationalist and Islamist groups have stressed the importance of women in producing the next generation and raising sons for the

[217] Jordanian naming practices give the child a personal first name, followed by the child's father's name as a middle name, occasionally grandfather's name next, and finally the father's surname as family name. Birth registration procedures do not allow deviation from this naming practice. Every person's identity is necessarily defined by patrilineal connections. Assumptions about the importance of fathers' names sometimes create odd or amusing situations for foreigners, as when a female friend of mine was asked by an official to explain how her father's name could be "Claire" (her middle name).

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movement, inculcating in them the values of the nation.[218] This view of women's social role would seem to suggest that perhaps they, above all, should be able to transmit nationality to their children.

Thus the nationality handicap of women is not a necessary product of a desire to promote traditionalism or patriarchy, and we must look further for the political significance of such laws. The treatment of women's nationality is not merely a product of concern for the nationality of children they may produce; it is, I argue, indicative of the state's understanding of women as citizens themselves.

In arguing that Jordan's gendered nationality law is not a mere automatic reflection of tradition and patriarchy, I do not suggest that it has no connection to these forces. Indeed, nationality law is reflective of the state's understanding of the dominant cultural position on women's roles and rights.[219] The Jordanian state is not divorced from its cultural environment; on the contrary, it takes explicit steps to partake of the legitimacy that comes from cultural authenticity, as I argue throughout this work.

However, the pursuit of legitimacy is a political project and so involves political choices; this is why gendered nationality law cannot be dismissed as an inevitable

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[218] One of the clearest Islamist statements of this position is found in the Charter of the Islamic Resistance Movement (Hamas), which identifies women as the key to the preservation of national identity and the transmission of culture. Similar sentiments are reflected in the statements of some Jordanians who view potential cancellation of the honor crimes law as a threat to society; a frequently heard argument is that "if women become morally corrupt, then the whole society will become corrupt." (Quoted in Rana Husseini, "Lawyers, judges, intellectuals condemn national campaign against Article 340," *Jordan Times*, 10 March 2000.)

[219] This also explains why nationality laws in most other countries, including the United States, treated women's nationality as different from (and inferior to) that of men, in many cases until quite recently.

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outgrowth of a traditional society. In this of all areas of law, the state is making deliberate choices, and it does so with an eye to its legitimacy. As I have already argued, the Jordanian state's legitimacy is based in part upon its claim to represent authentic local culture, a stance which requires the endorsement of some (but not all) aspects of traditional society. Women's subordinate position would certainly fall into this category, and by endorsing the existing patterns of social power, the state partakes of the authority that those patterns have. Gendered nationality laws are thus a component of the state's legitimacy project, and are in fact as much related to the liberal aspect of the state as to its traditional one.

The liberal state and its failures

Gender-differentiated nationality rights are not a phenomenon limited to the Arab world, or to the developing world. The development of the modern liberal state and the concept of citizenship owes much to the liberal tradition, which, while it established a basis for political rights claims, did so incompletely. As Mary Ann Tétreault points out,

> ...the brotherhood envisioned by liberal theorists from John Locke to John Rawls is exactly that, brotherhood. It rejects half of the dynastic concept of patriarchal rule, the rule of the fathers, but does not question the other half, the subjection of women to men and particularly of wives to husbands. [...] Well into the twentieth century and virtually everywhere in the world, wives were the subjects of their husbands and thus could not be autonomous citizens.[220]

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[220] Mary Ann Tetréault, "Gender, Citizenship, and State in the Middle East," in *Citizenship and the State in the Middle East*, p. 77.

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Thus we find limitations on women's citizenship in developed democracies as well as authoritarian and developing cases. The idea that women's citizenship was different from men's has been most notably reflected in the denial of suffrage to women, but has also affected women's nationality rights in various ways. The United States maintained for most of its history a practice of automatically assigning married women the nationality of their husbands, and of conditioning the naturalization of immigrant women upon the gain or loss of nationality by their husbands. This, like denial of suffrage, is a means of mediating women's citizenship through a male guardian; married women did not need to vote because their political will was expressed by their husbands, and they did not need separate nationality because they would naturally follow that of their husbands. In the West, these practices were part and parcel of the doctrine of coverture, which treated married women as legal minors requiring guardianship, but in both the West and elsewhere it also reflected (and in some cases continues to reflect) the belief that women are ill-suited by their natures for the performance of public duties. Women are understood to be naturally emotional rather than rational and concerned with the home and private welfare rather than the public realm and the commonweal, and thus they are unsuited for political roles. The liberal state perpetuates such understandings of women, and thus legal orders derived from it will do likewise.[221]

[221] Ibid., p. 75.

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State legitimation

The liberal state is not, of course, the sole cause of what Laurie Brand has called women's "second-class citizenship."[222] Local customs, religious mores, and the exigencies of the state are also important factors in determining the quality and degree of women's citizenship in general and nationality rights specifically. I have argued throughout this work that the Jordanian state faces significant legitimation needs that it satisfies in part through appeals to cultural authenticity. In such cases, the maintenance of laws that contribute to the preservation of traditional social forms can serve the state's interest by helping to legitimate it to particular audiences.

Simultaneously, the state may pursue different policies meant to appeal to other audiences. In the Jordanian case (some elements of) the state undertake legal reforms on gender issues when necessary or useful to please liberal elements, and avoid them when such reforms would come at too high a cost in terms of displeasing traditionalist sectors.

With regard to nationality laws, I think that reform is complicated by the broader legal environment granting fathers the primary agency in family matters. States have shown themselves unwilling to undo the current legal structure, and it is likely that reform will occur gradually from the margins, with an accretion of new policies to mitigate the objectionable effects of law.

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[222] Laurie Brand, "Women and the State in Jordan: Inclusion or Exclusion?" in *Islam, Gender and Social Change*, Haddad and Esposito, eds. (Oxford University Press: New York, 1998). Brand was writing specifically of the position of Jordanian women, but the term is applicable more broadly.

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In the meantime, however, it is important that nationality-law disparities based on gender not be dismissed as historical or cultural curiosities, or as mere policy alternatives for demographic management. They should be recognized, analytically and politically, for their real importance in defining women's standing in the eyes of the state. Citizenship is one of the key elements in political development, and the choices made by the state in this arena are indicative of both the relationship of the state to its citizenry and some of the principles upon which legitimacy is based.

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CHAPTER SIX: ADMINISTRATION AND POLITICS

Because the issue of cultural authenticity is an important one for the legitimacy of the state, a number of policies are oriented toward preserving social forms that are important to traditional forces. In effect, this has usually meant preserving traditional family and power structures and social practices that disadvantage women, such as the power of husbands and fathers as heads of household. At the same time, the state also supports efforts to extend women's rights and improve their status, as for example in expanding their access to passports and family books (see below). This is a result not only of the nature of the hegemonic discourse, but of the different agendas of various components of the state, and the different audiences to whom state policy is being presented. This article will focus on four examples of the state's treatment of gender issues: administrative policies, the military, a local government council, and the relationship of women's organizations to the state.

Administrative laws and regulations

Jordanian criminal law and the law of nationality have already been extensively examined in this study, but there are other state policies constituted by administrative law and regulations that are of interest in terms of the state's approach to women's roles and status. Some of these policies assign women to (or endorse their existing position in)

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subordinate sociopolitical roles, while others explicitly endorse equal treatment of men and women or an improved role for women with regard to the state.

The Family Book

For many years the primary form of identification for Jordanian citizens has been the family book (*daftar 'a'ileh*). These books are issued by the Ministry of the Interior's Directorate of Civil Status and Passports. The books are issued to families; both male and female children remain in their fathers' family books until marriage, at which point men are issued their own books, and women are recorded in the family books of their husbands. The first page of the book is entitled "head of household" (*rab al-'a'ileh*), and includes the husband's/father's photograph, name, date and place of birth, religion, address, profession, place of business, blood type, and personal identity number. Subsequent pages include the man's wife's data;[223] in her case, these include her photograph, name, religion, date and place of birth, nationality, profession, place of business, date and place of marriage, blood type, and personal identity number. Note that the man's nationality is not recorded; he must be Jordanian by definition; a Jordanian woman married to a non-Jordanian is not entitled to a family book. Likewise, the man's marriage data are not recorded, as he may be married to more than one woman. The

[223] I am told that polygynous marriages are accommodated in additional family books issued to the husband, or possibly by the addition of pages for second (and third and fourth, although this is extremely rare) wives. I did not see the books of any families in this circumstance myself but believe that the former is the more common practice.

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following pages contain space for the listing of up to fourteen children. The family book is also where stamps indicating the receipt of government aid (such as food or health care) are recorded.

In the past few years, the Jordanian government has begun to issue personal identification cards to individual adult citizens. The family books are still issued, however, and while the identification card was meant to supersede the family book in many areas, the family book is still the primary form of identification used by many people and is still required for certain business with the government, such as registering children for school.

The problems posed by the family book are both practical and conceptual. They are issued only to male "heads of household," thus relegating women to a subordinate position within the household and at the same time distancing them from direct interaction with the government. A woman whose husband will not give her the family book finds it difficult, if not impossible, to do any business with the government that requires identification. She cannot apply for a passport, claim government assistance, and until recently, could not vote if she did not have access to her family book. This is a particular problem for divorced women; while a divorced woman (or a widow) reverts to the family book of her fathers (or other senior male relative if the father is deceased), her children remain in the family book of her ex-husband; she must have access to the book in order to register them for school, etc.

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Women may not be issued a family book in their own right, with some exception made for extraordinary circumstances. Widows, for example, have been able to get family books as a matter of practice, particularly in cases where no male relative was available to include the widow in his family book. In such cases, however, the woman does not become the "head of household;" instead, officials carefully mark out that designation and write in "widow." As with other government policies such as the nationality law, this practice suggests that women's relationship to the state is one of citizenship-by-one-remove. That is, no one would be likely to deny that female Jordanians are citizens, but they, like children, require intermediaries in their relationship to the state.

A similar situation has existed with regard to the issuance of passports. The passport application form contains a space for the signature of "husband or guardian,"[224] and without this signature, a woman's application for a passport will be denied. In 1998 the law was reportedly changed to remove this restriction, but the passport office continued to use the old forms and to require women to obtain the signature before the application would be processed.[225]

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[224] "*Muwafiqat al-zawj/al-wali.*" This portion appears at the end of the form.

[225] After hearing several stories in 1999 about the continuing requirement for women show permission to get a passport, I asked two Jordanian friends, both unmarried adult women, to go to the passport office, obtain the form, and ask if the permission signature were really still necessary. In both cases they were told that it was required. One woman pointed out that the law was allegedly changed, but was told to get a signature anyway.

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The state has inaugurated some policy and legal changes to extend men and women the same rights. The Elections Law of 1986 carefully defined "Jordanian" as "every person, male or female, who has Jordanian nationality...."[226] This makes it clear that both women and men are included in the provisions of this law. It is interesting that this alteration was considered necessary, since the plural "Jordanians" and singular "Jordanian" are elsewhere held to include women despite their masculine grammatical gender, unless otherwise specified or clear from context.

Another recent development with regard to women's legal rights is Jordan's signature and ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[227] Jordan expressed reservations with regard to parts of the document, generally those relating to equality in marriage and equal nationality rights.[228] However, the remainder of the document is legally in force in Jordan, including the provision that requires that women and men be equal before the law. The process of implementation of this treaty obligation has been slow, but the presumed willingness of the government to take on the legal duties indicates support in at least some sectors for the changes required. In the Jordanian legal system, international legal obligations take precedence over Jordanian law, and thus claims can now, in theory, be made in Jordanian courts to demand the implementation of these laws even where they

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[226] The Law of Elections to the House of Representatives, No. 22 for 1986. Article 2.
[227] Jordan signed the treaty on 3/2/1980 and ratified it on 1/7/1992.
[228] Jordan's reservations concern Article 9 paragraph 2, Article 15 paragraph 4, and Article 16 paragraph 1, items c, d, and g. These provisions are therefore not included in Jordan's obligations under the treaty.

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conflict with domestic law. It remains to be seen if this potential legal remedy will be of practical value: so far, no challenge on this basis has been brought before the courts.

Personal Status Law

Issues such as marriage and divorce come under the jurisdiction of Personal Status law, which differs based on the confessional identity of the citizen; Muslims have one body of law based on *shari'a*, and members of other sects have their own laws created by something like a church council. Consigning personal, daily life issues to the care of Personal Status law allows the state to adopt the pre-existing practices sanctioned by religion as its own, without the necessity of contestation. The state benefits in terms of legitimacy by preserving sociocultural elements that serve to order life in a familiar way for most people. The state's abstention from direct regulation of these issues does not, however, reduce its complicity in and responsibility for the practices maintained under Personal Status law. In adopting religious law for the purposes of the state, the state effectively lends its authority in support of this body of social regulation. Thus the state may be held accountable in this realm as well, since it seeks to benefit by using traditional formulations of religious law to enhance its political need for cultural authority.

Personal Status law is less politically amenable than other laws to change through regular legislative procedures (which is not to say that it is impervious to change) and is the locus of many of the gendered legal prescriptions that serve to perpetuate inequality

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among men and women. This effectively removes certain issues from political contestation in the sense that they provide weak grounds on which to challenge the state, as the state has designated these issues as outside its direct sphere of interest. This does not mean, however, that such issues are depoliticized; the content of the Personal Status laws is a focus of interest for several NGOs concerned with women's rights, and is also a tool which serves the interest of traditionalist forces by distributing power in a way that preserves social forms that effectively constrain women. Although NGOs have been somewhat reluctant to offer outright challenge to the Personal Status law, the issue is a top priority in many women's concerns regarding social change.[229] In recent years, proposals have been made in Jordan to limit men's rights to take additional wives, and a plan was under discussion in 1999 to undertake a complete overhaul of Personal Status Laws.

Despite having the power to do so, the Jordanian state and its constituent elements have not demonstrated a willingness to alter traditional power structures as they affect gender roles. Other traditional structures, such as the Tribal Courts, have been abolished as the state's need for them declined.[230] However, it appears that gender issues are a convenient way to perpetuate, implicitly, claims to cultural legitimacy and to satisfy

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[229] A September 1997 project sponsored by al-Kutba Institute for Human Development, the General Federation of Jordanian Women, and the Konrad Adenauer Foundation brought together representatives of local-level women's groups in order to form an agenda of women's concerns for the next four years. The top priority expressed by these women was to change the personal status laws in order to give women more protections with regard to divorce, polygamy and child custody.

[230] Tribal law was formally abolished in June of 1976.

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particular constituencies, such as the "tribal sector". Thus while several legal changes have been enacted to improve women's status, the overall effect has been conservative rather than progressive. At many points the government's rhetoric about equality and women's advancement comes into direct conflict with existing legal practice, and when the latter is well within the government's control the lack of changes can only be attributed to deliberate intent on the part of the state.

Women in the military

In 1995, the Jordanian military incorporated a formal program, the Directorate of Women's Affairs, for the development of women's roles and status as military members. The origin, goals, and methods of this program provide an interesting example of the interplay between cultural forces and political development. Although the Jordanian military is now professional (rather than conscript-based) and formally divorced from political contestation (its members cannot vote, for example), its role within the Jordanian state is such that military developments carry direct and indirect political implications. Thus the change and expansion of women's military roles reveals a great deal about the types of state power, the relevance of cultural mores to state decisionmaking, and the tactics that are used to pursue progressive (or nonprogressive) agendas successfully.

Observation of the Jordanian military with regard to women's roles reveals above all the ability of certain elements of the state to operate in partial isolation from society.

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To a certain extent, the development of the Directorate of Women's Affairs has been an internal military matter, and the competing interests shaping the program have been traditional military authority and the agenda of the royal family. However, at the same time, even in such an isolated (or purely state) realm as the military, the state and its agents do not ignore, and cannot afford to ignore, the cultural context in which their agendas are contested. Thus the DWA takes traditional mores into account when formulating its proposed changes, and those opposed to such changes are able to bring pressure from non-military sources. In this way the various state agents contest with one another over competing agendas, with all of them conscious of, and to a greater or lesser degree able to make use of, the sociocultural context in which the military is situated.

Women have been formally involved with the military since 1962, when the first class of military nurses began training. For most of their history, military women have filled traditional roles such as nursing and secretarial jobs. They were not given regular military training and were not considered soldiers in any sense. However, this situation has recently begun to change, with the establishment of the Directorate of Women's Affairs, headed by Lt. Col. (HRH) Aisha bint al-Hussein.

The development of the Directorate reveals the various types of power that have been brought to bear inside the state and how those (sometimes competing) sources of authority can be selectively employed. It originated in a petition to King Hussein by Princess Aisha and her cousin, Princess Basma. At the King's behest and with high-level

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military acquiescence, a research office was created, later upgraded to the Directorate and given a staff. Royal support was essential in establishing the program despite a certain amount of opposition from within the military.

However, having used royal authority to initiate the program, the leaders have shifted, in a sense, to military authority. This facilitates the incorporation of women into the military on equal terms, rather than as a special case. Operating on a basis of professional military competence, rather than personal status, is absolutely essential to the mission of the DWA (see below). Such military authority is not a fiction; it has been carefully earned by both Lt. Col. Aisha and Major Basma. For example, Lt. Col. Aisha is a graduate of the British military academy Sandhurst and has graduated from Special Forces parachute courses and taken first place in weapons competitions in the Jordanian Royal Guard Course. Possessing earned military competence enables her to claim the authority of a military professional; this type of authority seems to replace or occasionally supplement her royal authority.[231] This ability to shift among types of authority makes Lt. Col. Aisha particularly able to operate within a state structure that possesses diverse agendas and power centers, and is a large component of the success of her directorate.

The DWA's approach to developing women's military roles has several notable characteristics that explain to a great degree its successful operation to date. The

[231] It must be noted that many royal family members, from Jordan and elsewhere, have received military training (often at Sandhurst) and hold nominal or real military positions. However, the military training and employment of royal women is something of a novelty, and they had to prove their competence "in spite of" their gender, rather than being accepted automatically.

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language of rights and equality is not used, direct challenges to traditional roles are not offered, and the whole program is guided by a notable degree of pragmatic gradualism. This strategy has helped the DWA to avoid opposition where possible, and to meet it successfully when it does arise. Their mission statement concerns improving the skills and professionalism of women already in the military; another apparent goal, that of expanding women's duties within the military, is not explicitly stated. In interviews, officers repeatedly stressed that neither they nor the majority of military women want the same jobs and roles as men. This is no doubt reassuring to those elements in the military who still entertain doubts as to women's presence among the forces.

The Directorate has managed opposition to its work by carefully demonstrating competence, implementing changes slowly and in small steps, and making certain tactical arrangements, such as the design of women's uniforms, which remove bases upon which they could be criticized.[232] At the same time, the DWA has quietly accomplished a great deal in terms of changing women's images. Women's training now covers all the same topics as that given to men,[233] and all military women receive weapons training. Upon the graduation of the first unit of policewomen, a public ceremony was held to demonstrate their competence with weapons and the support of the King for the new unit. However, these policewomen have not been incorporated into regular duties; they are

[232] For example, women who wish to wear *hijab* have a uniform option that permits them to do so by wearing a long skirt and jacket and an army-issued headscarf.

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specially tasked with matters relating to the discipline of military women. Again we see a careful balance being struck to allow progressive change without making a serious challenge to existing practices.

All of the above practices take place in a context of the recognized importance of being "culturally appropriate." The DWA places a strong emphasis on demonstrating competence to win respect, rather than demanding changes on the basis of rights claims. As a result, although the agenda of the DWA is in the larger analysis a radical one, the methods and goals are such that their program looks quite moderate, and is even able to incorporate traditionalism where that is of tactical value to them (as in neutralizing opposition). That the military itself must take such cultural considerations into account, despite its aforementioned isolation from social pressure, is not surprising. Indeed, as the Jordanian military has a special role in representing the traditional, tribal elements of state support, cultural concerns about gender are quite likely to permeate such a setting. Opposition (albeit limited) to the DWA from outside the military reveals the importance of gender as a contestational element representing "authentic" or "Islamic" culture; on non-gender-related issues, the military is generally immune to such opposition.

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[233] With the exception that certain matters such as infantry tactics are taught to women in a classroom rather than a practical setting, on the grounds that women members will never be exposed to situations in which

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Local Government

The state has so far in this discussion been treated primarily at the national level. However, a concern with gender issues is found at other levels of state authority, as well, and helps to demonstrate the different attitudes within the state about gender issues. One of Jordan's most important national heritage sites is Petra, which is administered locally by the Petra Regional Council. Inside Petra, members of a kin group called the Bdul have for years run concessions and sold souvenirs to tourists. In 1998, the Petra Regional Council took steps to organize all economic activity within Petra into cooperatives, in order to reduce chaos and decrease the numbers of sellers inside the site, who were felt to be detracting from the natural beauty. In so doing, they involved the Bdul community leaders and reached an agreement about new economic practices. A key result of this development was that women were for a while no longer allowed to sell souvenirs or work in the concessions inside Petra; furthermore, they are not permitted to have an ownership stake in any of the new cooperatives, and were at one point apparently barred from entering the site at all.[234] The Council itself made this arrangement with the (male) Bdul representatives, and it has been given the force of local law. When asked to explain why women are now excluded from economic activity, a PRC employee explained that

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they need such training.

[234] Mr. Suleiman Farajat, Petra Regional Council, interview, April 1998; when I spoke to Mr. Farajat again in March of 1999, he denied that Bdul women had ever been forbidden access to enter or work in Petra. There is some disagreement on this issue, and it may be the case that the restriction was temporary or partially misunderstood. As of 1999, Bdul women could enter the site and some were again selling souvenirs, although they were often told to move on by site officials. It remains the case that women may

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the women are dirty and displeasing to the tourists, and that it is necessary to clean up Petra by removing "the children, the women and the donkeys." Another PRC employee explained that the women should be home with their children anyway, and thus the PRC "put their husbands and brothers at the tables" to sell things. One's husband having an income is not the same as having an income oneself, but this point is clearly not relevant to the PRC (although not lost on the Bdul men who endorsed this scheme). An official explained that the women will be allowed to sell things in their own village, Um Saihun, but as tourists do not go there, the success of such a venture is likely to be minimal.[235] It is notable that a government agency has enthusiastically participated in, if not engineered, the deliberate disemployment of women *as women*.[236]

This PRC policy disemploying women exists alongside a government-endorsed NGO project in the same area which was created to provide employment for women. The Noor al-Hussein Foundation runs a jewelry-making project employing young women from Wadi Musa.[237] While the co-existence of two opposite policies on women's

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not participate in ownership of the cooperatives. The responsibility for this lies partly with the PRC and partly with the Bdul men who agreed that "their" women should be kept out of the business enterprises.

[235] The official providing this information declared that many tourists visit the Bdul village; this is simply untrue. It is well outside the Petra site, on a road little used by tourists, which is occasionally controlled by police checkpoints. Offering the women a shop in their village was clearly intended as a dismissal of their interests, and the women themselves rejected the idea.

[236] However, gender competition is not the only force at work in this situation. One PRC official told me that "we don't like a lot of people from this area, especially from the Bdul, to get inside Petra." The PRC, it should be noted, is composed of members of a different tribal group, the Laetna. Also, a concern with tourist sensibilities, understood as anti-traditional, is a clear motivator in this matter. However, the PRC's argument that tourists do not like to see women working is certainly far-fetched and inconsistent, revealing more about their own prejudices than those of the tourists.

[237] The Noor al-Hussein Foundation is a semi-non-governmental organization of the type described in part three of this article.

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employment at first seems ironic, it actually reflects the state's recognition of the utility of gender in serving different political agendas. The state's aims are various: to increase tourism in Petra, to ameliorate the effects of poverty, and to promote women's economic opportunities. The state is also interested in minimizing the claims of the Bdul to traditional rights within Petra. This is managed by placing Petra under the control of a regional council whose members are non-Bdul, and instituting policies that gradually remove the Bdul from the site.[238] In pursuit of all these goals, the state and its various agencies find it expedient to make use of gender roles for purposes that appear contradictory. Thus a project to employ women exists directly alongside a government agency that has legally disemployed another group of women. This reflects both the flexible political utility of gender and the non-monolithic character of the state.

Nongovernmental organizations dealing with "women's issues"

The women's movement in Jordan is dominated by a group of organizations that are connected to the state both formally and in practice. Thus most of these groups are not strictly *non*governmental organizations, but rather are para-state in nature. This relationship has, I believe, been one of the strongest influences on the character of the

[238] The Bdul for many years actually lived inside Petra, in the various caves and in other dwellings. The village Um Saihun was built in the mid-1980s explicitly for the Bdul, as part of the deal removing them from the site in order to facilitate tourism.

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present women's movement in Jordan.[239] Despite their ties to the state, these women's organizations still serve as an arena for contesting both social practice and state policy. While this contestation is more limited than it would be in a completely free environment, the women's movement has had its successes in promoting change and enjoys some legitimacy as an arena of discussion and as representatives of Jordanian women's goals. It also seems that these groups' para-state nature has enhanced the stature of the Jordanian women's movement (at least among some quarters) and has facilitated their work by providing a state-sanctioned--or more specifically, a royally-sanctioned--space in which to pursue change. However, it is clear that the women's movement faces significant constraints from both the state and the sociopolitical hegemony in Jordan. Because the movement has shown itself willing to work within these constraints, both discursive and practical, it is not a counterhegemonic movement, despite its work for social change.

Nongovernmental organizations and the state use one another in pursuit of their various goals, but the state clearly has the upper hand in this process. The state benefits in terms of international public relations from having a plausible and well-populated women's movement, and certain elements within the state are able to advance their agendas through the work of the women's organizations. Women's organizations are able to accomplish changes in the law through their formal ties to the state. Thus the

[239] State influence on the women's movement has been notable throughout its history; see Laurie Brand, "Women and the State in Jordan: Inclusion or Exclusion?" in *Islam, Gender, and Social Change*, Yvonne Yazbeck Haddad and John L. Esposito, eds. (Oxford University Press: Oxford, 1998).

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relationship between the state and the movements is one characterized by both cooperation and co-optation.

Links to the State

The close relationship between the state and "non"governmental organizations is clear from an examination of two of the leading women's groups, the Jordan National Committee for Women (JNCW) and the Princess Basma Women's Resource Center (PBWRC). The JNCW is an elite-level, policy-oriented umbrella organization; its Legal Committee advises Parliament on bills and proposes amendments to existing legislation. The JNCW, which has existed since 1992, is governed by a board of directors which includes members from other NGOs as well as government ministries. The current head of the board is the Minister for Religious Affairs, who holds the chair because it is his turn as the longest-serving minister.[240] Government influence extends beyond the board of directors: the JNCW comprises two committees, one of which collects representatives from all the NGOs working on women's issues in Jordan, and the other of which is a "government organizations" committee, including representatives from each of the government ministries.

The Princess Basma Women's Resource Center has less direct participation by the government, but clearly falls under the same umbrella of state oversight. The PBWRC's

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staff includes only one employee who is a civil servant seconded from a government ministry; the others have no direct connection to the state. Nor does PBWRC funding come from the Jordanian government. The support for certain projects is provided by foreign governments, and the center also charges participants for participation in its workshops. The PBWRC has a different mission from the JNCW, as it is oriented toward the support of the JNCW through the production of studies and information and the provision of training. The PBWRC carries out its work through the organizational structure of the Jordan National Forum for Women (JNFW), which is the most grass-roots of the three national para-state groups, with approximately 127,000 members and organizational structures in every governorate. These groups are each constituted as NGOs, but clearly fall partially within the sphere of the state, even to the extent of actual government presence in their operating structures. There exist other groups in the women's movement which are not linked to the state,[241] but even they feel the effects of state regulation of political contestation, and tend to work within the royal-liberal strand of dominant discourse, rather than placing themselves in opposition to it. As these groups also conduct projects in conjunction with the major, state-linked groups, the influence of state involvement extends to them as well.

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[240] This seems an odd arrangement for a feminist organization, but it is said that this has not hampered the work of the JNCW, and that in fact the presence of the minister is an aid in presenting proposed changes as compatible with religious duties.

[241] These include the al-Kutba Institute for Human Development and the Jordanian chapter of SIGI (Sisterhood is Global, International).

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The extent to which organizations are connected to the state is not merely a function of their formal government connections. Each of the above-mentioned organizations enjoys significant royal patronage, particularly through the leadership of Princess Basma bint Talal, the sister of King Hussein. Princess Basma is the president of the JNCW, the founder and head of the PBWRC, and the chair of the Higher Council of the JNFW. Clearly, royal influence on the women's movement is significant, and this serves to extend the co-optation of the women's movements beyond the merely bureaucratic control of the state, bringing it more directly into the path of the dominant royal-liberal discourse. The issue of royal support is usually treated by the groups themselves in terms of the benefits it confers on them; as in the case of the military's Directorate of Women's Affairs, many believe that the organizations would be less effective in the absence of royal protection and involvement.

The degree to which constraints on women's organizations are acknowledged by their members varies. Some activists claim that the groups are not influenced by the state and are free to formulate and pursue their own objectives. Others, however, openly acknowledge the limitations placed upon the success of the women's movement, noting that the state has the power to accomplish by fiat many of the goals for which the movement is still struggling, yet refuses to make the requested changes. This shapes the groups' assessments of the possible and thus their programs; it is also felt as a general constraint on the breadth and tone of debate on women's issues. One activist remarked

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that the groups know where the line is past which they will not be allowed to go, and they take care to operate behind it.

Characteristics of the movement

The women's rights organizations are generally characterized by the same gradualist approach as we have observed in the military. This is true of both individual activists and organizational behavior. Women activists who are markedly and publicly strident are generally condemned, not only by public opinion but also by other women activists. Organizations tend strongly toward moderation in demands and conciliatory attitudes, especially toward agents of the state. While there have been calls for sweeping social change and a more demanding approach,[242] this has not so far been the practice in the NGO realm. Organizations seem very conscious of a need to avoid offending both cultural mores and the state and its various agencies. This should not be taken for cowardice on the part of women's activists, as it is more a matter of pragmatic strategic considerations and the pervasive docility in the political culture of Jordanian civil society.

However, it is equally true that this gradualism and its corollary, limited expectations, has led the women's movement to adopt stances that are flexible to the point of compromising even their hard-won gains. For example, in 1996 activists

[242] Lawyer Asma Khader, known for her strident style, called for a switch to this approach at a recent conference. Somewhat surprisingly, Senator Leila Sharaf, long associated with the government and by no means an opponent of the state, heartily endorsed the idea of making maximalist, radical demands on the state (particularly Parliament) as a means to achieve speedier progress in women's rights.

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succeeded in persuading the government to alter the law on maternity leave, to guarantee longer periods of leave not only for civil servants, but for women in the private sector as well. Upon the implementation of this law, some businesses made it known that they would be reluctant to hire women who were guaranteed a right to maternity leave. Many women's rights activists are now giving serious consideration to asking for a revocation of the maternity leave improvement, in order to remove an excuse for not hiring women. A different approach would be to seek further protections against hiring discrimination based on gender, but that does not appear to be an approach that appeals to many activists. This willingness to compromise gains in the face of opposition is what lends the women's movement an air of timidity. This is unfortunate, both in terms of less vibrant political contestation and the reduced opportunities for progressive change.

Another common criticism of the women's movement is that it is fragmented and internally competitive. This is particularly notable in the continual development of various agendas by different organizations, which are not made politically effective by unified advocacy. However, on one recent issue, the women's movement was unusually cohesive. Elections for the *majlis al-nawab*, the lower house of Parliament, were held most recently in November of 1997, and none of the seventeen women who competed won election to office. In the wake of this failure, the women's organizations collectively called for a quota for women in Parliament, to be enacted before the next election. They

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requested a quota of 20% women deputies in the lower house,[243] and in rejecting this plan, the government replied that women are already equal and therefore need no special protections with regard to participation in the legislature.[244] Even a united front is not sufficient to enable the women's movement to demand changes when the state is disinclined to grant them.

Whether quasi-state or private, women's organizations seem to share a general consensus that economic, social, legal and political changes are interlinked, and that reai improvements in Jordanian women's lives will only come about as a result of progress on all these fronts. This is, on its face, a radical approach, which implicates fundamental social forms and cultural elements in women's oppression. However, in practice, there is little about the NGO realm that is radical. Proposed changes are focused on the margins of legislation and there is a marked reluctance to put goals in terms of demands, and to make such demands when to do so would challenge anything considered "fundamental" in a cultural sense. Thus the honor crimes law is widely deplored, but until about 1998 no strong effort was sustained with regard to bringing about a change in it. However, King Hussein's 1997 speech from the throne contained a denunciation of violence against women, Princess Basma has undertaken several activities on the issue, and other

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[243] The upper house is chosen by appointment, and has for the past several years included approximately three women in each session.

[244] It should be noted that the idea of a quota does not contravene Jordanian constitutional law; two quotas, for Circassians and Christians, already exist. In the latter case, the quota provides representation in excess of their actual percentage of the population. The minister's suggestion that a quota for women would indicate their lack of equality seems odd in this context, as the same logic does not seem to apply to the

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members of the royal family participated in a march to protest the practice. This royal endorsement seems to have opened the topic to NGO participation, and thus some changes may be accomplished in the future. Little opposition is raised to issues that fall under the jurisdiction of the personal status law, apparently from a feeling that the movement cannot afford to provoke serious religious opposition. That the NGOs see their main opponents as religious and traditional is evident; however, also evident is a desire to achieve gains by avoiding, rather than overcoming, traditionalist opposition.

The degree to which this strategy has been successful is debatable. Certainly some important changes have been made, including improving women's ability to retain custody of their children, obtaining for women the right to get passports without family approval, and instituting a law guaranteeing a specified period of maternity leave. However, other key legal issues, relating either to state practice (such as the nationality law) or issues believed to be dear to traditional forces (such as honor killings) have met with less success on the part of NGOs, and have been characterized by a markedly conciliatory and deferential approach.

The Jordanian women's movement has overseen several important gains for women in recent years. However, the movement is dominated by its relationship to the state and does not offer any radical challenge to the existing order. While this compromises the degree to which they can (or are willing to) contest dominant practices,

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groups currently benefiting from quotas. Furthermore, religious and ethnic minority groups have explicit Constitutional guarantees of equality, which women do not.

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it may also have secured their continued existence in an environment where all of civil society, not just the women's movement, is subject to strong state scrutiny and regulation. However, pragmatic strategy is not without its effects on the breadth of acceptable debate and discussion within the movement, and thus not only the activities but the actual character of the movement have been constricted. The women's movement engages neither in counterhegemony nor in subversion disguised as acquiescence and accepts that its role is to contest from within rather than outside the hegemony.

Conclusion

State policies regarding women's roles and rights are something of a mixed bag; some, such as the policies on family books and passports, limit women's power, reinforce male authority over them, and distance female citizens from the workings of their government. Other policies, such as the incorporation of women into the military, and the formal legislative advisory role granted to the JNCW, suggest a much more progressive state approach to women's rights. These are, however, limited in their effects. The opportunities offered by the program incorporating women into the Jordanian military are not easily replicable in other areas of the state. The military is a unique environment in many ways; its special characteristics and particularly the role of royal authority were able to produce changes through means that could not be applied elsewhere. However, the example does suggest something important about the nature of

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hegemony/counterhegemony discourses in Jordan: counterhegemonic effects can be produced, and perhaps most effectively so, by methods that are not themselves counterhegemonic. It is not merely that military women have cloaked radical goals in traditional language (which is also a useful political strategy); they genuinely do not intend revolutionary change in this arena. Nonetheless, the effects of this program are potentially far-reaching and challenging to some fairly fundamental beliefs about gender roles and rights.

The achievements and limitations of the women's movement also stem from what is allowable by dominant political forces rather than resulting from radical challenges to them. The movement's primary contribution to political contestation lies in its efforts to strengthen the royal-liberal element of the political hegemony; it is a small irony of Jordanian politics that monarchical power, not usually considered a progressive force in political science, has been the best safeguard of women's rights. While this strand is generally compatible with the achievement of changes in women's status, the political relevance of traditionalist claims cannot be overlooked. The state's needs for cultural legitimacy are at present a leading determinant of the extent to which challenges to traditional social practice are effective. This will remain the case so long as gender roles are considered essential to cultural authenticity, and so long as the state finds it necessary to base its legitimacy upon the demands of sectors of society that value the preservation of traditional social practices.

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CONCLUSIONS

The findings of this study offer new insights into the legitimacy issues that shape Jordanian political development both for good and for ill. The extent to which the state should enshrine tradition in law and politics, the question of which traditions merit such enshrinement, the extension of rights and the morality of society are all issues integral to the establishment of a stable political system that satisfies demands both of authenticity and justice.

The relevance of the study, however, extends well beyond the Jordanian case. The essential issue in the case examined here is one that is fundamental to the study of politics: what makes a good political system? There is probably nearly universal agreement that political systems should reflect the will of the people they govern, they should be "moral," (although of course the definition of morality will vary enormously over time, place, segment of society, etc.), they should be indigenous rather than externally imposed (in U.N. language, respecting the inherent right of peoples to self-determination), and they should have technical competence in all the administrative tasks of government. Where contestation arises is over the meanings of terms like "the will of the people," "moral," and "indigenous."

This, in terms of the study of legitimacy and development, is where politics becomes interesting, because the outcome of this type of contestation will shape not only

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the distribution of power among political actors, but the fundamental character of the system itself. Each of these issues, of popular will, morality, and indigenousness or authenticity, is at the heart of legitimacy issues in Jordanian politics. The Jordanian government claims to represent the general will not by democratic responsiveness, but by shared identity and having the nation's best interests at heart. In this case, and indeed in any post-colonial context, a significant amount of political competition takes place around the issue of which interests and values constitute "indigenous" ones; thus the debate on honor crimes features two opposing sides arguing about whether the law should be eradicated (because it is foreign in origin) or the practice itself should be preserved (because it is a traditional means of ensuring morality). The requirements of morality also feature significantly in the legitimation issues in Jordan, often in connection to the question of cultural authenticity. Political actors with a traditionalist agenda often claim the mantle of Islam for themselves, thus linking religious morality with cultural tradition, which are logically contrasted to immorality and imported foreign values. Their opponents are more likely to argue against this linkage of tradition with religion, decrying certain practices as traditional but unIslamic, and to argue that democracy and "modern" politics require a greater protection of rights against outdated practices that are no longer suited to the society. They are arguing about their own interests, certainly, but also about the attributes that a just society and a good political system should exhibit.

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Politics is not simply about the pursuit of power, the amassing of advantages and resources for oneself or one's own interests. It is also, and perhaps even more, about the establishment of systems that make sense to people in the way they order society, systems that reflect what people believe and the ways in which they live their lives. This is not to suggest that any system reflects all of its citizens' beliefs or interests, or indeed that any system even succeeds in establishing equal citizenship, in the fullest sense, among all those it governs. Rather, politics at the system level has an inherent requirement of legitimacy, that it be recognized as valid by the people. The "consent of the governed," in the Declaration of Independence's happy phrase, need not be actively solicited, but its absence or even erosion will seriously hamper the stability of the state and will bring into political contestation elements of shared sociocultural meaning that the state has the power to destroy but not to create.

In one sense, then, the Jordanian system is no different from any other, as it partakes of this basic question of the good political life. In some systems the issue is already largely settled, while in Jordan and elsewhere in the developing world, the nature of the system is, to a greater or lesser degree, an open question. The Jordanian case is significantly different, therefore, from those for which Habermas's theory was intended; it is a developing system both politically and economically. The legitimation issues that I argue are key to the course of Jordanian political development arise precisely because the relationship between the state and the society is still being formulated, but they are

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analytically similar to the legitimation issues that arise in developed countries according to Habermas's model.

At the most practical level, this study tells us something about the prospects for democracy and the expansion of rights in the Jordanian case. At a second level, I would argue that the study of legitimacy in developing, post-colonial systems warrants further attention for scholars as it may be a key to explaining democratic (and undemocratic) development in many cases. Most broadly, the findings of this study suggest a need for a more broadly comparative consideration of the force of tradition in contemporary politics, especially where tradition is linked to religion. From the rise of the Christian right in the United States to Hindu nationalism in India, the mobilization of citizens on the basis of a perceived need to protect meaningful sociocultural elements (faith, language, family structures) from the predations of an insufficiently-moral or insufficiently-authentic state is a notable phenomenon. Considering it in the light of legitimation issues and system development should suggest parallels between the politics of development in rich and poor countries and democratic and nondemocratic systems.

The pursuit of legitimacy

This study demonstrates that, while tradition is an important factor in Jordanian political contestation, the course of Jordanian political development should not be characterized as merely the product of a continuing struggle between tradition and

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modernity. The chapters above have shown that Jordanian laws and policies regarding honor crimes, nationality, passports, family books, and other issues all have the political effect of distancing female citizens from the normal regulatory operations of the state by making them a special category in the relations between state and citizen. On their face, these laws and policies appear to be merely various ways in which the state endorses traditional practices, and so fails to act as a fully "modern" political order. However, the state's endorsement of such practices is neither automatic nor uniform over all areas of social tradition. Rather, the state and other actors are making conscious political choices about shared identity (what does it mean to be Jordanian?) and values (the preservation of a moral and/or authentic society). These choices are best understood, I argue, not as reflexive traditionalism but as attempts to satisfy legitimation needs by managing sociocultural elements, using their social meaningfulness to bolster the connection between citizens and state. As this approach to legitimacy is equally salient in the study of advanced capitalist states, for which the theory was originally intended, its applicability here demonstrates that something more interesting than a simple clash of tradition and modernity is taking place.

The Jordanian state's approach to citizenship, its understanding of individuals' relation to the state, results in the mediation of women's relations with the state through social traditions of male authority over women. This is not a simple reflection of predominant social realities in the political realm; the state does not, after all, replicate or

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endorse all forms of traditional social hierarchy in its administrative functions. The authority of fathers over sons or tribe leaders over other members, for example, does not enter into men's interactions with the state. When a man applies for a passport, no one asks him if his father approves or if his tribe's leader has given permission. Men are individual citizens before the state, while women are regarded as representatives of "cultural tradition," serving as what Mary Ann Tétreault called the "last Bedouins."[245]

Thus gender issues are an important means by which the state seeks to preserve or enhance its legitimacy. However, as the research discussed above indicates, this does not mean that the state engages only in "traditionalist" legitimation through gender issues. Another source of legitimacy is found in the wielding of "forward-thinking, democratic" values. This is one basis for the regime's opposition to honor crimes and domestic violence. Advocacy of women's rights is therefore sometimes couched in terms of compatibility with Islamic teaching or local custom, but at other times presented as necessary for the Jordan of the twenty-first century or for the future of democracy. The type of appeal varies, of course, by issue and intended audience, and the state is neither a staunch opponent of women's rights nor a promoter of gender egalitarianism.

The primary goal of the study was to demonstrate this integral importance of sociocultural elements to the maintenance of state legitimacy, and to investigate the implications of this for the nature of the developing political system. However, the

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[245] Mary Ann Tétreault, "A State of Two Minds: State Cultures, Women, and Politics in Kuwait," *International Journal of Middle East Studies*, vol. 33, no. 2 (May 2001), pp. 213-216.

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findings described above also contribute to an understanding of the difference between "tradition" and "tradition-as-politics." The latter phenomenon, whose effects on Jordanian politics are investigated here, is a reification of tradition, in order to make it a basis for political authority and a guide to policy. It posits "tradition" as a fixed and demarcated cultural entity. This is a political position, rather than a scholarly one; where scholars uncritically accept it as synonymous and coterminous with tradition itself, they introduce a politically important epistemological flaw into their work.

The packaging of "tradition" for the purposes of politics is not, however, merely a cynical or disingenuous use of chosen elements of culture in order to promote particular interests. Rather, tradition-as-politics arises out of the way in which we understand traditions: they are elements of social practice that have continuity over time, and while they are not truly static, we think of them that way because the element of continuity is central to the meaning of tradition. It is this "naturalness" of tradition that makes it desirable as an element in the state's attempts to legitimate itself by borrowing the mantle of meaningful sociocultural elements. The difference between tradition and tradition-as-politics thus goes directly to the issues of legitimacy raised in Habermas's theory.

The Jordanian state's management of sociocultural elements for purposes of legitimacy has the unintended, and unavoidable, consequences predicted by the theory. It politicizes these formerly "natural" social practices and values, bringing them into the realm of political contestation and demands on the state. The preservation of social

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practices like paternal and spousal authority over women is consequently not incorporated into state practices without comment, but instead gives rise to a lively debate on the proper role of tradition, what actually constitutes "tradition," and the requirements of a political system that is democratizing, or that is Jordanian, or that governs a Muslim society. All of these issues are contested rather than consensual, and the outcome of this contestation and the state's management of it will shape the course of Jordanian political development for the foreseeable future.

Political prospects for Jordan

So far, this politicization of cultural elements has shaped the legitimacy issues of the Jordanian state without yet producing a "legitimation crisis." Habermas predicted the collapse of the system not as an immediate consequence of legitimation problems, but "when the consensual foundations of normative structures are so much impaired that the society becomes anomic."[246] The state's ability to manipulate two strands of hegemonic discourse, the royal-liberal and the "traditional," serve to ground its legitimacy at more than one point in the sociocultural realm. The current legitimacy politics is not about the absence of consensus, but rather its mobilization around two different poles of legitimacy. The partisans of each position are not alienated, even from the other camp, and even use the language and tactics of the other discourse to broaden their own appeal. Legitimation

[246] Jurgen Habermas, *Legitimation Crisis*. Beacon Press: Boston, 1973. p. 3.

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crisis in Jordan is not inevitable, and political development has more than one possible course.

However, if the legitimacy of the Jordanian state, and more broadly of the political system and its constituent actors, becomes entirely a matter of success in a battle for cultural legitimacy, then those who define "authentic tradition" will have much more power than others to shape the prospects for democratization. The significance of the politics of legitimacy as played out in issues of gender and law is not only about the content of policies and competition of interests, but the power to determine the nature of the political system itself.

The Jordanian system contains the elements upon which to build a democratic system respectful of individual rights and equality before the law; it also has the potential to revert to more coercive authoritarianism, either secular or religio-traditional. In its favor, lively contestation exists over the cultural-legal issues considered by this study likely to be partially determinative of the course of political development, and the very fact of this contestation will perhaps draw more participants into political life and contribute to the development and representation of a wider variety of interests.

Potential avenues of future research

The Jordanian case offers several lessons about the role of legitimacy in political development. In terms of general theory, rather than regarding democratization as a

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product of economic development, elite bargaining strategies, or some combination of the two, this case suggests that a great deal of contestation is likely to take place over the definition of tradition and the means by which it is to be compatible with other goods like individual freedom, civil rights, and equality before the law. The study of the role of tradition in politics could benefit, therefore, from a reinvigoration; it would, I argue, be more useful to consider tradition one of the variables in legitimacy and thus relevant to general political development, rather than to maintain the old dichotomy which has more political force than scholarly value.

The relationship between traditions and legitimacy for state stability and regime type is significant, and not merely because democracy in which rights and participation are limited by traditional social hierarchies is little democracy at all. The contestation over which conception of rights and freedoms should serve as the foundation of the political order is more than merely a negotiation of the "rules of the game." Rather, it is a determinative element in the character of the system itself; the nature of the system will be a product of the legitimacy upon which it rests.

This study is predicated upon the understanding of law as not merely a coercive state tool, but both a reflection of social values and a shaper of them. This is the source of its political power, and the reason that law is an important arena for the pursuit of political legitimacy. A comprehensive comparative study of law and legitimacy in other Arab countries would be valuable in refining the theory offered here; subsequently, a

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cross-regional comparison could contribute to the further development of general theory on the politics of law in developing systems and on the incorporation of cultural elements into political legitimacy strategies. In my view, this area of research is one of the most promising for increasing our understanding of democracy and its prospects in many types of system.

I would further suggest that the findings of this study demonstrate the relevance of gender issues to the central questions of political development. Despite decades of interesting and thorough research on gender issues in the Middle East and elsewhere, the field is still considered by many to represent a "special interest" subcategory of politics, in a way that research on other social elements such as class, race and religion is not. This study shows that gender issues, from both traditionalist and reformist perspectives, are connected to the central values in society and politics and can, especially in a developing system, have enormous symbolic and functional significance across a wide variety of political issues.

The importance of culture to political development is not, at the most important level, located in questions such as the compatibility of women's rights and tradition or Islam and democracy, although these are interesting issues in themselves. It is about the creation and operation of political systems that are meaningful to their citizens, that reflect what people understand and value. This political system must be comprehensible to and considered appropriate by its people, and the state must, for its own preservation,

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work to achieve this legitimacy. The state has a great deal of power to affect the environment in which legitimacy is pursued and contested, both through authoritarian controls common in the developing world and through every state's preeminence in the field of law, wherein social values are given political recognition and coercive power. However, the state cannot, as Habermas warns, create legitimacy out of whole cloth. It must rely on the sociocultural realm for the substance of what is meaningful; this draws the state into a relationship with its society, although not of course with every member or interest within it. The choices about legitimation, the selection of cultural elements as sources and symbols, is fundamental to politics, particularly in cases wherein the foundations and attributes of the political system are still largely an open question. This relationship of state and society through legitimation is fundamentally important in shaping the nature of the political system; the elevation of legitimacy to a position of greater attention in research and theory-building will serve to improve our understanding of the processes and outcomes of the building of political systems.

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INTERVIEWS

All interviews were conducted in Amman, Jordan, unless otherwise specified. This list includes only conversations structured as formal interviews; casual conversations with some of the persons listed below are not included.

Attorney Asma Khader, April 1998, June 1999

Attorney Ghada Kamhawi, August 1999

Attorney Rihab Qaddumi, Jordan National Committee for Women, April 1998, September 1999

Professor (attorney) Salah Bashir, October1998, November 1998, April 1999

Eman Nimri, Princess Basma Women's Resource Center, December 1997, April 1998, November 1998

Amal Sabbagh, Queen Alia Fund, August 1999

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Ellen Khoury, Al-Kutba Institute for Human Development, October 1997

Dr. Barakat Nimr and Mr. Adil al-Hadeed, Interior Ministry, August 1999

Directorate of Women's Affairs, Jordan Armed Forces February and March 1998
Maj. HRH Basma bint Ali, Lt. Col. HRH Aisha bint al-Hussein

Firas al-Idwan, Parliamentary secretary, August1999

Dr. Hani Jahshan, National Insitute of Forensic Medicine, June 99

Suleiman Farajat, Petra Regional Council April 1998, April 1999

Judicial Inspector Adel Khasawneh, March 1999

Farouk Kilani, former head of High Court of Justice, March 1999

Public Security Department, Family Protection Unit, Capt. Samir Jazeen, Lt. Taghreed Abu-Sarhan, November 1998, Summer 1999

Senator Leila Sharaf, July 1999

King Abdullah of Jordan, Georgetown University, Washington, D.C., September 1999

Rami Khoury, journalist, December1997

Rana Husseini, Journalist, Jordan Times, October 1997

Colonel Walter Heidmous, Air Attaché, United States Embassy, October 1998

Col. Jessmer, Military Attaché, United States Embassy, July 1999

Dr. Abdul Latif Arabiyyat, Secretary-General of the Islamic Action Front, Arlington, Virginia, April 2000

Patricia Salti, May 1999

Janine el-Tell, Director of AMIDEAST, July 1999

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Alain McNamara, former AMIDEAST director, August 1999

"Ahmad," medical student at University of Jordan, July 1999

Sister Mary Burke (nurse) and Um Safyan (social worker), Pontifical Mission for Palestine, Mother of Mercy Clinic, Zarqa, May 1999

Meetings and conferences

Business and Professional Women's Club, Annual Meeting, June 1999

Bassira (women's group) meeting, February 1998, Sen. Leila Sharaf
October 1997, Josi Salem-Pickartz

"Promoting Women's Status through Legal Reforms," conference co-sponsored by al-Kutba Institute for Human Development and the Goethe Institut, October 1998.

Women's Committee for the 1997 Elections, October 1997

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