

**PERSONAL STATUS LAW REFORM IN JORDAN:
STATE BARGAINS AND WOMEN'S RIGHTS IN THE LAW**

A Thesis
submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Master of Arts
in Liberal Studies

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April 14, 2015

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ABSTRACT

Despite numerous attempts at reform over the past decade and a half, the Jordanian government has failed to permanently amend its Personal Status Law (PSL). One of the most controversial issues standing in the way of reform is women's right to divorce. In 2001, Jordan introduced a new PSL that included the *khul'* clause, which gave women the right to dissolve a marriage by waiving their marital rights and offering financial compensation to the husband. Under the modified law, the judge could grant a divorce, even if the husband did not agree—a law that broke from the traditional legal application of *khul'*. After the lower house of parliament rejected the law twice, Jordan revised its PSL again in 2010 by repealing the controversial judicial *khul'* law and introducing a new type of divorce, *iftidā'*, that guaranteed women the same rights in a way that was deemed more culturally appropriate. This suggests that the government sought to expand women's rights in a way that adheres to cultural norms, yet despite this, the law has not been ratified and remains as a temporary law.

This paper explores the reasons for Jordan's failure to enact permanent, more progressive rights for women in the law, as well as the contours of the debate over

reform. PSL reform represents a departure from cultural and religious tradition and thus has become an arena for contestation over competing notions of cultural authenticity. The case of *khul'* and PSL reform in Jordan highlights tensions that exist regarding such competing claims of cultural authenticity, questions of political and religious legitimacy, and the authority of the state. Family law reform provides a lens through which one can examine the complex relationship between the state and women's rights in Jordan, as the state's interests are invariably represented in the reforms, but such interests do not always support expanded rights for women in the law. This study examines the ways in which the various actors involved in reform—the monarchy, parliamentary representatives, women's rights activists, Islamists, the international community, and the religious courts—interact and bargain with one another over issues pertaining to women and the family. Focusing specifically on the issue of divorce for women and taking a closer look at how PSL reform in Jordan has been facilitated or obstructed at different times by the actors involved demonstrates how and why the relationship between these groups and their competing claims of cultural authenticity ultimately result in decreased gender justice for women in the law.

ACKNOWLEDGEMENTS

I wish to express my sincere appreciation to my thesis advisor, Prof. Fida Adely, for her knowledge, advice, and patience. I am extremely grateful for the faculty, staff, and students at the Center for Contemporary Arab Studies (CCAS), whose constant support helped me through the research and writing process. Being surrounded by a group of scholars and friends whom I could turn to for guidance allowed me to develop my ideas and gave me the encouragement that I needed to finish this thesis and complete my graduate studies. Special thanks go to Prof. Rochelle Davis, for supporting my academic and personal pursuits; Prof. Judith Tucker, for her wisdom and direction; Vicki Valosik and the CCAS thesis workshop group, especially Lindsey Cummings, Sacha Robehmed, Faisal Kattan, and Erica Vasquez for their constructive feedback and help with editing; Benan Grams, for her assistance with Arabic translation; and Anne Ridder, Assistant Dean of the Graduate Liberal Studies program, for her help in editing and formatting the thesis. I would also like to thank my interviewees, whose knowledge and insight were invaluable to this study. Last but not least, I am deeply grateful for the love and encouragement from my family—especially from Mo, whose constant emotional support, patience, and understanding through the entire process made this thesis possible.

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INTRODUCTION

In 2001, as part of a larger effort to institute comprehensive political, economic, and social reforms, the Jordanian government issued a number of temporary laws by royal decree that were intended to improve the status of Jordanian women. One such law was a series of amendments to Jordan's Personal Status Law (PSL)—a set of legal codes, derived from Islamic sharī'a, that regulate matters pertaining to the family, such as marriage, divorce, child custody, and inheritance.¹ One of the most controversial articles of the amended law was the judicial *khul'* clause, which gave women the right to dissolve a marriage by waiving their marital rights and offering financial compensation to the husband. Under the amended law, a judge could grant a divorce, even if the husband did not agree, breaking from the traditional application of Islamic sharī'a. At the time, only a few Muslim countries had laws that granted women the unilateral right to divorce.

A heated debate ensued in parliament and in the media over the *khul'* law and other amendments to the PSL, as many objected to the PSL's apparent deviation from Islamic sharī'a, as well as its disregard for cultural norms. After the lower house of parliament rejected the amendments twice—largely because of judicial *khul'*—the law remained in place until 2010, when Jordan's religious courts introduced a new draft law.

¹ Law Amending Personal Status Law, no. 82 (2001). The law is commonly called the "Personal Status Law," although the literal translation is the "Law of Personal Status" (*qānūn al-aḥwāl al-shakhṣiyya*).

In response to many of the concerns expressed during the previous decade, the judicial *khul'* provision was repealed. Although the draft PSL returned to a classical, sharī'a-based definition of *khul'* in which the husband's consent is required, the practice of guaranteeing women divorce in exchange for compensation was preserved under a new name, *iftidā'*, which was deemed more culturally appropriate and religiously authentic.² Despite this apparent negotiation, the draft law has not yet been brought before parliament for a vote and remains in effect as a temporary law. The development of women's access to divorce highlights several important themes that will feature prominently throughout this thesis, including the precarious nature of laws regarding women and the family, the bargains and compromises that occur over women's rights, and contested notions of "tradition" and "modernity," particularly as they relate to women.

Issues pertaining to women and the family have been central to state reform projects since the nineteenth century, so family law reform provides a lens through which one can examine the complex relationship between state interests and women's rights in Jordan. As state interests evolved in response to shifting political, social, and economic circumstances, the changing needs of the state were reflected in Jordan's family law. As this study shows, there is a strong relationship between the government's failure to enact more progressive laws for women and the monarchy's

² *Iftidā'* means "ransom" or "redemption." Changes in the language of the law will be discussed in more detail in chapter three.

need to maintain its legitimacy. Legal reform in Jordan occurs in a context in which the monarchy must balance competing state interests while also ensuring regime survival, which largely depends on the support of social conservatives—particularly communities with strong tribal ties or foundations. Therefore, as the monarchy strengthens its ties with social conservatives to guarantee regime survival in moments of political instability, reforms that expand the rights of women are often shelved in favor of less controversial policies.

Family law reform in Jordan illustrates the bargaining that occurs as the monarchy attempts to implement controversial policies regarding the status of women. When King Abdullah II came to power following the death of his father, King Hussein, he expressed his commitment to improving the status of women in Jordan through implementing comprehensive reforms that reflected international human rights norms.³ However, strategies employed by the monarchy to ensure regime survival have required the king to accomplish his reform-oriented goals in a political context in which he must also engage those who strongly oppose changing notions of women and the family. Moreover, the king has been compelled to balance competing state interests while shielding himself from criticism as much as possible due to concerns over his own legitimacy. Such concerns stem not only from questions of cultural appropriateness, but

³ Many of King Abdullah's speeches during this time discuss women's rights as part of the larger reform agenda for the country.

also from his endorsement of unpopular policies, such as negotiations with Israel, the U.S. invasion of Iraq, and neoliberalism.

Notions of gender, culture, and tradition in Jordan remain heavily contested, so the king must approach women's rights in the law delicately during moments of political uncertainty in order to appease social conservatives who reject changing notions of the family. Therefore, the legislative stagnation regarding women's rights does not necessarily reflect apathy on the part of the monarchy; rather, it shows that the king is, first and foremost, concerned about political stability and staying in power. Reforms to Jordan's PSL under King Abdullah have grown increasingly more complicated as the king appeals to both "liberal" and "traditional" constituencies that have opposing views with respect to women's rights.⁴ Tracing the development of divorce in the law since 2001 allows us to see the layers of bargains and multiple negotiations that have enabled the monarchy to enact controversial policies in a way that does not threaten regime stability.

It is not surprising that personal status law reform in Jordan is a heavily debated topic. Women's rights have been contentious in most modern Muslim states because of the ways in which women and the family are associated with notions of cultural and religious tradition. Unlike civil and penal codes, which are governed by separate "secular" laws and judicial systems, matters of personal status are regulated by religious

⁴ Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate Publishing Company, 2009), 7.

courts. Although all civil law, too, has its foundations in Islamic law, family legislation is one of the few areas that most consider to be governed by religious law. Deniz Kandiyoti's foundational work on Islam and the state shows that tensions between the West and the modern Middle East have "created an area of cultural resistance around women and the family" and explains how women came to represent traditional Islam in society.⁵ As the influence of imperial powers in the political and commercial sphere grew, personal status laws, she argues, became the last bastion of control for the Ottoman authorities, and later, the modern Arab states.⁶ For many, changing family law represents a departure from tradition and thus family law reform has become an arena for contestation over competing notions of cultural authenticity.

Valentine Moghadam's *Modernizing Women* provides a framework for analyzing the relationship between women, gender, and state modernizing projects. She argues that "neopatriarchal state practices build upon and reinforce particular normative views of the family, often but not exclusively through the law."⁷ Parties involved in personal status law reform articulate different, often competing ideas of what social roles of women are considered acceptable, frequently employing Islamic rhetoric to legitimate their claims. Moghadam notes that discourses regarding women and the family can

⁵ Deniz Kandiyoti, ed., *Women, Islam and the State* (Philadelphia: Temple University Press, 1991), 7.

⁶ *Ibid.*, 8-9.

⁷ Valentine M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (Boulder, CO: Lynn Rienner Publishers, Inc., 1993), 112.

serve as a “convenient weapon” between opposition forces, which explains how in the case of Jordan, political parties have used women’s rights as a bargaining tool for issues that have little to do with women. As a state such as Jordan attempts to implement comprehensive reforms to modernize, “[p]olemics surrounding women and the family are responses to the contradictions of social change and emerge in the context of patriarchal societies undergoing modernization and demographic transition.”⁸

Mounira Charrad explores the topic of law, gender, and state modernization projects more in depth by considering the social context of three North African countries that developed radically different personal status codes. She shows that in Tunisia, where kin-based communities had the least amount of political autonomy, the government was able to enact more progressive personal status laws, whereas in Morocco, where the government derived legitimacy from the more patriarchal rural and tribal communities, women experience more discrimination in the law.⁹ Therefore, she demonstrates how the law can either reinforce existing structures or serve as a force of social change. Charrad’s work helps inform discussions on law in Jordan, where kin-based communities constitute much of the support base for the monarchy and continue to exercise a significant amount of political authority. When the state has an interest in

⁸ Ibid., 111.

⁹ Mounira Charrad, *States and Women’s Rights: The Making of Postcolonial Algeria, Tunisia and Morocco* (Berkeley, CA: University of California Press, 2001), 7.

upholding particular notions of women and the family in order to appease patriarchal or socially conservative constituents, the reforms to the law tend to be less egalitarian.

Much of the literature on women, Islam, and the state explores reforms that occurred as newly-formed Arab states established their first legal codes. However, Lynn Welchman adds to this literature by providing a comprehensive background on the history of family law reform, detailing trends in state modernization projects from the Ottoman Empire to the present. Her work on family law in Arab states describes three major phases in legal reform, which provide a useful tool for understanding the development of family law in Jordan. The first phase, which took place at the beginning of the twentieth century, consisted of Ottoman and early Egyptian reforms. The second phase is characterized by national codifications, and although she primarily focuses on North Africa, this phase can also apply to Jordan. Welchman's main interest in her most comprehensive work on family law, *Women and Muslim Family Law in Arab States*, is the third phase of family law reform, in which changes to family law occur as a response to global circumstances and generally involve greater participation of women.¹⁰ It is in this phase that Jordan's *khul'* provision, largely in response to international human rights norms, was introduced.

In *Women, the State, and Political Liberalization*, Laurie Brand provides a critical analysis of the role of the state in reforming gender laws in Jordan. She argues that during periods of political liberalization, even though women's rights groups were more

¹⁰ Lynn Welchman, *Women and Family Laws*, 42-43.

visible, the state seized the opportunity to extend its reach, involving itself directly in the work of civil society organizations. With members of the monarchy and other state institutions involved in women's groups, issues important to women and gender reforms often took a back seat to other, more important national interests. Women's rights sometimes coincided with national interests, but that was not always the case; during the period of political liberalization that started in 1989, Jordan welcomed greater participation of conservative Islamist groups, which emerged as a powerful force in society. Brand shows how the state, and in many cases the monarchy specifically, bargained over women's rights in order to placate, rather than challenge, the tribes, Islamists, or other social conservatives who would otherwise pose a threat to the legitimacy of the regime.¹¹ Although her work was published prior to King Abdullah's ascension to the throne in 1999, her analysis of gender politics in Jordan in the 1990s explains the failure to permanently amend the PSL during his reign. As the political and economic circumstances in Jordan necessitated increased democratization, the monarchy was forced to contend with political opposition that rejected more progressive views of women and the family.

Other work on the political opposition in Jordan contributes to this thesis by describing the complicated relationship between the Islamists and the Jordanian monarchy. Quintan Wiktorowicz's work on the management of Islamic activism in

¹¹ Laurie A. Brand, *Women, The State, and Political Liberalization: Middle Eastern and North African Experiences* (New York: Columbia University Press, 1998), 148-149.

Jordan explains how the monarchy in Jordan uses Islamic rhetoric to counter ideological groups that it considers to be a threat while also controlling institutions responsible for articulating and disseminating Islam.¹² He describes how the Islamic Action Front (IAF), the political arm of the Muslim Brotherhood in Jordan, has remained the strongest and most organized political opposition. While not directly related to family law reform, Wiktorowicz's explanation of the precarious relationship between the monarchy and the Islamists helps show why personal status law reforms after 2001 have proven to be an obstacle for the state.

Janine A. Clark and Jillian Schwedler also add to this literature. Their work on Islamists in Jordan speaks to the larger body of literature on democratization theory, challenging the idea that inclusion leads to moderation. Clark has written specifically on the issue of gender in the law in Jordan, showing how legislation relating to women's rights in the law has become the "battleground" over which Islamists involved in parliamentary politics express their discontent with the monarchy's authoritarian policies.¹³ Schwedler's *Faith in Moderation* explains how the government has chosen to include the Islamists in parliamentary politics as a means of controlling political

¹² Quintan Wiktorowicz, *The Management of Islamic Activism: Salafis, the Muslim Brotherhood, and State Power in Jordan* (Albany, NY: SUNY Press, 2001), 46.

¹³ See Janine A. Clark, "The Conditions of Islamist Moderation: Unpacking Cross-Ideological Cooperation in Jordan," *International Journal of Middle East Studies* 38, no. 4 (November 2006); Janine A. Clark and Amy E. Young, "Islamism and Family Law Reform in Morocco and Jordan," *Mediterranean Politics* 13, no. 3 (November 2008).

outcomes.¹⁴ This nuanced understanding of the political process in Jordan, particularly the ways in which the government oscillates between more and less authoritarian moves to maintain regime stability, proves particularly useful in analyzing the political context in which legislative reforms occur and in understanding the political bargains that occurred over women's rights.

Family law reform in Jordan highlights tensions that exist regarding such competing claims of cultural authenticity, questions of religious and political legitimacy, and the authority of the state. What much of the literature lacks, however, is a comprehensive approach to family law reform in Jordan that considers the social and political contexts together. Literature on family law reform in Jordan often overlooks circumstances that either motivate the opposition to reject the law or that threaten the legitimacy of the monarchy, and literature on the political opposition or women's movements in Jordan often lacks a nuanced understanding of the process of legal reform. Catherine Warrick's *Law in the Service of Legitimacy* seeks to fill these lacunae, however, by examining the impact of culture, politics, and legitimacy on Jordan's legislative process. Warrick demonstrates how Jordan uses legal codes to establish legitimacy by manipulating "traditionalist" and "modern" discourses in response to the current social climate. By arguing that women's rights "are connected to political

¹⁴ Jillian Schwedler, *Faith in Moderation: Islamist Parties in Jordan and Yemen* (New York: Cambridge University Press, 2006), 38-39.

legitimacy because they serve as an arena for contestation over authentic culture,”¹⁵ she shows how the state is increasingly “riding two horses at once”—contending visions of “tradition” and cultural authenticity—by trying to serve domestic and international demands while maintaining Islamic legitimacy. She explains how the government’s rhetoric often directly contradicts the law, and in order to “preserve the state’s careful balance of legitimacy,” the government must negotiate.¹⁶

However, none of the literature mentioned takes into account the most recent reforms that were introduced in 2010. By ending with the family law reforms in 2001 and their failure to pass in parliament in 2004, one might simply assume the government can only pass legislation that expands women’s rights through more authoritarian measures, as Islamists and other social conservatives, such as the tribal representatives, use women as a bargaining tool in parliamentary politics. The introduction of a new draft law in 2010 and the evolution of the law show that gender politics in authoritarian regimes involve multilayered bargaining. Examining the entire period of reform (2001 to present) rather than just the moment of reform also allows for a deeper understanding of the political context that affects the state’s ability to pass legislation. Women’s rights only appear on the agenda when the country is less concerned about political stability and security, but the extension of state control and

¹⁵ Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate Publishing Company, 2009), 4-5.

¹⁶ *Ibid.*, 124.

ostensible diffusion of authority allow women's rights to quietly remain on the agenda. While gender is the contested space over which the political opposition is fighting, it becomes increasingly more difficult for the opposition to attack the regime's policies surrounding women's rights when the king has seemingly delegated the legislative authority and decision-making ability to other members of the government and civil society.

This study draws on a variety of English and Arabic sources, including legal texts, newspaper articles, speeches, press releases, and interviews. The background work on the history of family law reform in Jordan, particularly reforms prior to 2001, relies primarily on secondary source material to provide the sociohistorical and political context at each moment of reform in Jordan, but the original laws were consulted throughout the analysis. The study of legal reforms under King Abdullah II examines newspaper articles from the *Jordan Times* and *Ad-Dustour*, speeches given by King Abdullah to various audiences, interviews with several prominent women's rights activists and representatives from women's rights organizations in Jordan, and the laws themselves, which are available online through Jordan's Legislation and Opinion Bureau.¹⁷ With the exception of the legal texts, the aforementioned materials are used both as primary and secondary sources. They not only provide critical details regarding the context of the reforms and fill in missing pieces of information that are not found in

¹⁷ Previous and current laws are available on the Jordanian Legislation and Opinion Bureau's website, <http://www.lob.gov.jo>.

secondary sources, but they also comprise the material used to analyze the changing discourse in Jordan surrounding women's rights legislation. Speeches given by King Abdullah to parliament have proven to be particularly useful in this regard, given parliament's role as the official legislative authority in the kingdom. The discourse around gender and legal reform in Jordan can change depending on the audience, so analyzing the legislative agenda and political objectives that the king has presented to parliament each session shows at what historical and political moments women's rights fall from the legislative agenda that the monarchy is promoting, and what issues supersede initiatives to improve the status of women in the law.

This study is organized into three chapters. The first chapter examines stages of family law reform in Jordan and in the region, paying particular attention to the ways in which the law is used to serve state interests. While the laws do improve the status of women, they only do so when women's rights align with the interests of the state. The second chapter will examine family law reform under King Abdullah II, from 2001 to present. By taking into consideration state interests during that period, which include appeasing social conservatives and international audiences alike, one can see how the monarchy has balanced multiple competing interests and has been able to enact less popular policies regarding women while still maintaining legitimacy. The final chapter will look specifically at the issue of women's access to divorce in Jordan and will examine the ways that the discourse over the PSL has changed since 2001 as two competing discourses, the "conservative-traditional" and the "modern-liberal," are

brought together to effectively change the PSL. By using religion as a legitimating tool, the monarchy increasingly erodes the opposition of the Islamists who have rejected PSL reforms due to their apparent lack of cultural authenticity, therefore uniting the two discourses. Exploring how family law reform in Jordan has unfolded and focusing specifically on the issue of women's access to divorce in the law reveals the ways in which political opposition groups and their competing claims of cultural authenticity create power struggles that result in decreased gender justice for women in the law. As this study will show, balancing competing state interests requires the monarchy to take a new approach to gender legislation in order to effectively implement reforms that improve the status of women in the law.

CHAPTER I: FAMILY LAW REFORM AND THE STATE

Understanding larger trends in legal reform across the Arab world is useful in examining the specific legal developments in Jordan. Family law reform in many modern Arab states can be divided into three general phases: the first phase, consisting of reforms made in the early twentieth century to Ottoman and Egyptian codes; the second phase, in which codified laws were created for the newly-formed Arab states; and the third phase, in which the legal reforms respond to changing global and regional circumstances and increased calls for universal human rights.¹ The following chapter will examine reforms to family law in Jordan and in the region during the first two phases, which were characterized by increasing state intervention into family matters. Legal reform is often assumed to be something positive, especially when it is connected to a state's effort to modernize. However, as this chapter will show, modernizing Islamic family law often resulted in less progressive reforms for women, as the codified laws and updated legal structure not only limited judicial discretion, which affected the ability to provide just outcomes for women, but it also gave governments the opportunity to construct or define notions of the family that reflected the goals and aspirations of the state.

¹ Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), 42-43.

In the case of Jordan, the ability to enact more egalitarian gender laws in the twentieth century was further encumbered by the country's political and social structures. Legal amendments lagged significantly behind feminist movements regionally and globally that called for social and legal change. Family law was reformed at particular moments in the country's history when Jordanian identity was being reconstructed. Therefore, while codifying and reforming family law aimed to unify the population, it also redefined what it meant to be a Jordanian man or woman according to the particular political and social circumstances. The kingdom's desire to respond to various constituencies required it to create laws that both represented "traditional" Jordanian values and the "modern" family, all while consolidating its authority and protecting its legitimacy. Therefore, any real expansion of women's rights in the law only occurred to the extent that such rights coincided with state interests.

Early Family Law Reform

Jordanian laws regarding marriage, divorce, inheritance, child custody, and other family-related issues have their basis in the Qur'an, hadith, or Islamic jurisprudence (*fiqh*), but contemporary family law differs from the application of classical Islamic sharī'a found in pre-modern Islamic society. Prior to codified sharī'a, family law was primarily administered through religious courts, whereby the judge (*qāḍī*) would rule according to the prevailing opinions of the school (*madhhab*) of Islamic jurisprudence to which he adhered. Although all four Sunni schools—Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī—based their jurisprudence on the same original sources, opinions on a particular matter

could vary greatly from school to school, or even from judge to judge, which allowed for a range of possible outcomes, all of which were correct according to Islamic law.

Although Ottoman jurists subscribed to the Ḥanafī school of law, legal decisions were not uniform across the Empire; Ottoman judges often represented divergent views and were somewhat flexible in allowing a case to be adjudicated by a judge from another school if it could lead to a more favorable outcome.²

The first phase of family law reform took place amid many other legal reforms in the Ottoman Empire. In the latter part of the nineteenth century, the Ottomans began a series of legal reforms, creating a civil law system known as the *Majalla*. Interaction with European colonial powers compelled the Ottoman authority to establish a comparable civil code, so it modeled the *Majalla* after European law, drawing articles pertaining to commercial transactions, oaths, and court procedures largely from Ḥanafī law. Although some reformers had wished to adopt the French civil code, deriving codes from shari'a grounded the law in the cultural fabric of the Empire.³ Issues pertaining to the family, such as marriage and divorce, were left under the full jurisdiction of the religious courts. Several decades later, in 1917, the Ottoman government established the Ottoman Law of Family Rights (OLFR), the first codified Islamic family law, making codes relating to issues of personal status uniform across the

² Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, CA: University of California Press, 1998), 16; Amira Al Azhary Sonbol, ed., *Women, the Family, and Divorce Laws in Islamic History* (Syracuse, NY: SUNY Press, 1996), 12.

³ Wael Hallaq, *Shari'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 411.

Empire. The OLFR drew not only from Ḥanafī rulings, but also from those of other schools through *takhayyūr*, a process that involved selectively choosing rulings from other schools of law. This process, which had also been used to create the *Majalla*, allowed the Ottomans to construct a law that conformed to modern society while drawing from Islamic sources.⁴ The legal reforms also involved incorporating the court system into the government and used the courts as an opportunity to extend the reach of the state. Not only did the state limit judicial discretion through establishing codified laws and subject judges to the Empire’s bureaucratic structures, but it also introduced registration procedures for contracts, giving the government greater control over family matters.⁵

Some of the issues raised by reformers in this “first phase” of family law reform include women’s access to divorce, polygyny, guardianship (*wilāya*), the minimum age of marriage, and maintenance (*nafaqa*). While those in favor of reform found Islamic arguments to support a “modern” notion of the family, reforming Islamic marriage also served the interest of the state. Judith Tucker argues that reforming existing definitions of marriage and the family was a “political project . . . aimed at strengthening the social fabric” of the community.⁶ As she points out, even Islamic reformers who argued for

⁴ Lynn Welchman, “The Development of Islamic Family Law in the Legal System of Jordan,” in *International and Comparative Law Quarterly* 37, no. 4 (1988): 870.

⁵ Wael Hallaq, *Sharī’a*, 405; Sonbol, *Women, the Family, and Divorce Laws*, 13.

⁶ Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), 69.

new conceptions of marriage based on Islamic principles also tied such reforms to the state. For example, Muhammad Rashid Rida used examples from the Qur'an and hadith to support legal restrictions on polygyny, but equally central to his argument was the belief that monogamous marriages were more stable relationships and were therefore more beneficial for the nation.⁷

Despite that many reformers in the nineteenth and twentieth centuries sought to improve conditions for women under the law, however, the OLFR did little to expand women's rights. On the contrary, reducing the vast sharī'a tradition to a number of fixed rules limited the possibilities for women.⁸ Despite the influences from other schools in the new codified law, the OLFR adhered primarily to Ḥanafī law, which emphasized form over intention, often disadvantaging women.⁹ Because the OLFR granted judges less discretion in applying sharī'a to family matters, discriminatory practices were written into law by virtue of the fact that the legal codes did not capture the numerous interpretive possibilities that often led to increased justice for women in the law. Thus, this first period of legal development may be understood not only as a simplification of the law, but also as an opportunity for the state to extend its reach in the name of family law reform.

⁷ Ibid., 68.

⁸ Judith E. Tucker, "Revisiting Reform: Women and the Ottoman Law of Family Rights," in *The Arab Studies Journal* 4, no. 2 (Fall 1996): 7, 16.

⁹ John L. Esposito, *Women In Muslim Family Law* (Syracuse, NY: Syracuse University Press, 1982), 51.

Post-Colonial Family Law Reform in Jordan

The intervention of the state in family matters continued in the “second phase” of legal reform, in which independent Arab states instituted their first post-colonial codifications of law starting in the 1950s. During this period, many newly-formed Arab states were faced with having to unify the country while also standardizing law.¹⁰ For many Arab countries, the establishment of codified family law accompanied other developments in civil law, whereas with others, such as Algeria, the reforms occurred later. As Lynn Welchman notes, “state patriarchy” through increased state intervention and decreased judicial authority often restricted women’s access to just outcomes through the law, while at the same time giving the state the ability to address women’s rights issues.¹¹ Therefore, codified laws in this period could serve as a tool to further regulate women and the family while also giving the state the ability to expand rights for women that it deemed beneficial to state interests.

Jordan was the first independent Arab state to promote a codified family law through its implementation of the Jordanian Law of Family Rights (JLFR), and several countries, such as Syria, Tunisia, Morocco, and Iraq followed by establishing personal status codes during the 1950s.¹² The JLFR was first issued as a temporary law in 1947, but was then again introduced as a permanent law in 1951 with a few amendments. The

¹⁰ Amira El-Azhary Sonbol, *Women of Jordan: Islam, Labor, and the Law*, (Syracuse, NY: SUNY Press, 2003), 20-21.

¹¹ Lynn Welchman, *Women and Muslim Family Laws*, 19-21.

¹² Welchman, “The Development of Islamic Family Law,” 871.

provisional JLFR of 1947 and the subsequent codified JLFR of 1951 were instituted during a transformative time in the history of the then-nascent Jordanian state. Both laws, which were largely based on the OLFER but also borrowed from Egyptian legal reforms in the 1920s, occurred during a time in which newly-formed Arab states were establishing national codes. Jordan had just become an independent kingdom when the government issued the temporary family law in 1947. The country had already seen many transformations in the first few decades of its history, and it again experienced drastic changes with the establishment of the state of Israel. Jordan's territory expanded to include parts of Palestine, bringing the inhabitants of the land under Jordanian rule. Taking into account the Palestinian refugees and those living in the annexed land, the population of Jordan more than tripled.¹³ With additional people now under Jordanian law, the government reissued the family law in 1951, repealing the JLFR of 1947, as well as "any Ottoman, Jordanian, or Palestinian legislation" issued prior to 1951 that would otherwise contradict the new law.¹⁴

Additionally, the state extended its reach further into family affairs through new laws that restructured the judicial system. Under the Law on the Establishment of Shari'a Courts of 1951, Jordan unified the shari'a courts of the West Bank and Jordan under one system, designating one judge (*qāḍī*) to serve in one of twenty-four districts,

¹³ Joseph Massad, *Colonial Effects: The Making of National Identity in Jordan* (New York: Columbia University Press, 2001), 12.

¹⁴ Jordanian Law of Family Rights, art. 130, sec. 2-3 (1951).

eight of which were in the West Bank, and establishing the Sharī'a Court of Appeals in Amman.¹⁵ Through the law, the courts were brought under the direct authority of the state by requiring the approval of the king in all decisions made by the newly-created Sharī'a Council, and it also instructed sharī'a judges to rule according to Ḥanafī law except in cases where those decisions would contradict existing Jordanian laws.¹⁶ In 1952, the Jordanian Constitution elaborated on the judicial system further by organizing its courts into three types: civil courts (*maḥākim niḥāmiyya*), religious courts (*maḥākim dīniyya*) and special courts (*maḥākim khāṣṣa*), essentially continuing the Ottoman judicial model.¹⁷ The civil courts were granted authority over all matters except issues of personal status, blood-money (*diyya*) when the victims are Muslim or the parties agree to have the matter adjudicated in a sharī'a court, and Islamic endowments (*waqf*). Furthermore, the Supreme Judge (*qāḍī al-quḍā*), who was to be appointed by the king, would be responsible for appointing judges to serve in the sharī'a courts.¹⁸

Through a “selective reading” of sharī'a, the JLFR took state interest into consideration by reflecting the prevailing visions of a modern family in Jordan while at the same time reinforcing traditional gender roles.¹⁹ Building on some of the same

¹⁵ Lynn Welchman, *Beyond the Code: Muslim Family Law and the Shar'i Judiciary in the Palestinian West Bank* (Cambridge, MA: Kluwer Law International, 2000), 49.

¹⁶ *Ibid.*, 50.

¹⁷ Amira Sonbol, *Women of Jordan*, 35; Lynn Welchman, “Islamic Family Law in Jordan,” 869.

¹⁸ Lynn Welchman, *Beyond the Code*, 48-49.

¹⁹ Amira Sonbol, *Women of Jordan*, 35.

modernization efforts undertaken by legal reformers in the late nineteenth and early twentieth centuries, the JLFR emphasized the concept of fitness (*kifā'a*) of the spouses for one another by imposing a limit on the age disparity between spouses. Additionally, where the OLFR had discussed marital appropriateness in terms of finances and profession or craft (*ḥurfa*), the JLFR provision only mentioned *kifā'a* of finances.²⁰ The JLFR also relaxed some of the grounds for divorce by reducing the amount of time that a woman must wait before requesting a divorce due to her husband's imprisonment from five to three years.²¹ At the same time, the law lowered the minimum age of marriage and gave the state greater ability to intervene in family matters. Whereas the OLFR had increased the minimum marriage age to eighteen for men and seventeen for women with the permission of a guardian, the JLFR permitted a judge to authorize a marriage if the spouses had reached age fifteen, and it also eliminated the need for a guardian's consent for women who had reached the age of seventeen. Thus, the law improved the status of women in some cases while reinforcing patriarchal structures in others.

It is important to note that all amendments served to benefit the state in some way, whether they afforded more rights to women or not. In cases where the law improved women's status, those codes simply reinforced national aspirations. Updating laws of *kifā'a* strengthened the family unit and ensured that women could actively participate in building a stronger nation. Women were increasingly entering the public

²⁰ Jordanian Law of Family Rights, art. 23 (1951).

²¹ *Ibid.*, art. 93 (1951).

sphere due to a greater emphasis on female education, but their roles as teachers and educators did not stand in contrast to traditional virtues of the time. The JLFR was enacted during the early stages of the country's women's movement, which was characterized by participation of well-educated, elite women in charity organizations dedicated to improving women's social situation by raising awareness about health and welfare issues.²² The Women's Social Solidarity Society, established in 1944, and the Society of the Jordanian Women's Federation, founded in 1945, are two such examples. Led by the mother of King Talal, Queen Musbah, and Princess Zein ElSharaf, the mother of King Hussein, the two organizations, which merged in 1949 and were dissolved that same year, sought to improve the lives of disadvantaged women and to train them to become better mothers.²³ Women, seen as responsible for preserving tradition and raising the next generation of Jordanian citizens, would serve the nation by being better mothers and housewives.²⁴ Additionally, making divorce easier for women in cases of imprisonment has a dual benefit; with Jordan responsible for the population in the West Bank following the 1948 Arab-Israeli war, it is likely that more women found the provision regarding imprisonment relevant due to the political conflict.

²² Laurie A. Brand, *Women, The State, and Political Liberalization: Middle Eastern and North African Experiences* (New York: Columbia University Press, 1998), 120-121.

²³ Suhair Al-Tal, *Muqaddamāt Hawla Qaḍīyyat al-Mar'a wa-Ḥaraka al-Nisā'iyya fi-l-Urdun* (Beirut: al-Mu'assasa al-'Arabiyya li-l-Dirasāt wa-l-Nashr, 1988), 122.

²⁴ Joseph Massad, *Colonial Effects*, 82.

Aside from updates to the law that reflected the changing political landscape, the JLFR did not depart significantly from the OLFR of 1917, which further indicates that the purpose of the law was for unifying and centralizing the government rather than making any substantial changes to existing notions of the family. Reducing the minimum age of marriage satisfied social conservatives who rejected the higher marriage age enacted through the OLFR. It is worth mentioning that King Abdullah I, who was openly supportive of veiling, expressed apprehension over the increased public presence of women, a view that was shared by religious leaders.²⁵ He even issued a royal decree prohibiting the adornment of women in public, after which the Supreme Judge (*qāḍī al-quḍā*) made a statement advising women about their public appearance.²⁶ It seems doubtful, therefore, that he would have promoted a law that relaxed conservatism unless there was another purpose in mind. The fact that the law also restricted men by taking power away from the male guardians and giving it to the judges further reinforces the notion that reforms to family law in this period had to do more with strengthening the authority of the state than anything else. The JLFR empowered judges to determine whether men and women younger than the marriage age were capable of marriage, and it also allowed the judge to essentially act as a guardian in cases where a guardian's consent is not required. The laws, therefore, eroded the authority of the family patriarch and allowed the state to instead serve as

²⁵Ibid., 91.

²⁶Ibid., 89.

the patriarch. This state patriarchy through the JLFR shows that the legal amendments were not about women at all; rather, some reforms expanded the rights of women when they coincided with state interests and allowed the state to extend its reach.

Increased calls to improve the status of women in Jordan began in the mid-1950s. The Arab Women's Union (AWU), whose slogan called for "equal rights and responsibilities, liberating Palestine, and full Arab unity," was established in 1954, three years after the Law of Family Rights was enacted. This marked a change in the goals of the women's organizations, which became more politically active and called for expanded legal rights for women.²⁷ Some of the proposed initiatives included personal status law reform, particularly regarding issues of arbitrary divorce and polygyny, but these efforts did not gain much traction.²⁸ The organization's national struggle meant that concerns of women were not addressed and took a back seat to other, more pressing issues in the country—a theme that would continue to reemerge in the history of personal status law reform and the development of women's legal rights. The AWU did make some gains in the way of voting rights for women, as such rights did not threaten existing notions of women and tradition, but even those voting rights for women were discriminatory; illiterate women were denied the right to vote, which was

²⁷ Laurie Brand, *Women, The State, and Political Liberalization*, 122.

²⁸ Suhair Al-Tal, *Muqaddamāt Hawla Qaḍīyyat al-Mar'a*, 128-129.

not the case for men.²⁹ Following an attempted coup in 1957, the AWU, along with many other women's organizations, was banned because of its involvement in Arab nationalism, and such activity would not pick up again until the 1970s.³⁰

Jordanian women were enfranchised by royal decree in 1974, the year before the first UN Conference on Women was scheduled to meet in Mexico City. In preparation for the conference, women who had been active in the AWU formed a committee, which was licensed by the Ministry of Interior as the Women's Union in Jordan (WUJ) in 1974.³¹ The goals of the WUJ included raising women's educational and socioeconomic levels, helping women realize and practice their full rights as citizens and heads of households, strengthening cooperation with women's associations and societies at the pan-Arab and international levels, representing Jordanian women in conferences, supporting Arab solidarity and effectively participating in the building of an Arab homeland.³² The WUJ sought to organize and gain legitimacy and visibility rather than work out an agenda between 1974 and 1981, when the government disbanded the organization.³³

²⁹ Ibtisam Al-Atiyat, "Harvests of the Golden Decades: Contemporary Women's Activism in Jordan," in *Mapping Arab Women's Movements: A Century of Transformations from Within*, eds. Pernille Arenfeldt and Nawar Al-Hassan Golley (Cairo: American University in Cairo Press, 2012), 136.

³⁰ *Ibid.*, 137-138.

³¹ Laurie Brand, *Women, The State, and Political Liberalization*, 124.

³² Suhair Al-Tal, *Muqaddamāt Hawla Qaḍīyyat al-Mar'a*, 132.

³³ According to the Societies and Social Bodies Law of 1966, the Ministry of Interior could close any organization that it believed violated the constitution, but because it could not prove that such a transgression had occurred, the official reason cited for the closure of the WUJ in 1981 was confusion

The Context of Jordan's First Personal Status Law (1976)

The international emphasis on women's rights starting in the 1970s had a profound effect on the nature of family law reform in the region. In 1975, the UN held the first World Conference on Women in Mexico City and subsequently declared 1976 to 1985 the UN Decade for Women. A few years later, in 1979, the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which required member states to ensure that women were granted equal rights under the law. Most members of the Arab League have ratified CEDAW, but many have done so with reservations, claiming that one or more articles of the Convention contravene shari'a. While the increased attention to human rights empowered women's rights advocates, opponents attacked them for employing a form of Western feminism that was not "culturally authentic." Because groups campaigning for legal reform often cooperate with or receive financial support from organizations based in the West, some believe that the universal human rights agenda is a foreign one, and therefore ideas about gender equality are often viewed as a form of cultural

over its name. The name was similar to the General Federation of Jordanian Women, which was established in 1981 by Iman Mufti, the first female minister in Jordan, in an effort "to bring more government control over the women's movement" and serve as an umbrella organization and official representative for women's groups in Jordan. Although the WUJ changed its name to the Women's League in Jordan and later to the Jordanian Women's Union (JWU), the strength of the organization was effectively weakened and would not regain momentum until the 1990s. See Ibtesam Al-Atiyat, "Harvests of the Golden Decades," 138-140 and Laurie Brand, *Women, The State, and Political Liberalization*, 124-126.

imperialism.³⁴ As a result, recent efforts to reform discriminatory laws have been framed in more culturally-authentic ways—by using shari‘a to support egalitarian reforms, for example. Regardless of how the reforms are framed, however, international efforts to improve the status of women have resulted in significant amendments to laws regarding marriage, divorce, and child custody in many Arab states.

The Jordanian Personal Status Law (PSL) was instituted in 1976, replacing the JLFR of 1951. Although the new PSL was introduced at a moment when the women’s movement started gaining traction internationally and in Jordan, the PSL of 1976, like the JLFR before it, does not seem to respond to increasing calls for women’s rights and instead seems to serve state interests. Unlike the JLFR, which modified a previously existing law (the OLF), the PSL of 1976 was an entirely new law with provisions that were designed to “meet the needs of Jordanian society” and ensure that the Jordanian codes were similar to those in neighboring Arab countries—namely, Egypt and Syria.³⁵ Some of the expanded rights for women under the PSL include an emphasis on stipulations in a marriage contract that protect the wife’s interests, specifications regarding what constitutes disobedience on the part of the wife, and compensation for arbitrary divorce (*ṭalāq ta‘assufī*).³⁶

³⁴ Lynn Welchman, *Women and Muslim Family Laws*, 38.

³⁵ Lynn Welchman, “The Development of Islamic Family Law,” 871.

³⁶ *Ṭalāq ta‘assufī* can also be translated as “abusive divorce,” and is understood as a divorce without reasonable cause. The law states that women who are divorced in this way will be entitled to up

Lynn Welchman has suggested that such reforms that take into account the public interest (*maṣlaḥa*) indicate a “readiness, if not always to initiate radical innovations, at least to monitor and update the law in accordance with the legislature’s perceptions of the needs of a changing society and of the Islamic judiciary, a readiness that appears to be unparalleled in the other Arab states that issued comprehensive codes of family law in the 1950s.”³⁷ While the new PSL in 1976 may have shown willingness to reform, it is clear that such reforms were not necessarily for the purpose of improving the status of women. For example, the minimum marriage age had been an issue important to the legal reformers from the late nineteenth century, but the 1976 PSL reduced the minimum marriage age to sixteen for men and fifteen for women.³⁸ Additionally, some of the more egalitarian provisions actually granted greater rights to men. For example, despite that husbands were already guaranteed the right to divorce, the grounds for petitioning a divorce in court, which had previously only been applicable to women, were expanded to apply to men as well and were justified on the basis of “equality between the spouses.”³⁹ Although men did not need to petition the court for a divorce, extending this divorce option to men gave husbands the ability to prove that

to one year of alimony. The provision is found in the Jordanian Personal Status Law, sec. 12, art. 134 (1976).

³⁷ Lynn Welchman, “The Development of Islamic Family Law,” 886.

³⁸ Jordanian Law of Family Rights, sec. 1, art. 5 (1951).

³⁹ Lynn Welchman, “The Development of Islamic Family Law,” 873.

their wives were at fault in the marriage, relieving them of their financial responsibilities.

When placed in the context of the political events occurring in the 1970s in Jordan, it seems that family law reform in the 1970s also helped unify the country by regaining the support of the Transjordanians, or those from the East Bank. One significant event of domestic concern was Black September, in which major fighting broke out between the Jordanian army and Palestinian fighters under the authority of the PLO, resulting in the expulsion of the Palestinian resistance from Jordan. This led to increased animosity between those from the East and West Banks and backlash against ideas that were seen as “imported” by Palestinians, which included greater social freedom as exercised by Palestinian male and female resistance fighters. The situation also inspired a turn toward conservatism and concern for honor, so women were often targets of the backlash.⁴⁰ At the same time, just a few days after the PLO fighters were expelled, King Hussein established the Council of Tribal Leaders, appointing his brother, Prince Muhammad, as the council president. In 1973, as a response to recent civil war, the council issued a statement to unify all tribal traditions under the law. The Council was abolished in 1973 but was replaced by extra-judicial agreements between the monarchy and tribal representatives.⁴¹ This helped to strengthen the relationship between the East Bank Jordanians and the state, which had suffered because of the

⁴⁰ Laurie Brand, *Women, The State, and Political Liberalization*, 124.

⁴¹ Joseph Massad, *Colonial Effects*, 61.

Palestinian resistance.⁴² In 1976, the same year that the new PSL was introduced, the government canceled all laws pertaining to the Bedouins, including the Law of Supervising the Bedouins and the Tribal Courts Law, but the agreements between the monarchy and the tribes remained.⁴³

It is not surprising that the law did relatively little to improve the status of women and instead upheld patriarchal models of the family. The monarchy's efforts to strengthen relationships with Transjordanians following political upheaval in the country in the early 1970s resulted in a need to maintain the patriarchal structures valued by the tribal communities in Jordan. Thus, as Welchman notes, the law does respond to "the needs of a changing society" in that it expanded rights for women in some areas while also reinforcing rights for men in others. However, her suggestion that the legal reforms represented "radical innovations" is debatable, especially when compared to the concurrent global calls for women's rights and the fact that women's organizations in Jordan entered a "renaissance phase" in the early 1970s.⁴⁴ The 1976 Personal Status Law did not introduce any truly progressive reforms regarding women's rights, despite the fact that it was established during the UN Decade for Women, and even introduced provisions that increased the rights of men. Therefore, it seems that regardless of the efforts made to update Jordan's laws to bring them in line with modern society,

⁴² Laurie Brand, *Women, The State, and Political Liberalization*, 124.

⁴³ Joseph Massad, *Colonial Effects*, 63.

⁴⁴ Ibtesam Al-Atiyat, "Harvests of the Golden Decades," 138.

reforming family law has continued to serve state interests—whether that be to ensure the viability of the female labor force, to keep pace with their Arab neighbors, or even to maintain an image of positive reform in front of an international audience that was placing an increasing emphasis on eliminating gender discrimination in the law—but responding to diverse interests did not always result in more progressive rights for women in the law.

Mounira Charrad’s work on gender and the state in the Maghreb provides a useful framework for analyzing how the relationship between tribal communities and the state affects family law reforms. She argues that in Tunisia, where kin-based communities had the least amount of political autonomy, the government was able to enact more progressive personal status laws. Morocco, on the other hand, whose government derived legitimacy from the more patriarchal rural and tribal communities, had less progressive personal status laws.⁴⁵ In Morocco, she explains, the monarchy’s relationship with the tribal communities resulted in less progressive rights for women in the law because “it was not to the advantage of the Moroccan monarchy to engage in any policy that might hasten the disintegration of tribal solidarities.”⁴⁶ Because of this, the Moroccan government instituted many policies that disadvantaged women by endorsing through the law an image of the family that upheld patrilineal family

⁴⁵ Mounira Charrad, *States and Women’s Rights: The Making of Postcolonial Algeria, Tunisia and Morocco* (Berkeley, CA: University of California Press, 2001), 7.

⁴⁶ *Ibid.*, 154.

structures.⁴⁷ Charrad’s work helps inform discussions on family law and society in Jordan, where kin-based communities continue to exercise a significant amount of political authority—a theme that will be explored in greater depth in the following chapter.

The importance of the relationship between the state and the tribal communities dates back to the mandate period, before Jordan was an independent kingdom. Transjordan as a nation-state was established in 1921 by the British, who appointed the Hashemite Amir Abdullah to the throne. Unlike other nation-states, which were created as a result of an existing national identity or movement, Transjordan “involved the simultaneous creation of a nation to constitute this state.”⁴⁸ Although Abdullah had formed alliances with the various families and tribes in the region, he and the British felt it necessary to implement a number of policies that could unify the nascent state’s population under a new political identity.⁴⁹ In *The Tribes of Jordan*, Abdullah is described as reining in the “recalcitrant” sheikhs:⁵⁰

[W]ith great difficulty, enduring a number of rebellions, particularly during the 1920s and 1930s, but finally succeeding, thanks to its Hashemite religious legitimacy on the one hand, and through the following practical measures on the other hand: through a policy of generous governmental concessions to the Tribes; through the Emir (Abdullah I) personally befriending the *Shyukh*, visiting their tribal encampments and spending time with them; through a strategy

⁴⁷ Ibid., 167.

⁴⁸ Joseph Massad, *Colonial Effects*, 27.

⁴⁹ Ibid.

⁵⁰ The plural of *sheikh* is *shuyūkh*.

aimed at uniting or isolating the *Shyukh* (depending on the situation); through co-opting the tribesmen into the Jordanian army (which not only gave the state an excellent army, but inculcated into the tribesmen patriotism and respect for governmental authority), and, finally, through securing public British guarantees of military support for the Jordanian army.⁵¹

This passage not only shows the ongoing support of the monarchy for the tribes—the book was authored by Prince Ghazi bin Muhammad, who served as Advisor for Tribal Affairs to King Hussein—but it also illustrates important aspects of the complex dynamic between the state and Jordan’s tribal communities that continues to exist. More importantly, in order for the new state to succeed, the monarchy established a system of patronage in order to appease the tribes and encourage them to submit to government authority. This involved offering concessions to Transjordanians, employing Transjordanians in government and military positions, and establishing personal relationships with tribal leaders. The government further consolidated its power by isolating tribal leaders who resisted Hashemite rule, at times bringing in the British military for reinforcement.⁵² The government’s response to such revolts in the 1920s and 1930s “introduced a sense of native unity against usurpers and a unity of purpose aimed at giving native Transjordanians the right to rule themselves.”⁵³ The government’s policy of patronage in exchange for general acquiescence meant that the stability of the state and the ability for the monarchy to remain in power relied heavily

⁵¹ Ghazi bin Muhammad, *The Tribes of Jordan at the Beginning of the Twenty-first Century* (Jordan: Jam’iat Turāth al-’Urdūn al-Bāqī, 1999), 13-14.

⁵² Joseph Massad, *Colonial Effects*, 28-29.

⁵³ *Ibid.*, 29.

on the support of the tribes. As the government seeks to strengthen ties with Transjordanians by reaffirming the king's role as the patriarch of the "tribe" of Jordan, this further reinforces the patriarchal structures that exist in the country that often prevent alternative conceptualizations of the family that grant women greater liberties.

Women and Political Liberalization

As the previous section shows, the 1976 PSL was introduced at the onset of international calls for women's rights, but it does not fit into the third phase of family law reforms described by Welchman. Increased women's activism in Jordan that called for legal reform began in the 1990s, following political liberalization in 1989. However, no reforms to family law occurred during this time that improved the status of women. In fact, some legal changes increased discrimination against women. The rest of this chapter will explain why, despite a political opening in 1989 and a surge of women's rights advocacy in Jordan and worldwide, the last decade of King Hussein's reign would see little progress in improving the status of women in the law.

Increased democratization in Jordan occurred not as a result of the monarchy's desire to increase political participation of its subjects, but rather as part of a strategy to "preempt events" and ensure political stability amid deteriorating economic circumstances.⁵⁴ The moment of political liberalization came in 1989, when riots broke out in Ma'an in response to rising fuel prices. In the 1980s, Jordan was experiencing an

⁵⁴ Malik Mufti, "Elite Bargains and the Onset of Political Liberalization in Jordan," *Comparative Political Studies* 23, no. 1 (1999): 103-104.

economic recession; the decline in oil prices had led to decreased rents to Jordan, the return of Jordanian workers from the Gulf, inflation, and external debt. As a result, the government was forced to negotiate a debt-rescheduling agreement with the International Monetary Fund (IMF). Part of the plan included a reduction in subsidies, sparking public outrage in cities that were traditionally bastions of regime support.⁵⁵ In response to the riots, the government employed a democratization strategy to ensure the survival of the regime. By giving Jordanians the space to voice their frustrations in the already existing parliamentary framework, the government could better monitor opposition without relinquishing control.⁵⁶

This was not the first time that Jordan had engaged representative bodies; Jordan's history with parliamentary politics predates its independence in 1946. From as early as the 1920s, the monarchy realized that political inclusion would strengthen and legitimize the regime through giving different constituencies a voice.⁵⁷ Although King Abdullah I resisted parliamentary life during the mandate period, tribal leaders and middle-class professionals were represented in national assemblies and conferences that met throughout the 1920s and 1930s.⁵⁸ When King Hussein ascended to the throne

⁵⁵ Quintan Wiktorowicz, *The Management of Islamic Activism: Salafis, The Muslim Brotherhood, and State Power in Jordan* (Albany, NY: SUNY Press, 2001), 12.

⁵⁶ *Ibid.*, 13.

⁵⁷ Abdo Baaklini, Guilain Denoeux, and Robert Springborg, *Legislative Politics in the Arab World: The Resurgence of Democratic Institutions* (London: Lynne Rienner Publishers, Inc., 1999), 136.

⁵⁸ Jillian Schwedler, *Faith in Moderation: Islamist Parties in Jordan and Yemen* (New York: Cambridge University Press, 2006), 44.

in 1953, he was tasked with ruling a country that had experienced significant changes, including two new constitutions, the Arab-Israeli war and the subsequent annexation of the West Bank, and the assassination King Abdullah, his grandfather.⁵⁹ Faced with a new population of West Bank Jordanians who did not recognize the king's right to rule and many of whom had pan-Arab and nationalist leanings, the king decided to "ride the nationalist and progressive wave," holding parliamentary elections in 1956, at the height of pan-Arabism.⁶⁰ The king legalized opposition parties and made efforts to cut ties with Western powers, pleasing supporters and opponents alike.⁶¹ However, the 1956 elections resulted in a legislative assembly that would ultimately prove too strong a threat to the monarchy, as half of the representatives elected belonged to nationalist or pan-Arab groups, and opposition parties constituted a majority of elected representatives.⁶² After an attempted coup was foiled in 1957, the king imposed martial law, outlawing political parties and cracking down on civil liberties, and Jordanians would be given little opportunity to participate in electoral politics until 1989. 1989 was also the first year that Jordanian women, who were enfranchised in 1974, were allowed to vote in a general election.

⁵⁹ Abdo Baaklini, et al., *Legislative Politics in the Arab World*, 136.

⁶⁰ Ibid., 140.

⁶¹ Jillian Schwedler, *Faith in Moderation*, 42.

⁶² Ibid. See also Abdo Baaklini, et al., *Legislative Politics in the Arab World*, 140-141.

The group that emerged most successful following the 1989 elections was the Muslim Brotherhood, which had been largely unaffected by the period of repression. Established as a charitable organization in 1945, the Jordanian Brotherhood, like the tribal communities, had a special relationship with the monarchy. King Abdullah I supported the Brotherhood to monitor the organization's activities, to help counter rising pan-Arab nationalism in the region, and to strengthen his own religious legitimacy.⁶³ King Hussein continued this patronage of the Brotherhood, offering members of the organization positions in the government and other favors in exchange for their loyalty and general obedience to regime policies. Thus, the Brotherhood, having remained in existence during the ban on political parties due to its status as a charitable organization, gained twenty-two seats in the 1989 elections. Independent Islamists gained another twelve seats, making the Islamist bloc the largest in parliament. Instead of focusing on policy issues, the Islamists were concerned with implementing gender segregation in public spaces, such as in ministries.⁶⁴ In 1992, under the new Political Parties Law, they founded a political party, the Islamic Action Front (IAF).

The Islamists' gains in parliament would be short-lived, however. The regime, threatened by their political power, was attempting to limit the influence of the Islamists in the government. Jordan was expected to participate in negotiations with

⁶³ Janine A. Clark, "The Conditions of Islamist Moderation: Unpacking Cross-Ideological Cooperation in Jordan," *International Journal of Middle East Studies* 38, no. 4 (November 2006): 545-546.

⁶⁴ Abdo Baaklini, et al., *Legislative Politics in the Arab World*, 158-159.

Israel in the near future, to which the IAF would undoubtedly object. After parliament was dissolved in 1993, the government, at the behest of the king, introduced a one-person, one-vote law that would help stack the lower house of parliament with loyalists who would support a Jordanian-Israeli treaty.⁶⁵ With only one vote to cast, Jordanians were forced to choose between family affiliations and ideological leanings, and they ultimately chose a representative from their tribe.⁶⁶ As expected, the Islamist representation in parliament was cut in half, and the new lower house was comprised mainly of tribal representatives who were politically conservative and pro-government.⁶⁷ In October 1994, Jordan signed a peace treaty with Israel and received the support of the lower house. As Laurie Brand notes, there were “serious economic stakes” involved in peace negotiations with Israel, and “the king would drag the Jordanian people kicking and screaming, if necessary . . . [but w]hatever popular dissatisfaction might arise, the government (the king) did not have to worry about being challenged significantly from within elected state bodies.”⁶⁸

This period of political liberalization in Jordan also enabled the women’s movement to mobilize in the 1990s. With the Jordanian government receiving more external funding, the government adopted policies that favored women by approving

⁶⁵ Ibid., 156.

⁶⁶ Laurie A. Brand, *Women, The State, and Political Liberalization*, 113.

⁶⁷ Ibid.

⁶⁸ Ibid., 116.

international conventions and making changes to its own law. Jordan signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992 with three reservations,⁶⁹ as well as three other international conventions that it had signed in 1957 and 1964 relating to political rights for women, the nationality of married women, and minimum marriage age.⁷⁰ By 1994, many women's organizations and committees were involved in attempts to amend discriminatory laws in the country by ensuring that they were in compliance with international human rights conventions.⁷¹

As many civil society organizations increased their activity, however, state-sponsored feminist organizations also emerged. Needing to exercise some control over the direction of the demands of the independent feminist organizations, the government tasked Princess Basma, King Hussein's sister, with forming a committee on women's affairs, the Jordanian National Commission for Women (JNCW), which recommended the National Strategy for Women in Jordan in 1993.⁷² Something similar had occurred in the early 1980s; the Jordanian Women's Union (JWU), then called the Women's Union in Jordan (WUJ), was closed in 1981 at the same time that the pro-

⁶⁹ The three reservations pertain to citizenship, housing, and women's mobility. In 2009, the government lifted the reservation on women's mobility.

⁷⁰ Laurie A. Brand, *Women, The State, and Political Liberalization*, 135.

⁷¹ *Ibid.*, 134.

⁷² Sherry R. Lowrance, "After Beijing: Political Liberalization and the Women's Movement in Jordan," *Middle Eastern Studies* 34, no. 3 (July 1998): 93.

government General Federation of Jordanian Women (GFJW) was established under the Ministry of Social Development.⁷³ The GFJW sought to represent all women's organizations, but in reality, it marginalized many Jordanian women.⁷⁴ Establishing the JNCW in 1993 gave the government the ability to "steer the progress of women's rights and status in a direction that can benefit women but also assure governmental veto power over the process."⁷⁵ The JNCW promotes both grassroots and top-down initiatives, so while many women were participating in shaping the agenda for women, the state was able to ensure that the agenda did not stray from its own goals.⁷⁶ Furthermore, state-sponsored women's organizations had greater financial support for their activities; increased funding for women's initiatives in the 1990s primarily benefitted the royal NGOs and semi-governmental organizations, as they were better positioned to receive funding from international donor agencies.⁷⁷

Despite clear legal advancements made during the 1990s, there were no changes to the 1976 PSL during this time, although several draft laws were introduced. Laurie Brand suggests that the government was secretive about draft laws so as to keep people thinking that they were working on a new law, placating those who wanted change

⁷³ The JWU was later reopened and still operates in Jordan.

⁷⁴ Laurie A. Brand, *Women, The State, and Political Liberalization*, 126-127.

⁷⁵ Sherry R. Lowrance, "After Beijing," 93.

⁷⁶ *Ibid.*, 94.

⁷⁷ *Ibid.*

while not upsetting those who wanted to maintain the status quo.⁷⁸ However, the government permitted some more conservative gains during this time, as legislation was passed that increased discrimination against women. For example, a decision was made in 1990 to make state land subject to Islamic inheritance laws, meaning that women would no longer be able to inherit the same share as men. Even those who did not necessarily feel strongly about the law, including a Christian MP, approved the legislation, as they “did not feel that it was useful to antagonize the Islamists, who had just done so well at the polls.”⁷⁹ Additionally, an amendment was introduced that gave tax breaks to men with more than one wife. Although the law was defeated, the support for such a law shows the level of conservatism among many of the lawmakers.⁸⁰

* * *

This chapter has shown how family law reform was used in the modern Middle East to extend the state’s reach into matters of the family, therefore giving governments the ability to construct new ideas of women and the family that suited national interests. Early reformers hoped to create a new idea of the family, one that expanded women’s rights to fit with the times, but this leads to a false assumption that legal reform is progressive and that amendments to family law increase rights for women. In Jordan, family law reform served multiple functions: unifying the population, redefining

⁷⁸ Laurie A. Brand, *Women, The State, and Political Liberalization*, 150.

⁷⁹ *Ibid.*, 134.

⁸⁰ *Ibid.*, 137.

gender roles to conform to regional and international notions of the modern family, reinforcing patriarchal structures, and consolidating state power—all of which were for the benefit of the state. The specific circumstances in Jordan required the state to achieve all of these goals at once, which explains why the law lagged behind feminist calls for reform inside and outside Jordan. As Jordan moves into its “third phase” of family law reform—a phase that was inspired by events of the 1990s—the changing state interests will continue to be reflected in both the process of reform and the law itself.

CHAPTER II: PERSONAL STATUS LAW REFORM UNDER KING ABDULLAH II

As discussed in the previous chapter, family law reforms are often made in the name of modernity, which leads to common assumption that such reforms improve the status of women. However, Jordan and many other Arab states have used family law reform and women's rights to serve state interests, which do not always result in substantial progress for women. In the case of Jordan, state interests have involved appeasing socially conservative groups, such as the tribal communities or the Muslim Brotherhood, in exchange for loyalty to the monarchy and political stability. Continuing on the theme of state interests, this next chapter will discuss family law reforms in Jordan that fit into the "third phase" in which the amendments respond to a concerted effort worldwide to improve the status of women and eliminate gender discrimination in the law. Due to Jordan's particular challenges and interests in the twenty-first century, however, enacting more progressive laws for women has proven to be a difficult task.

Laurie Brand's work on women and political liberalization in Jordan explains that the policy of the government under King Hussein was primarily concerned with "placating, or at least not challenging the forces—tribal, Islamist, or simply socially conservative—upon which the legitimacy of the regime rests," rather than making any

real strides in the way of women's rights.¹ Political liberalization, or "defensive democratization," which was a necessary step for King Hussein, required the monarchy to engage the opposition forces and give them an outlet for their frustrations.² This strategy for regime survival meant that the king must accomplish his goals in a political context in which he also engaged those whose strongly opposed changing notions of women and the family. Regime survival has been even more critical for King Abdullah; unlike his father, he has had to prove that he is a "real" Jordanian and that he has the authority to rule since ascending to the throne in 1999.³ Therefore, in addition to relying heavily on the support of the social conservatives, the king also seeks to provide economic and political stability as a means to strengthen his legitimacy, which requires him to balance the interests of external forces while also responding to the needs and desires of his own constituents.⁴ While balancing these conflicting state interests is not new to the monarchy, regional and domestic circumstances in the twenty-first century have exacerbated the situation, requiring the monarchy to take a different approach to reform.

¹ Laurie A. Brand, *Women, The State, and Political Liberalization: Middle Eastern and North African Experiences* (New York: Columbia University Press, 1998), 148-149.

² Glenn E. Robinson, "Defensive Democratization in Jordan," *International Journal of Middle East Studies* 30, no. 3 (August 1998): 389-390.

³ Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate Publishing Company, 2009), 14.

⁴ Raymond Hinnebusch and Neil Quilliam. "Contrary Siblings: Syria, Jordan and the Iraq War." *Cambridge Review of International Affairs* 19, no. 3 (September 2006): 520.

The previous chapter has shown that although the monarchy may promote reforms to improve the status of women, when push comes to shove, women's rights get tossed aside in favor of other policies that garner broader support. In a country where the monarchy's main support base comes from social conservatives, particularly communities with strong tribal ties or foundations, the king cannot afford to be viewed as not "culturally authentic." Given that the legitimacy of the monarchy can be called into question when it comes to women's rights issues, the government must deal with personal status law reform delicately so as to not threaten its own legitimacy in front of his support base of social conservatives. At the same time, however, the king must also implement substantial reforms to continue to receive financial support from Western countries that ensure the economic vitality of the country. Therefore, efforts to reform the laws and "modernize" society have taken a different course under King Abdullah as the regime negotiates these competing state interests.

Family law reform under King Abdullah has been characterized by several interrelated themes that will be discussed in the remainder of the chapter. First, women's rights issues disappear from the national agenda in times of political or economic crisis. While this has been the case at other moments in Jordan's history, the recent PSL reforms show that women's rights under King Abdullah are not sacrificed altogether. Rather, compromises are made that attempt to find a middle ground—albeit compromises that, first and foremost, satisfy state interests. It is particularly striking to examine family law reform and the king's discourse regarding women's rights

against the backdrop of domestic and regional events, as it becomes clear that it is only “safe” for the monarchy to openly promote women’s rights when concerns over the stability and security of the country are absent.

Second, the king has empowered other members of the government to take an active role in promoting reforms. Baaklini, Denoeux, and Springborg’s work on the legislative history of Jordan shows that starting in the 1970s, King Hussein involved himself less in legislative affairs and instead delegated responsibilities to other members of the government, such as the prime minister. The king still maintained authority behind the scenes, as he retained the power to dismiss government officials and create laws, but the appearance of a diffusion of power helped protect the monarchy, and specifically the king, from criticism.⁵ Such a policy enabled the king to weather unpopular policy changes that might have otherwise called his authority into question. Family law reform in Jordan since 2003 illustrates how, through the monarchy’s expanded reach in civil society, which outwardly distributes the central authority, the king has been able to push forward with his initial goals without opening himself up to criticism.

Third, the decentralization techniques employed by the monarchy reveal a tension that exists regarding the king’s role in implementing progressive reforms and the reliance on democratic processes to enact laws. The discourse surrounding the

⁵ Abdo Baaklini, Guilain Denoeux, and Robert Springborg, *Legislative Politics in the Arab World: The Resurgence of Democratic Institutions* (London: Lynne Rienner Publishers, Inc., 1999), 154-155.

king's reform policy increasingly stresses the importance of the rule of law in Jordan, yet the monarchy repeatedly undermines the supremacy of the law by manipulating the legislative process. For example, elections are a core feature of democratic institutions, but the monarchy has used election laws to control political outcomes.⁶ It is telling that despite the king's emphasis on democracy, the most progressive reforms for women have occurred as a result of undemocratic political maneuvers. However, the king makes a deliberate effort to remain within the rule of law, even if that means changing the law to suit his aspirations for the country. Dismissing parliament, postponing elections, and issuing laws by royal decree are all rights granted to the king by the constitution, so although such actions might be considered authoritarian, they are not unconstitutional. Thus, the king takes the same approach as his father, whose emphasis on constitutionality distinguished Jordan from other Arab regimes.⁷ As Catherine Warrick notes, law is important in Jordan because it "is a means by which shared norms and values are given formal recognition and political reality" and therefore "is both reflective and constitutive of cultural norms."⁸ King Abdullah underscores the importance of the law because it serves a dual legitimating purpose; he draws legitimacy from his ability to remain within the framework of the law, as well as to enact laws that the country considers culturally appropriate.

⁶ Schirin Fathi, "Jordanian Survival Strategy: Election Law as a Safety Valve," *Middle Eastern Studies* 41, no. 6 (November 2005): 889.

⁷ Abdo Baaklini et al., *Legislative Politics in the Arab World*, 146.

⁸ Catherine Warrick, *Law in the Service of Legitimacy*, 7.

As the rest of this chapter will show, Jordan’s third phase of family law reform takes place in a context in which international political circumstances directly impact the state’s decisions regarding women’s rights. Jordan finds itself increasingly needing to balance state interests—economic and political stability and security—with the interests of those who help maintain that stability and security. Consequently, much of the king’s reign has been characterized by bargains with various civil society groups and external actors that enable him to carry out a mission that will ensure economic and political stability. When the king came to power, he employed a discourse that resonated with international law. Jordan’s commitments to international conventions and its strong relationship with the West require government policies to conform to international human rights norms, at least superficially, while the king’s ability to stay in power relies largely on his cultural appropriateness as a ruler and the overall satisfaction of the Jordanian population. Through examining PSL reforms in Jordan under King Abdullah, the following chapter will illustrate how the monarchy has balanced many competing interests and has been able to enact less popular policies while still maintaining legitimacy.

Political Crisis in King Abdullah’s Early Years

When King Abdullah came to power in 1999, he articulated plans to reinvigorate Jordanian society by implementing a series of comprehensive reforms, many of which were aimed at improving the status of women. The country was experiencing a period

of political stability, allowing the king to advocate for more democratic processes.⁹ Many of the king's early reforms were framed as part of a larger move to integrate Jordan into international institutions, therefore adopting internationally-recognized norms and values.¹⁰ In the first few years of his reign, the king spoke repeatedly to Jordanians and to the international community about the need for the country to adjust its policies in order to interact with the rest of the world and better deal with the challenges of modern life. In March 2000, the king established the Royal Commission on Human Rights, which was chaired by Queen Rania and included ten Jordanian representatives. He further emphasized his commitment to human rights, while addressing parliament in 2000, stating that "human rights and freedom, human dignity, security, and stability are interconnected elements for building a strong Jordan, a state of law and order, an oasis of freedom and democracy, and respect for human rights."¹¹

After the Thirteenth Parliament, which the king had inherited from his father, came to a close at the end of May 2001, the king issued a new election law and delayed the November 2001 elections in order to have time to properly implement the

⁹ Curtis R. Ryan, "Political Opposition and Reform Coalitions in Jordan," *British Journal of Middle East Studies* 38, no. 3 (2011): 370.

¹⁰ Janine A. Clark and Amy E. Young, "Islamism and Family Law Reform in Morocco and Jordan," *Mediterranean Politics* 13, no. 3 (November 2008): 346.

¹¹ King Abdullah II, Speech at the Opening of the Fourth Ordinary Session of the Thirteenth Parliament, Amman, Jordan, 25 November 2000, accessed March 15, 2015, <http://www.kingabdullah.jo>.

administrative and logistical changes required by the new law.¹² While parliament was inactive, the government issued more than two hundred temporary laws, many of which were amendments to laws deemed incongruent with international human rights standards that the Royal Commission on Human Rights had recommended be changed.¹³ The constitution grants the Council of Ministers, appointed by the king, the power to issue provisional laws when parliament is not sitting or is dissolved, with the king's approval.¹⁴ Some of the temporary laws included amendments to the PSL of 1976, as well as a number of other provisional laws favoring women's rights.¹⁵ The amendments to the PSL expanded divorce rights for women, raised the minimum marriage age to eighteen for both parties, granted women greater custody rights, increased the number of years of alimony in cases of arbitrary divorce, and restricted polygyny by requiring the courts to notify wives of the impending marriage.¹⁶ One of the most controversial articles of the PSL amendments, and the primary reason for the law being voted down in parliament two years later, was the judicial *khul'* clause that guaranteed women the ability to obtain a divorce.

¹² Francesca Sawalha, "Jordanians Today Elect a New Lower House," *Jordan Times*, June 17, 2003. See also Jordanian Election Law for the House of Representatives, no. 34 (2001).

¹³ Janine A. Clark, "The Conditions of Islamist Moderation: Unpacking Cross-Ideological Cooperation in Jordan," *International Journal of Middle East Studies* 38, no. 4 (November 2006): 549.

¹⁴ Jordanian Constitution, art. 94 (1976).

¹⁵ Reem Abu Hassan, "Jordan," in *Women's Rights in the Middle East and North Africa: Citizenship and Justice*, eds. Sameena Nazir and Leigh Tomppert (Lanham, MD: Rowman and Littlefield Publishers, Ltd., 2005), 108.

¹⁶ Law Amending the Personal Status Law, no. 82 (2001).

Just a short time after the king's ascension to the throne, Jordan's political circumstances began to deteriorate, which had a profound effect on political liberalization, and therefore women's rights, in the kingdom. The eruption of the Second Intifada in September 2000 and "extreme regional uncertainties" after September 11th caused the king to delay elections even further, limiting democratization in the kingdom.¹⁷ To strengthen his legitimacy amid political uncertainty, the king attempted to provide economic stability to maintain favorability with constituents that fell outside the typical support base of the monarchy.¹⁸ Against the wishes of many Jordanians, Jordan signed a free trade agreement with the U.S., the first U.S. free trade agreement with an Arab state, that went into effect in 2001. Liberalizing the Jordanian economy led to deepening frustration with the monarchy, as the shrinking public sector diminished the government's ability to provide services to Jordanians.¹⁹ In order to ensure economic stability, however, Jordan would need to continue to develop relationships with outside institutions and engage in unpopular policies. By 2003, the situation had worsened; the U.S. invaded neighboring Iraq, further threatening the political stability of the country. While the king publicly criticized U.S. intervention in an effort to distance himself from the controversy surrounding the war, he secretly employed Jordanian troops in the neighboring conflict. Since the king's legitimacy

¹⁷ King Abdullah II cited "extreme regional uncertainties" as the reason for delaying the elections in a Speech at the Rose Garden, May 6, 2004.

¹⁸ Raymond Hinnebusch and Neil Quilliam, "Contrary Siblings," 519.

¹⁹ Curtis R. Ryan, "Political Opposition and Reform Coalitions in Jordan," 370.

rested “on his ability to deliver economic stability . . . the Iraq War was an opportunity for a resource-poor state to demonstrate loyalty to the economic patron on which such security depended.”²⁰ In March 2003, the U.S. agreed to pay \$700 million to Jordan to help compensate for the cost of war, in addition to the \$450 million that the government was already receiving from the U.S.²¹

Elections were finally held in June 2003 under a new election law that increased the number of seats in the house, lowered the voting age from nineteen to eighteen, and simplified voting procedures. It also introduced a women’s quota, guaranteeing seats to the top six female candidates receiving the highest number of votes. Nearly sixty percent of registered voters cast ballots in the election, which was the highest since the 1989 elections. Karak, Ma’an, Mafraq, Tafileh, Madaba, Jerash, and Ajloun all had at least seventy-eight percent voter turnout; Amman had the lowest voter turnout, with less than forty-five percent of eligible voters casting ballots.²² Overall, the results confirmed the suspected outcome; the more conservative rural regions would show the greatest interest in the elections, and Jordanians were most motivated in voting by family affiliations or ideology, such as Islam.²³ Approximately two-thirds of the seats

²⁰ Raymond Hinnebusch and Neil Quilliam, “Contrary Siblings,” 519-520.

²¹ Ibid., 520.

²² Hani Hourani, *Who’s Who in the Jordanian Parliament, 2003-2007* (Amman, Jordan: Sindbad Publishing House, 2004), 195-196.

²³ Alia Shukri Hamzeh and Dina Al Wakeel, “Tribal, Independent Figures Win Most of Lower House Seats,” *Jordan Times*, June 19, 2003.

were composed of tribal and independent figures, many of whom represented prominent Jordanian tribes. The remaining one-third belonged to the following political parties: the Islamic Action Front (IAF), National Constitutional Party, Jordanian Leftists Democratic Party, Islamic Centrist Party, and Popular Committees Movement Party. The IAF, who had boycotted the previous elections in 1997 due to the one-person, one-vote rule, won seventeen seats, the most of all of the parties. The number included one woman who won her seat because of the quota. All IAF members who ran in Amman's six districts were elected.²⁴

It is important to point out that of the six women who gained seats in the 2003 elections, four were from cities in the south (Tafileh, Karak, and Madaba), which are typically loyal to the monarchy, and the other two were from Zarqa and Irbid. No female candidates from Amman, where women are more involved in women's rights activism, were elected. While the government had succeeded in increasing female representation in parliament, the specific details of the women's quota and the gerrymandering that helped guarantee a pro-government parliament resulted in some of the quota seats going to social conservatives who voted against laws that improved the lives of women. An editorial in the *Jordan Times* referred to the women's quota as "perhaps the biggest step ever taken by Jordan on the path toward equality." Although voter turnout was higher among women, the author expressed disappointment that not a single female candidate would have been elected to parliament had it not been for the

²⁴ Ibid.

quota, further showing that women do not necessarily support other women, particularly in a place where familial or ideological affiliations prove to be stronger.²⁵ In 2007, activists lamenting the government's decision not to increase the women's quota argued that the 2003 elections only brought in "weak" and "inexperienced" female candidates whose performance did not meet the activists' expectations.²⁶ Therefore, while the women's quota provided space for women to participate in parliamentary politics, it did little to improve advocacy for women's rights.

Bargains over PSL

In an indication of what was to come, members of the IAF issued a statement just a few days after the elections pledging to reverse the "harmful" one-person, one-vote election law and "end legislative chaos caused by the issuance of temporary laws".²⁷ The IAF felt targeted by the election law and even believed that voter fraud had taken place in an effort to keep IAF members out of parliament. Less than two months later, on August 3, the lower house rejected the set of amendments to the PSL, largely because of the *khul'* law, which some described as one of the most "dangerous" laws in

²⁵ Editorial, *Jordan Times*, June 19, 2003.

²⁶ Rana Hussein, "Dismay over Decision to Keep House Quota Unchanged," *Jordan Times*, August 26, 2007.

²⁷ Alia Shukri Hamzeh and Rana Hussein, "Candidates Will Work to Rescind Laws Deemed 'Harmful' to Society – IAF", *Jordan Times*, June 20-21, 2003.

Jordan.²⁸ Janine Clark notes that “even prior to the vote, many activists felt that the *khul’* amendment . . . would be sacrificed in an effort to strike back at the king.”²⁹ This was accomplished in part because of a tribal-Islamist alliance in which two groups of social conservatives came together to reject the *khul’* law and other laws improving the status of women, such as the honor crimes law, which criminalized honor killings. Not even a week later, some of those same MPs who joined forces would butt heads over the identity of the country and the role of *sharī’a* in determining national interest, although there was no disagreement about national identity or the role of Islamic law in society where women’s rights were concerned.³⁰

When the law amending the PSL was rejected, it was returned to the upper house for revision. The upper house sent the PSL amendments and the honor crimes law back to the lower house later that month, on August 28, having only made minor changes.³¹ Within days of the law being rejected the first time, government actors and civil society groups took action to encourage successful passage of the law. Led by Princess Basma, the JNCW partnered with three women’s organizations—the General Federation of Jordanian Women (GFJW), the Jordanian Women’s Union (JWU) and the

²⁸ Dina Al Wakeel, “MPs Reject Khuloe Amendment Which Allows Women to Divorce without Consent,” *Jordan Times*, August 4, 2003.

²⁹ Janine Clark, “Islamism and Family Law Reform,” 341.

³⁰ Dina Al Wakeel and Sahar Aloul, “Deputies Rebuke Statements Made by Islamist MPs Monday,” *Jordan Times*, August 13, 2003.

³¹ The original law required the judge to try to reconcile a couple for a period of thirty days before issuing a *khul’* divorce. The upper house amended the law, extending the time to sixty days before sending the law back to the lower house for a second vote.

Jordanian National Forum for Women (JNFW)—to establish a national plan of action regarding women’s legislation and “to provide a platform for dialogue between various women’s movements and the legal committee of the lower house as well as women’s deputies.”³² Members from the women’s sector met with the Prime Minister and the Speaker of House to discuss *khul’* and other issues pertaining to women.³³ Furthermore, the king held meetings with members of the lower house to discuss political, economic, and social issues, and urged parliament to work together to “adopt a methodology, characterized by modernity and initiative” to implement changes that would “invigorate the energies of the society and involve all in the development process, especially youth and women.”³⁴ He encouraged parliament to provide women “with all the necessary capabilities and due rights in order to ensure their full participation in the political, economic, and social life.”³⁵

The law amending the PSL was brought before the lower house again in 2004, where it was rejected a second time and was sent back to the upper house for a vote. According to the Jordanian constitution, when the two houses cannot reach a consensus after each voting twice, the law in question will be brought before a joint session to be approved by a two-thirds majority vote. If the law is not approved, it is thrown out and

³² Dina Al Wakeel “Senate Panel’s Approval of Khuloe Hailed,” *Jordan Times*, August 26, 2003.

³³ “Jalasāt al-Thiqa,” *Ad-Dustūr*, August 12, 2003.

³⁴ King Abdullah II, Speech at the Opening of the First Ordinary Session of the Fourteenth Parliament, Amman, Jordan, December 1, 2003, accessed March 15, 2015, <http://www.kingabdullah.jo>.

³⁵ *Ibid.*

cannot be reintroduced during the same parliamentary session.³⁶ Those in favor of reform knew that the amendments would not pass if brought before a joint session. Although the upper house was composed of members who were appointed by the king and therefore typically endorsed the king's decisions, it was believed that some of those members would change their position on *khul'* and the other PSL amendments should the decision come to a joint vote.³⁷ At that point, in what was considered a "rare occasion," the president of the upper house, Zaid al-Rifa'i,³⁸ invited a group of ten advocates for legal reform to the Senate to discuss the proposed amendments. Suspecting that the law would not pass in the joint house session, al-Rifa'i, who was supportive of most of the proposed amendments, said that he would keep the charter in his desk rather than putting it before the lower house of parliament, allowing the temporary PSL to remain in place for a longer period of time to "help the public get used to it."³⁹ Despite that many women were able to take advantage of the *khul'* law during this time, not all women's rights activists were pleased with the outcome. A

³⁶ Jordanian Constitution, art. 92.

³⁷ Interview with prominent women's rights activist, Amman, 30 Dec 2014.

³⁸ Zaid al-Rifā'ī had been prime minister under King Hussein and was dismissed in 1989. He was appointed as head of the senate in 1997.

³⁹ Interview with prominent women's rights activist, Amman, 30 Dec 2014.

representative of the JWU remarked that “although [this] was a step, it was not a democratic one, so I couldn’t say that it was a victory for us.”⁴⁰

The constitution grants the king the authority to pass laws that are not approved by parliament, but he did not pursue that option. Instead, an underhanded—yet still constitutional—maneuver in which al-Rifa’i intentionally postponed the vote indefinitely appears to have been a safer move for the monarchy. As the amendments to the PSL were being debated in parliament in 2003, Jordan was forced to balance the U.S. interests in the Iraq war and increasing public opposition to Jordanian involvement in the conflict. Since the king was already facing increasing opposition due to Jordan’s participation in the Iraq war, it is not surprising that he would back away from another controversial issue and would instead delegate the authority to enact a temporary law to another government representative.

Silence over Women’s Rights

At this point, legislative reforms that improved the status of women disappeared from the king’s speeches to parliament, and he became relatively silent on issues pertaining to women’s rights. The goals that he articulated in the first few years of his reign showed a much stronger commitment to human rights injustices. Queen Rania also limited her support for controversial women’s issues; whereas her earlier activities focused on global women’s initiatives and legal reform, she began devoting her time to women’s empowerment and female education, which the Jordanian public views as less

⁴⁰ Interview with women’s rights activist, Jordanian Women’s Union, December 31, 2014.

contentious.⁴¹ As one activist pointed out, the only legal amendments openly supported by members of the monarchy have been the citizenship law and the honor crimes law, neither of which has a basis in Islam.⁴²

By the end of 2004, in light of the regional turmoil resulting from the Iraq war, the king turned his attention to targeting poverty and unemployment in the country and making security and stability a top priority.⁴³ Those goals would remain through the next few years as Jordan continued to combat rising extremism. On November 9, 2005, Jordan fell victim to a series of suicide bombing attacks carried out at the hands of Iraqis affiliated with al-Qa'ida in Iraq. In his speech to parliament less than one month later, King Abdullah characterized Jordan as “a progressive, civilized country, a strong and invincible country whose citizens and guests enjoy security, stability, and peace of mind in a climate of freedom, democracy, and respect for human rights.” He reaffirmed his commitment to making Jordan a stable country, noting that development could not proceed without ensuring “security, stability, and the rule of law.”⁴⁴ These themes continued through the end of the Fourteenth Parliament, which ended in 2007.

⁴¹ Ibid.

⁴² Ibid.

⁴³ King Abdullah II, Speech at the Opening of the Second Ordinary Session of the Fourteenth Parliament, Amman, Jordan, December 1, 2004 accessed March 15, 2015, <http://www.kingabdullah.jo>.

⁴⁴ King Abdullah II, Speech at the Opening of the Third Ordinary Session of the Fourteenth Parliament, Amman, Jordan, December 1, 2005 accessed March 15, 2015, <http://www.kingabdullah.jo>.

Elections for the Fifteenth Parliament, which were boycotted by the IAF due to claims of vote rigging and the ongoing one-person, one-vote law, were carried out in late 2007. As a result of the IAF boycott, only six members of the party were elected, as opposed to seventeen members in the 2003 election. The remaining seats were filled by independents, six of whom were women who were granted seats through the quota. With much of the political opposition not represented, the king would be well poised to usher amended laws through parliament that would fulfill the goals established in the National Agenda, which he put forth in 2005. While speaking to the Fifteenth Parliament in 2007, the king reiterated his commitment to comprehensive reform and vowed to provide a means for a “decent life to every Jordanian family,” which would include new legislation related to human rights and the rights of women and children.⁴⁵ An excerpt of a speech to the Jordanian public in 2008 sums up the king’s push for democracy, women’s rights, and reform:

[Our] achievements could not have been realized without the blessings of security and stability that Jordan enjoys, and that are a product of the efforts of our armed forces and security institutions . . . Political development, guaranteeing basic freedoms for citizens and civil society institutions and enhancing their participation in decision making, are all rights guaranteed by the Constitution; they are realized except in an environment governed by the values of freedom, pluralism, tolerance, respect for others’ opinions, the rule of law and equal opportunities. Within this framework, I have directed the government to cooperate with Parliament to pass a legislation package related to political development, especially that legislation related to the protection of children and women’s rights, the facilitation of public gatherings and the enhancement of the role and independence of charitable organizations and other civil society

⁴⁵ King Abdullah II, Speech at the Opening of the First Ordinary Session of the Fifteenth Parliament, Amman, Jordan, December 2, 2007, accessed March 15, 2015, <http://www.kingabdullah.jo>.

institutions.⁴⁶

However, amid global economic uncertainty and failure to pass much-needed economic reforms,⁴⁷ the king disbanded the fifteenth ordinary parliament, halfway through its term in 2009, and postponed elections for a year. He appointed Samir al-Rifa'i prime minister and tasked him with forming a new government that would be able to implement the goals that he had established as part of the National Agenda in 2005 and revise the election laws "to ensure that free and fair elections are conducted" in 2010.⁴⁸ It is important to note that the National Agenda, the king's "master plan" for reform, did pledge to "remove all forms of discrimination against women in laws and legislation by 2015."⁴⁹ Even though he did not explicitly state this goal in his speeches before parliament, this confirms that women's rights never left the agenda entirely and indicates a clear intent to reform the PSL, where some of the most discriminatory practices are found.

Although the goals articulated to parliament after 2003 did not strongly promote women's rights initiatives, much of the reform effort continued under the radar by women's organizations. After the law remained temporary, women's rights

⁴⁶ King Abdullah speech, On the Occasion of Independence Day, May 25, 2008, accessed March 15, 2015, <http://www.kingabdullah.jo>.

⁴⁷ Michael Slackman, "Jordan's King Remakes His Government," *New York Times*, December 22, 2009.

⁴⁸ Prime Minister Samir al-Rifa'i, remarks at YPO-Columbia University Middle East Research Center, February 3, 2010, printed in *Jordan Times*, February 7, 2010.

⁴⁹ King Abdullah II, "National Agenda 2007-2017," accessed March 15, 2015, <http://www.kingabdullah.jo>.

organizations launched campaigns to amend the laws by bringing women before judges and lawyers to give testimonies about how they have suffered as a result of divorce, polygyny, and other issues that the women's rights groups were tackling in the law. Much to their surprise, although the judges were supportive of women's rights, such support did not translate to legal reform. "In the end, it's the vision of their institution that they want to apply, not ours," said a representative of the JWU.⁵⁰ Additionally, the JWU started regional campaigns to reform family law, discussing with Egypt, Palestine, and Lebanon issues to be addressed in family law reform, with a particular emphasis on divorce rights. The JNCW and other organizations also held workshops and launched media campaigns to raise public awareness about the laws in an attempt to address commonly held assumptions that women's rights are not part of Jordanian culture or Islam.⁵¹ The various campaigns lasted about three years until 2009, when the CIJD began working on a draft law.

Although the women's organizations were the primary force behind ongoing efforts to improve the status of women, reforming gender laws was not absent from the government's agenda altogether. The government did make some strides during this time regarding women's rights legislation, but such progress occurred at points in which parliament was not in session or could not block legislation that expanded women's

⁵⁰ Interview with women's rights activist, Jordanian Women's Union, Amman, December 31, 2014.

⁵¹ Interview with representatives from Jordanian National Commission for Women in Amman, Jordan, December 29, 2014.

rights. In the intervening period between the end of the Fourteenth Parliament and the next elections, Jordan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Jordan had signed the Convention in 1992 with three reservations, but it did not formally publish it in the *Official Gazette* until fifteen years later.⁵² A CEDAW shadow report published in 2012 indicates that officially approving the Convention in 2007 was a strategic move, as the ratification occurred shortly before Jordan was to attend a session in New York discussing reports on its compliance with CEDAW. In March 2009, against the will of the IAF, Jordan lifted the reservation on article 15 of CEDAW, which calls for the women's freedom of movement and right to choose her domicile.⁵³ This occurred just two months before Jordan submitted a bid for a seat on the UN Human Rights Council, which, after a failed attempt at winning a seat in 2006, was elected to the Council in 2009. Both the ratification of CEDAW and the lifting of the reservation were approved by the king's Council of Ministers, and even though parliament's approval was not necessary, it is worth noting that these laws were adopted quietly and without much public awareness.⁵⁴

New Reforms in 2010

Parliamentary elections were held in 2010, following changes to the election laws that increased the women's quota to twelve seats and the overall number of seats

⁵² *Official Gazette*, 14 July 2007, no. 4943.

⁵³ Anne Sofie Roald, "Islamists in Jordan: Promoters of or Obstacles to Female Empowerment and Gender Equality?" *Religion and Human Rights* 4 (2009): 45.

⁵⁴ *Ibid.*

to one hundred and twenty. Political and economic circumstances were relatively stable at the time,⁵⁵ and therefore women’s rights made their way back on the legislative agenda. In his speech to parliament in 2010, the king stated that “the government will take all necessary legislative measures to protect women’s rights” and that he has been “working within a transparent vision of reform.”⁵⁶ Earlier that year, a new draft PSL had been introduced that showed a compromise between opposition groups over the law. Unlike the previous amendments to the PSL, all of which were enacted by royal decree, the new draft amendments were introduced by the Chief Islamic Justice Department (CIJD), or Jordan’s sharī’a court system, in cooperation with women’s rights organizations and other NGOs.

According to the JNCW, which networked with the government and served as an umbrella for the other women’s organizations, all NGOs worked on the legal amendments.⁵⁷ However, a representative from the JWU claimed that this was not the case, stating that the CIJD “excluded [many] civil society groups and included those who shared the same vision,” such as the JNCW, and political parties, such as the IAF. The JWU and other women’s organizations were not involved in the process and were “surprised” when they found out after the announcement was printed in the newspaper

⁵⁵ In 2010, Jordan signed a five-year agreement with the U.S., who pledged to give \$360 million in economic assistance and \$300 for military support annually.

⁵⁶ King Abdullah II, Speech at the Opening of the First Ordinary Session of the Sixteenth Parliament, Amman, Jordan, November 28, 2010, accessed March 15, 2015, <http://www.kingabdullah.jo>.

⁵⁷ Interview with representatives from Jordanian National Commission for Women in Amman, Jordan, December 29, 2014.

that the draft law had been introduced without showing or including them.⁵⁸ The JWU rejected the idea that the JNCW could effectively represent the interests of civil society or NGOs in Jordan due to its role as a semi-governmental organization. According to the JWU, because the JNCW has a consultation committee included with other NGOs, it claims to represent the interests of all women's organizations in Jordan. However, the JWU disagrees with the JNCW's role as a representative body in legislative reforms and was not pleased with the outcome of the law.⁵⁹

Having the supreme religious authority in the kingdom introduce the reforms gave the new codes more religious legitimacy and allowed the government to refute claims from the opposition that the law did not adhere to sharī'a. However, the religious courts in the kingdom function, in part, as a state institution; according to the CIJD's organizational structure, the Supreme Judge (*qāḍī al-quḍā*) answers directly to the prime minister, who is appointed by the king.⁶⁰ Additionally, although the constitution states that the judiciary operates independently from the other branches of the government, as the previous chapter explains, judicial appointments can only occur by royal decree. Moreover, the sharī'a courts began compiling detailed statistics on marriage and divorce following the rejection of the law in 2004, which suggests that the

⁵⁸ Interview with women's rights activist, Jordanian Women's Union, Amman, December 31, 2014.

⁵⁹ Ibid.

⁶⁰ The Chief Islamic Justice Department's organizational structure can be viewed at <http://www.sjd.gov.jo/AboutDepartment/OrganizationalStructure.aspx>

religious authority partnered more directly with the government to respond to opposition over the legal amendments. Those opposing the *khul'* provision often cited figures of high divorce rates that included both consummated and unconsummated marriages, so the CIJD began publishing detailed data that differentiated between different types of divorces to accurately reflect the situation regarding divorce in Jordanian society. It is not clear at whose behest this initiative was launched, but the fact that the religious courts were providing data that could impact the perception of divorce shows that the religious institutions assisted the monarchy in realizing its national goals of reform.

The monarchy's influence over the country's religious institutions becomes even more apparent when one considers ways in which the regime may have affected the decisions of sharī'a judges in the kingdom. In the period between the rejection of the PSL amendments in 2004 and the introduction of the new law in 2010, the government further extended its reach over the religious establishment. In January 2005, Jordan's National Center for Human Rights, which had been established by royal decree in 2002, conducted a three-month program funded by the UN in which more than one hundred judges from various parts of Jordan were trained in international human rights norms so that they could recommend changes to lawmakers and ensure that "vulnerable groups" would be protected by the justice system.⁶¹ Though the group was not composed

⁶¹ Reem Halasa, "Jordanian Law Should Comply with International Standards," *Jordan Times*, January 11, 2005.

entirely of shari'a judges, they were included in the program to make recommendations regarding the PSL and ensure compliance with international human rights declarations. The following year, in 2006, the king gave plots of land to one hundred and thirty-four shari'a judges, including five in Jerusalem, to recognize their important role in society and to improve their living conditions.⁶² These land grants were part of a larger initiative, which also included updating the technology in the country's sixty-five shari'a courts, to improve the judges' performance.⁶³

PSL reforms show that despite the government's decentralization strategy, the king is still very much tied to the institutions that seek to reform laws pertaining to women and the family, albeit indirectly. Decentralizing the government, at least superficially, may itself be a strategy to ensure that progressive reforms for women pass. As was mentioned previously, the IAF rejected the PSL amendments in 2003 not only due to ideological differences but also to get back at the king, whose one-person, one-vote law diminished the strength of the party and limited political opposition in parliament. Therefore, delegating authority to seemingly independent institutions and groups actually improved the chances of lasting reforms, and perhaps might be the only way to effectively enact gender legislation.

⁶² News Release, "King Issues Directives to Allocate Land for Shari'a Judges," Media and Communication Directorate, Royal Hashemite Court (Jordan), October 16, 2006; also "Sharia Judges Thank King for Land Allocation," October 21, 2006, accessed March 15, 2015, <http://www.kingabdullah.jo>.

⁶³ Ibid.

Moreover, many members of parliament had rejected the original PSL amendments because they felt that introducing temporary laws in the absence of parliament was a “disrespectful” move.⁶⁴ Thus, in 2011, an amendment was made to the constitution that limits the amount of time that temporary legislation can remain in effect.⁶⁵ The law states that when legislation fails to be ratified after three years, it will be repealed and therefore will revert to the previous law. Another amendment clarifies the specific circumstances under which temporary legislation may be introduced.⁶⁶ While the three-year limit does not apply to the PSL legislation because the constitutional amendment was made after the draft PSL was introduced in 2010,⁶⁷ these amendments to the constitution will serve to restrict the king’s ability to issue unpopular laws by royal decree moving forward. Therefore, delegating authority to other government officials or civil society groups while extending the state’s reach into those areas would permit the monarchy to achieve the desired legislative change in a manner that remains constitutional and appears democratic.

Many women’s rights activists are not pleased with the current version of the PSL, which can still be modified before it is placed before parliament for a vote, but they

⁶⁴ Dina Al Wakeel, “MPs Reject Khuloe Amendment Which Allows Women to Divorce without Consent,” *Jordan Times*, August 4, 2003.

⁶⁵ Amendments to the Constitution of the Hashemite Kingdom of Jordan, art. 128, no. 2, (2011). The Constitution had previously allowed for legislation to remain in effect indefinitely until repealed or amended.

⁶⁶ Amendments to the Constitution of the Hashemite Kingdom of Jordan, art. 94, no. 1 (2011).

⁶⁷ Interview with prominent women’s rights activist, Amman, 30 Dec 2014.

are not optimistic that the law will include more expansive rights for women, particularly given that some of the most powerful voices advocating for reform have accepted compromises.⁶⁸ However, as one women's rights activist pointed out, a range of views, even extreme ones, are beneficial for the legislative process; lawmakers will institute a law that falls somewhere in the middle, which will ultimately be more progressive than the law before it.⁶⁹ This is the case with the 2010 draft PSL, which marks a significant change over the 1976 PSL. Although some of the more progressive elements of the 2001 law have been eliminated, efforts to grant women more rights in the PSL continue.⁷⁰

Still, the new draft PSL has not been approved by the lower house of parliament and remains in effect as a temporary law. As history has shown, women's rights legislation is pushed aside in times of political crisis, and shortly after the draft PSL was introduced, the government was forced to deal with yet another regional crisis, as hundreds of thousands of Syrians flooded into Jordan. Therefore, improving the status of women has largely been off the agenda, as the government has been faced with economic challenges, security concerns, and combating rising extremism in the region. The king's speech to parliament in 2013 did not mention women at all, although he did

⁶⁸ Interview with women's rights activist, Jordanian Women's Union, Amman, December 31, 2014.

⁶⁹ Interview with prominent women's rights activist, Amman, 30 Dec 2014.

⁷⁰ Areej Abuqudairi, "Activists Seek Amendments to Personal Status Law," *Jordan Times*, June 14, 2013.

state his intent to bring other laws in line with the constitution.⁷¹ His recent speeches to parliament emphasizing the rule of law, balance of power, democracy, and empowering the people indicate that legislative reform is on the horizon, and given Jordan's history of using laws for unifying purposes, legal reform would serve more than one state interest. However, as the last two chapters have suggested, comprehensive reform that includes controversial women's rights legislation is met with resistance during times of political upheaval, so it remains to be seen whether the government will be able to implement the National Agenda, in which King Abdullah pledges to eliminate all discrimination against women in the law by 2015.

* * *

One women's rights activist remarked that Jordan's rejection of *Da'ish*, or the Islamic State of Iraq and Syria (ISIS), made 2015 a good time for women's rights. "Nobody wants to be part of that extremism," she said.⁷² Jordanian Muslims' efforts to distinguish themselves from extremist veins of Islam would encourage moderate views toward women in Islam. It does seem that women's rights groups are capitalizing on this widespread rejection of Islamic extremism in Jordan in an effort to encourage a changing discourse toward women's rights. An article published in the *Jordan Times* less

⁷¹ King Abdullah II, Speech to Non-Ordinary Session of the Seventeenth Parliament, February 10, 2013, accessed March 15, 2015, <http://www.kingabdullah.jo>.

⁷² Interview with prominent women's rights activist, Amman, 30 Dec 2014.

than a week after the video of Mu'ath al-Kasasbeh's death was released,⁷³ the JNCW announced that it would launch an anti-extremism coalition aimed at ending all forms of discrimination. The coalition, which is yet another example of state intervention, would endeavor to foster "human and moderate values" among Jordan's youth, and "encourage them to reject extremism, discrimination, exclusion and terrorist thoughts and ideologies."⁷⁴ While this certainly may result in a changing discourse around women's rights, this chapter shows that in addition to a shift in discourse, the government also needs an opportune political moment in which there is little opposition to other policies. As the U.S. vows to increase its aid to Jordan from \$660 million to \$1 billion per year,⁷⁵ the monarchy will likely face criticism from its conservative base over Western influence in the country, making legislation that improves the status of women less probable. Unless and until there is a shift in the hegemonic discourse regarding women and the family—a matter that will be discussed in the next chapter—it will be difficult to enact permanent legal reforms in a fully democratic way due to the difficult political and economic climate.

⁷³ Mu'ath al-Kasasbeh was a Jordanian pilot from Karak who was captured by ISIS in Syria in December 2014. On February 3, 2015, a video emerged showing that he was burned to death.

⁷⁴ Rana Hussein, "Women's Rights Activists Launch Anti-Extremism Coalition," *Jordan Times*, February 9, 2015.

⁷⁵ Dan Lamothe, "As Execution of Pilot is Publicized, U.S. Expands Relationship with Jordan," *The Washington Post*, February 3, 2015.

CHAPTER III: ***KHUL' AND DIVORCE FOR WOMEN IN JORDAN: A CHANGING DISCOURSE***

The previous two chapters have examined the state's role in family law reform and the effect of the particular political context in Jordan on the government's ability to pass more progressive laws for women. In patriarchal societies, legal reforms that advance alternative views of women and the family are often seen as a threat to religious and cultural norms, and therefore they challenge notions of cultural authenticity. Given that legal reforms improving the status of women have raised questions of cultural appropriateness, the Jordanian government has been unable to easily enact progressive reforms for women, as they threaten the legitimacy of the king, who is largely supported by the socially conservative tribes and whose strongest opposition is the religiously conservative Muslim Brotherhood. Legal scholars highlight tensions that exist between international human rights principles and claims of preserving cultural or religious tradition when it comes to women's rights, particularly in patriarchal societies. Some scholars who approach legal reforms from a position of international human rights norms argue that gender equality must have "normative hegemony" and that governments should be responsible for implementing more egalitarian legal reforms by eliminating patriarchal religious or cultural norms.¹ However, such a position assumes that religious or cultural norms are hegemonic. In

¹ Frances Raday, "Culture, Religion, and Gender," *International Journal of Constitutional Law* 1, no. 4 (2003): 710, accessed February 21, 2015, <http://dx.doi.org/10.1093/icon/1.4.663>.

the case of gender-related issues in Jordan, what does hegemony mean and is hegemony being contested? What is the role of the state in constructing a hegemonic discourse?

Scholarship on hegemony, particularly work relating to the construction of cultural ideas, provides a framework for analyzing the recent reforms to family law in Jordan and for understanding how legislative reforms have seen some success despite the heavy controversy surrounding them. T. J. Jackson Lears argues:

Among parliamentary regimes, only the weakest are forced to rely on domination; normally they rule through hegemony, even though the threat of officially sanctioned force always remains implicit. Ruling groups do not maintain their hegemony merely by giving their domination an aura of moral authority through the creation and perpetuation of legitimating symbols; they must also seek to win the consent of subordinate groups to the existing social order.²

This provides a particularly useful way of understanding the role that discourse plays not only in creating legitimacy for the monarchy but also in obtaining the support for the majority of Jordanians in reforming family law. Catherine Warrick identifies two “strands of hegemonic discourse” that exist in the dominant discourse in Jordan: the “royal-liberal” discourse, which promotes liberal democratic principles and has the general support of the royal family, and the “traditional” discourse, which is employed by those who claim religious or cultural authenticity to support their arguments.³

² T.J. Jackson Lears, “The Concept of Cultural Hegemony,” *The American Historical Review* 90, no. 3 (June 1985): 568-569.

³ Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate Publishing Company, 2009), 32-33.

Warrick suggests that combining the two discourses can prove successful, as it makes for a “highly flexible and politically adaptable hegemony” that is difficult to challenge. As the regime employs these two, often competing, discourses, it must do so in a way that does not threaten its own political legitimacy. Similarly, those who rely primarily on one strand of hegemonic discourse may further legitimate their claims by drawing from sources of authority that typically fall outside their discourse.⁴ In the case of PSL reform in Jordan, Islamic rhetoric had been used primarily to legitimate the opposition’s rejection of expanded divorce rights, but those supporting legal reform gained traction by drawing from that same discourse.

The public debate over *khul’* and divorce rights for women demonstrates the two strands of hegemonic discourse at play. As issues pertaining to women’s rights were negotiated following the introduction of an amended PSL in 2001, the “royal-liberal” and “traditional” discourses evolved over time. After an overview of the development of divorce law in Jordan through 2001, this chapter will analyze the discourse surrounding the PSL reforms. Using Warrick’s theory of a two-stranded hegemonic discourse in Jordan, this chapter will show not only how the hegemonic discourse evolved, how the two strands of discourse are used together to strengthen claims, and how combining or oscillating between two hegemonic discourses can ultimately lead to less progressive legal reforms for women, but also the ways in which the state is

⁴ Ibid., 35-36.

working to bring the two strands of discourse together to legitimate controversial reforms.

The Development of Women's Access to Divorce in Jordanian Law

In 2001, when King Abdullah II suspended parliament by postponing parliamentary elections, the government introduced amendments to the PSL of 1976 by royal decree. Notable changes to the PSL included expanding divorce rights for women, raising the minimum marriage age, granting women greater custody rights, and restricting polygyny. One of the most controversial articles of the new amended law, and the primary reason why the amendments were voted down in parliament two years later, was the judicial *khul'* clause that guaranteed women the ability to obtain a divorce. According to classical Sunni sharī'a law, divorce (*ṭalāq*) is the exclusive right of the husband. A husband may dissolve the marriage at any time for any reason, provided that he pay his wife her full dower (*mahr*), child support, any debts owed, and maintenance (*nafaqa*) for her waiting period (*'idda*), which is generally the length of three menstrual periods.⁵ Women, however, do not share the same unilateral right to divorce and must instead seek marital dissolution through other means. One way that a woman can obtain a divorce is through *khul'*, in which she requests to dissolve the marriage in exchange for some kind of compensation (*'iwad*) given to the husband. The

⁵ Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 190.

compensation may be in the form of money, debt forgiveness, or usufruct.⁶ Because *khul'* is a contractual agreement, both the husband and the wife must agree to the terms in order for the marriage to be terminated. Therefore, a *khul'* divorce could be understood as essentially a *ṭalāq* with the wife's agreement to both the divorce itself and the compensation.⁷ Traditional *khul'* divorces are not mediated in court, so women are not required to provide a reason for the divorce, but they do relinquish some or all of their financial rights in the process. If a husband refuses a divorce or if the wife wants to retain her financial rights, her only option, according to classical shari'a, is to request a divorce through *tafrīq*, or judicial separation. With *tafrīq*, a wife may petition the court to dissolve the marriage on certain grounds, such as when a husband fails to provide spousal support (*nafaqa*), is impotent, or missing. If the judge honors the wife's request for a divorce, he will dissolve the marriage contract and the wife will retain her financial rights.

Ottoman records indicate that women took advantage of the types of divorce afforded to them through shari'a. *Khul'* appears to have been a common type of divorce in seventeenth- and eighteenth-century Syria and Palestine; Ottoman court records show that women knew that they could use this type of divorce to "ransom" themselves

⁶ Ibid., 285-286.

⁷ Judith Tucker, *In the House of the Law* (Berkeley, CA: University of California Press, 1998), 96-97.

out of an unwanted marriage.⁸ Furthermore, women made extensive use of the courts to annul their marriages on grounds such as impotence, lack of support, and disease. Although the Ḥanafī school did not allow women to obtain a divorce for these reasons, Shāfi'ī or Ḥanbalī judges were permitted to oversee divorce cases in instances where Ḥanafī doctrine restricted Ḥanafī judges' ability to issue a divorce.⁹ In 1915, two imperial edicts were issued that recognized a woman's right to divorce her husband because of desertion and disease, and such grounds were codified with the introduction of the OLF in 1917.¹⁰ Another ground for judicial divorce included in the OLF was discord and strife (*niza' wa shiqāq*), in which the court would appoint an arbiter and would only issue the divorce after failed attempts at reconciliation.¹¹ Although the OLF expanded the grounds for divorce by basing the law in more than one Sunni school, it did not, however, acknowledge the prevalence of *khul'*, which was hardly mentioned in the law. As Judith Tucker points out, "only the closest reader of the law" would be aware that *khul'* had "legal standing."¹² Therefore, while the OLF succeeded in guaranteeing women the ability to obtain a divorce on certain grounds, it eliminated

⁸ Judith Tucker, "Revisiting Reform: Women and the Ottoman Law of Family Rights," in *The Arab Studies Journal*, vol. 4, no. 2 (Fall 1996), 11.

⁹ *Ibid.*, 13.

¹⁰ J. N. D. Anderson, *Islamic Law in the Modern World* (New York: New York University Press, 1959), 53-54.

¹¹ Lynn Welchman, "The Development of Islamic Family Law in the Legal System of Jordan," in *International and Comparative Law Quarterly*, vol. 37, issue 4 (1988): 873.

¹² Tucker, "Revisiting Reform," 12.

numerous other possibilities. The 1951 Jordanian Law of Family Rights (JLFR) did not depart significantly from the OLFR in terms of divorce rights or other issues pertaining to women; there was little mention of *khul'* and the grounds for divorce remained the same, with the exception of minor changes, such as reducing the amount of time after which a wife can seek a divorce from five to three years following her husband's imprisonment.¹³

In 1976, Jordan issued the Jordanian Law of Personal Status (JLPS), replacing the 1951 Law of Family Rights. The JLPS includes noticeable changes regarding women's access to divorce. The law discusses stipulations for *mukhāla'a*, or divorce in return for compensation to be paid by the wife to the husband, which, although it was a valid type of divorce according to classical sharī'a, had not featured prominently in earlier versions of the law. The articles focus primarily on the valid conditions of a *khul'* agreement, such as the type of compensation allowed in a *khul'* contract, but they do not discuss the wife's right to seek a divorce through *khul'* if her husband does not agree. The law assumes the mutual consent of both spouses, since *khul'* is, according to sharī'a, a divorce in which both spouses agree on a particular divorce settlement and the husband is relieved of his financial responsibilities that would otherwise be required in the case of *ṭalāq*. Additionally, the 1976 law benefitted women through a new stipulation on arbitrary divorce (*ṭalāq ta'assufī*), in which a wife who had been divorced "in an abusive

¹³ Jordanian Law of Family Rights, art. 93 (1951).

manner, such that he divorced her without reasonable cause,” could request up to one year of alimony from the husband and the court would rule in the wife’s favor.¹⁴

Many of the grounds for requesting divorce through *tafrīq* that had been present in previous personal status codes, such as chronic disease, impotence, absence, imprisonment, failure to pay the *mahr*, and dispute and discord between the spouses remained, although some of the stipulations changed.¹⁵ For example, the law shortened the length of time that a woman must wait to seek a divorce when her husband is missing (*ghiyāb*).¹⁶ Interestingly, despite that the law already granted husbands, but not wives, the unilateral right to divorce, some of the grounds for *tafrīq* were expanded to favor men and were justified on the basis of “equality between the spouses.”¹⁷ The clause allowing judicial divorce on the basis of discord and strife (*niza’ wa shiqāq*), which had previously only been granted to women, was amended so that harm (*ḍarar*) became a justifiable reason for men or women to seek a judicial divorce.¹⁸ Although men did not need to obtain a divorce through *tafrīq*, expanding grounds for divorce for men gave husbands the ability to prove that their wives were at fault in the marriage, relieving them of their financial responsibilities. Therefore, while the JLPS expanded

¹⁴ Jordanian Law of Personal Status, art. 134 (1976).

¹⁵ *Ibid.*, ch. 12, art. 113-134.

¹⁶ *Ibid.*, art. 123.

¹⁷ Welchman, “The Development of Islamic Family Law,” 873.

¹⁸ Jordanian Law of Personal Status, art. 132 (1976).

divorce options for women and limited a husband's ability to arbitrarily divorce his wife, it also created new opportunities for men to avoid financial obligations in a divorce.

The *Khul'* Controversy

The PSL of 2001, introduced by royal decree, followed a decade that is often considered the height of the women's movement in Jordan and fits well in the third phase of reforms in which "global, regional, and national circumstances" affect the type of legislation introduced.¹⁹ A period of political liberalization that started in 1989 opened the door for increased participation of women's organizations, and the government adopted policies that showed a greater commitment to women's rights by approving international conventions, such as CEDAW, and ratifying more egalitarian civil laws.²⁰ External funding from NGOs and international organizations dedicated to improving the status of women in Jordan in the 1990s resulted in a greater interest in international norms regarding women's rights.²¹ Many activists who mobilized during this time did so under the banner of universal human rights, and King Abdullah himself, from the beginning of his reign, pledged to implement reforms that brought Jordanian law in conformity with human rights principles and norms. Therefore, it is not surprising that critics of the new PSL accused proponents of the law of importing Western feminist

¹⁹ Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), 43.

²⁰ Laurie A. Brand, *Women, the State, and Political Liberalization: Middle Eastern and North African Experience* (New York: Columbia University Press, 1998), 135.

²¹ *Ibid.*, 140.

ideals that undermined the Muslim family. In Jordan, as in other modern Muslim states, political opposition groups used Islamic rhetoric to attack regimes that support more progressive legal reforms and have signed international agreements in an effort to make the state appear less culturally authentic.²²

From the beginning, opposition to PSL reforms was often framed in Islamic terms. Critics of the *khul'* provision did not deny that a wife had the right to seek a divorce through *khul'*; rather, they objected to the elimination of the husband's consent, which all four Sunni schools agreed was necessary for a valid *khul'* divorce. Verses in the Qur'an and Sunnah suggest that female-initiated divorce was acceptable at the time of the Prophet, so *khul'* as a practice was never in question. Hence, early debates over the *khul'* law centered on different interpretations of the same textual sources. One of the most commonly cited verses pertaining to *khul'* is the account of Habiba bint Sahl, the wife of Thabit ibn Qais:

Narrated Ibn 'Abbas: The wife of Thabit bin Qais came to the Prophet and said, "O Allah's Apostle! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner (if I remain with him)." On that Allah's Apostle said (to her), "Will you give back the garden which your husband has given you (as Mahr)?" She said, "Yes." Then the Prophet said to Thabit, "O Thabit! Accept your garden, and divorce her once."²³

Those seeking increased rights for women use this verse to show not only that a no-fault divorce is acceptable, but also that the husband's consent is not needed. The Prophet,

²² Welchman, *Women and Muslim Family Laws in Arab States*, 38-39.

²³ *Ṣaḥīḥ Bukhārī*, book 63, no. 197. M. Muhsin Khan, trans., *Ṣaḥīḥ Bukhārī* (Riyadh: Darussalam Publishing and Distribution, 1997). Here the word *ikhtal'at* is used.

they argue, did not ask Thabit's permission; rather, when Habiba agreed to return the garden that had been given to her for her dower (*mahr*), the Prophet told Thabit to accept it and divorce her. Furthermore, Habiba had no real reason to want a divorce other than the fact that she was not attracted to her husband, which indicates that women should not have to prove fault in order to obtain a divorce.²⁴ Opponents of judicial *khul'* accept this hadith as proof that women can obtain a divorce by returning the *mahr*, but they do not agree that this hadith supports the notion that divorce rights can be given to women to exercise at their discretion. One Jordanian MP explained that in this instance, the Prophet was acting as a judge, so this example of divorce resembles a *tafrīq* in which the Prophet adjudicated the divorce.²⁵ The implication here is that the judge reserves the right to deny the wife the divorce, meaning that the authority to dissolve the marriage would not rest exclusively in the hands of the wife. However, not all *khul'* critics believed that a judge was necessary; some believed that *khul'* could occur extrajudicially, as long as both parties consented.²⁶

Divorce for women also has its foundations in the Qur'an (2:229): "If you have cause to fear that the two may not be able to keep within the bounds set by God, there shall be no sin upon either of them for what the wife may give up [to her husband] in

²⁴ "*Khul'* in Personal Status Law in the program 'Haqqi'...Al-Qaddoumi: legitimate support for *khul'* in the Holy Qur'an and the Prophetic Sunnah," *Ad-Dustour*, 22 July 2004.

²⁵ Maher Abu Tayyer, "Ma'rakat al-*khul'*," Memoranda by Deputies Nidal al-Abadi and Taysir al-Fityani, *Ad-Dustour*, August 31, 2003.

²⁶ *Ibid.*

order to free herself.”²⁷ However, opponents point to other Qur’anic verses when rejecting judicial *khul’*, claiming that a husband’s consent is required because the Qur’an clearly grants him authority (*qiwwāma*) over his wife.²⁸ Other Islamic arguments against *khul’* concern the financial rights of spouses. While judicial *khul’* required women to waive their right to their dower and maintenance (*nafaqa*), some suggested that the law disadvantaged men who paid a small dower or who put property in their wives’ names, as such property would not be returned with *khul’*.²⁹ Women’s rights activists have countered this argument with stories of women who contributed money to help maintain their household or raise children and who had no claim to money invested in the marriage.³⁰ Such expenses are considered the responsibility of the husband according to shari’a, so reclaiming financial contributions could be a difficult task for women, regardless of the type of divorce.

Other arguments used against judicial *khul’* pertained to the relative ease with which a woman could obtain divorce through the new PSL and how this would impact the family. Following the lower house’s rejection of the PSL in 2003, Islamist MP ‘Ali ‘Otoum claimed that *khul’* “makes judicial separation easier between spouses, helps to

²⁷ Qur’an 2:229, trans. Muhammad Asad. Here the word *iftada’t* is used for divorce.

²⁸ Maher Abu Tayyer, “Ma’rakat al-khul’,” Memoranda by Deputies Nidal al-Abadi and Taysir al-Fityani, *Ad-Dustour*, August 31, 2003.

²⁹ Ibid.

³⁰ Interview with women’s rights activist, Jordanian Women’s Union, December 31, 2014.

dismantle the family, and encourages women to rebel from their husbands.”³¹ In addition, some believed that the new PSL was an “agenda of foreign and strange Western ideas that are connected to conferences and conspiracies aimed at eliminating the strength of the family.”³² Interestingly, men are not accused of destroying the family when they initiate a divorce, but as one activist notes in response, “the patriarchal mentality is always blaming women.”³³

Moreover, some felt that *khul'* was unjustifiable in cases where the husbands were morally upright (*mustaqīm*) or were honoring their marital duties.³⁴ Those opposing the *khul'* law felt that women should not be permitted to seek a divorce without a legitimate reason. One lawyer responded to such a claim by stating that the reason for the divorce was “hatred” of the spouse.³⁵ Similar critics of the law suggested when given the opportunity, women would seek a divorce for frivolous reasons. One popular story circulating was that of a woman who was told that she would be with her husband in the afterlife, so she divorced her husband because she wanted to go to

³¹ Basil Rafi'a, “Islamist-tribal alliance in parliament in the face of the right of *khul'* and honor crimes,” *Al-Hayat*, May 8, 2003.

³² Maher Abu Tayyer, “Ma'rakat al-khul',” Memoranda by Deputies Nidal al-Abadi and Taysir al-Fityani, *Ad-Dustour*, August 31, 2003.

³³ Interview with prominent women's rights activist, Amman, 30 Dec 2014.

³⁴ Maher Abu Tayyer, “Ma'rakat al-khul',” Memoranda by Deputies Nidal al-Abadi and Taysir al-Fityani, *Ad-Dustour*, August 31, 2003.

³⁵ “*Khul'* in Personal Status Law in the program 'Haqqi'...Al-Qaddoumi: legitimate support for *khul'* in the Holy Qur'an and the Prophetic Sunnah,” *Ad-Dustour*, 22 July 2004.

heaven and she believed that he was going to hell.³⁶ Those in favor of the *khul'* law deny that women seek a divorce for no reason at all, arguing that in most cases, women who seek a divorce through *khul'* have reasons but do not wish to provide the court with intimate details of their marriage.³⁷

One major concern over the law appears to have been with the language itself, so it is important to note the change in terminology between the 1976 and 2001 PSL. In the 1976 PSL, divorce in exchange for compensation is called *mukhāla'a*, the verbal noun of *khāla'* (verb form III), which simply means to divorce in return for compensation from the wife and implies that two people are involved in the action. The 2001 personal status law, on the other hand, exclusively used the term *khul'* instead of *mukhāla'a* to describe the divorce.³⁸ *Khul'* is the verbal noun of *khala'a* (verb form I), which means to remove oneself from the marriage. The verb *khala'a* also means to extract (a tooth), to dislocate (a joint), and to depose (a ruler)—all actions that involve some display of force. Unlike *mukhāla'a*, which is a more neutral term that assumes the involvement of both spouses in the decision, *khul'* implies action on the part of just one spouse in seeking to dissolve the marriage. One lawyer noted that even though the language of the law

³⁶ Interview with women's rights activist, Jordanian Women's Union, December 31, 2014.

³⁷ Ibid.

³⁸ Jordanian Personal Status Law of 1976, Section 11, Articles 102-112.

describes the woman as dislocating herself (*takhla'a nafshā*), people understood it as removing herself from her husband (*takhla'hu*).³⁹

The 2010 Personal Status Law: A Changing Discourse

By the time the draft PSL was introduced in 2010, the debate had changed. Those advocating for legal reforms did so by employing an Islamic discourse in a much more direct way than they had in the past, weakening the position of the traditionalists whose arguments relied heavily on Islamic evidence to reinforce their patriarchal ideas. Whereas in the earlier version of the law, those on the “liberal” side of the debate perhaps appeared defensive in the face of stronger religious arguments, advocates of legal reforms in 2010 supported their position with feminist interpretations of Islamic sources. One women’s rights activist who assisted with the preparation of the new draft law said that she went through the law “article by article,” providing evidence from the Qur’an and religious texts for each of the proposed amendments.⁴⁰

In response to the many concerns that were expressed during the previous decade over *khul'* and other amendments, the Chief Islamic Justice Department (CIJD), which was responsible for drafting the new PSL, repealed the 2001 judicial *khul'* law. What had been *khul'* under the 2001 PSL became a new type of judicial divorce, *tafriq lil-iftidā'*, in which a woman could “ransom” herself from the marriage in exchange for

³⁹ Interview with women’s rights activist, Jordanian Women’s Union, December 31, 2014.

⁴⁰ Interview with prominent women’s rights activist, Amman, 30 Dec 2014.

compensation after a failed attempt to reconcile.⁴¹ This new divorce option gave women the exact same rights as before—all that changed was the name.⁴² *Tafriq lil-iftidā'* still required women to pay a sum of money in order for the divorce to be valid, and the judge would attempt to reconcile the couple for a period of thirty days before issuing the divorce, but the husband's consent was not required. The new draft law also preserved classical *khul'*, which was understood by all four Sunni schools of law as a transaction between the spouses.⁴³ Instead of returning to the word that was used in the 1976 PSL, however, the new law called the practice "*khul' riḍā'i*," or *khul'* by mutual consent. *Khul' riḍā'i* stressed the agreement of the spouses and defined the term as "the husband's divorce (*talāq*) of his wife in exchange for a compensation about which they have both agreed, whether it be called *khul'*, *talāq*, *mubāra'a*, or the like."⁴⁴

Changing the terminology used in the divorce laws appears to have served two purposes. First, it suggested that the laws were in accordance with Islamic tradition. The term *iftidā'* is derived from the verse in the Qur'an (2:229) that states that a woman may "ransom herself" in situations where she fears violating the laws ordained by God, which directly links this type of divorce to that which is mentioned in the Qur'an.

⁴¹ Jordanian Law of Personal Status, sec. 4, art. 114 (2010).

⁴² Interview with lawyer and human rights activist, Amman, December 29, 2014.

⁴³ Ibn Rushd, *The Distinguished Jurist's Primer*, vol. 2, trans. Imran Ahsan Khan Nyazee (Reading, UK: Garnet Publishing Limited, 1994), 79.

⁴⁴ Jordanian Law of Personal Status, sec. 3, art. 102 (2010). *Mubāra'a* is the mutual consent of husband and wife, either of them waiving all claims by way of compensation (definition courtesy of Hans Wehr).

Additionally, by retaining the practice of *khul'* as understood in Islamic jurisprudence, the term *khul' riḍā'i*, or consensual *khul'*, the law returns to its roots in classical Islamic law while also legally ensuring the husband's authority in endorsing a *khul'* divorce. Therefore, the new version of the law appeared to satisfy those who rejected judicial *khul'* because of its departure from classical *fiqh* while also responding to women's rights advocates who demanded a way for women to obtain a divorce against their husband's will.

Second, and perhaps more importantly, changing the terminology addressed the issue that many had with *khul'*, as the word *khul'* was considered socially unacceptable. Chief Islamic Justice Ahmed Hilayel, who announced the new law, stated that the CIJD "felt that it would be hard for the daughter for a mother who divorced herself from her father via the *khul'* law to be called the daughter of such a parent. It is socially damaging to the daughter."⁴⁵ *Iftidā'*, which means "ransoming" or "redemption," is a word used when someone is imprisoned or taken captive, so this was seen as a better term.⁴⁶ Hence, *iftidā'* preserves the dominant position of the husband, as it compares the wife to someone imprisoned who must ransom herself from her captor, reinforcing classical Islamic conceptualizations of marriage.⁴⁷ Furthermore, it could also benefit

⁴⁵ Rana Hussein, "New Personal Status Law Strengthens Jordanian Families," *The Jordan Times*, September 28, 2010.

⁴⁶ Interview with women's rights activist, Jordanian Women's Union, December 31, 2014.

⁴⁷ For an in-depth discussion of the relationship between marriage and slavery in classical Islamic law, see Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010).

women by eliciting sympathy for a wife being held “captive” to her oppressive husband, rather than a woman who seeks a divorce because she prefers a life of leisure and rejects her family obligations. Not everyone viewed the term favorably, however; a representative from the Jordanian Women’s Union argued that this term was only “better for the man” and instead felt that the law should have created a third term for this type of divorce.⁴⁸

According to the CIJD, the new law also adhered more closely to Islamic principles by preserving the financial rights of the wife. In addition to guaranteeing women access to divorce through *iftidā’*, the CIJD also made it easier for women to obtain a divorce through judicial separation (*tafrīq*), which remains the only way that a woman can divorce her husband while maintaining her financial rights. One judge from the CIJD claimed that the 2001 law served the interests of women who were able to afford to return their dower to their husbands.⁴⁹ Another judge stated that improving the divorce procedures and eliminating the *khul’* law ensured “that women get more rights and do not lose money when they file for divorce.”⁵⁰ Still, the CIJD’s new PSL did not appease all involved in legal reforms. Some women’s rights activists felt that women should be able to retain their financial rights and should not have to give a reason for the divorce, so they continued lobbying for fully equal divorce rights under

⁴⁸ Interview with women’s rights activist, Jordanian Women’s Union, December 31, 2014.

⁴⁹ Rana Hussein, “Chief Islamic Justice Department to ‘reconsider’ khuloe law,” *Jordan Times*, May 3, 2010.

⁵⁰ Rana Hussein, “Activists slam CIJD’s personal status law,” *The Jordan Times*, April 21, 2010.

the law.⁵¹ As was the case with the 2001 PSL, the current PSL requires women to prove the fault of the husband in court in order to receive her financial rights. It is interesting to note that when parliament rejected the law in 2003 and 2004, opponents were claiming that the *khul'* law potentially violated the financial rights of the husband. However, when discussions were taking place over the new draft law, one impetus for changing *khul'* was the inability for the *wife* to retain her (Islamic) financial rights, with the husband's financial rights no longer a concern.

A Hegemonic Shift?

By 2010, it appears that the discourse over PSL reform had changed. Members of the IAF, who had vehemently opposed the law when it was first introduced, no longer objected to divorce rights for women on the basis that such rights departed from *sharī'a*. This, in part, reflects the weakened position of the IAF, which had been marginalized politically as a result of election reforms. As Curtis Ryan notes, the political opposition, largely comprised of the Islamists, are more progressive than the monarchy regarding democracy and liberalization, but less so when it comes to social legislation.⁵² Therefore, when the state employs strategies to reduce Islamist representation in parliament or when the IAF boycotts elections to protest their lack of fairness, this undoubtedly contributes to a shift in the Islamic discourse, as there is less political

⁵¹ "When Tying The Knot," *The Jordan Times*, June 28, 2011.

⁵² Curtis R. Ryan, "Political Opposition and Reform Coalitions in Jordan," *British Journal of Middle East Studies* 38, no. 3 (2011): 380.

resistance to changing notions of the family. When committees began meeting in 2009 to discuss draft amendments, there was no discussion in the media about the legitimacy of the PSL in religious terms. Instead, the opposition expressed dissatisfaction over changing notions of the family, especially if in response to the West. In a statement from February 2010, the women's committee of the IAF said:

We in the women's committee of IAF do not see anything wrong with reforming the personal status laws within the system of Islamic shari'a if the needs of Jordanian society demand that; however, this step is a response to external pressures and dictates aiming with time to change Islamic law and substitute it with civil law or reform it such that it is commensurate with UN treaties far removed from the essence of the Islamic shari'a and the interests of society and the family.⁵³

After the CIJD announced that it would repeal the 2001 *khul'* clause, replacing it with *iftidā'*, the women's committee praised the proposed amendments, considering it a "blessing" that the revisions upheld the precepts of Islamic shari'a. A representative of the committee claimed that "the previous law allowed for easier divorce in a society that highly values family ties," and that they want to ensure justice for the husband and the wife.⁵⁴ When Chief Islamic Justice Ahmed Hilayel held a press conference to officially announce the new temporary PSL in September 2010, he reassured the public that the new law would be "aimed at ensuring a strong bond within Jordanian families

⁵³ "Women of the Islamic Action Front warn against changing personal status law in response to external pressures and dictates," *Gerasa News*, 28 February 2010, accessed November 27, 2014, <http://www.gerasanews.com/print.php?page=article&id=24083>.

⁵⁴ Mohammad Ben Hussein, "Women Islamists praise proposed Amendments," *The Jordan Times*, 29 April 2010.

and the rights of women and children as stipulated in the *sharī'a*.”⁵⁵ One noticeable change to the draft law that addresses a potential cause for divorce involved the creation of a *nafaqa* fund, which would provide financial assistance to husbands who were unable to support their wives.⁵⁶

However, some articles appearing in the media around this time do not employ religious rhetoric at all. Online news sources focused on the “embarrassment and shame” felt by men who were now being repudiated by their more empowered wives. One article claimed that “many husbands now rush to file divorce themselves when informed of their wives’ intent to resort to *khul’*.” The article goes on to note that the “shame for a man to be divorced by his wife in the Arab world is crippling” and that husbands preemptively divorce their wives themselves to “save face.”⁵⁷ Photos and cartoons published with articles about the legal amendments also give some indication of how the debate has changed over time. Whereas articles discussing divorce for women in the early 2000s had cartoons with traditional Jordanian characters or photos of wedding rings, by 2010, they featured pictures of families being ripped apart. One particular photo that appeared in multiple online articles featured a woman preparing

⁵⁵ Rana Hussein, “New Personal Status Law Strengthens Jordanian Families,” *The Jordan Times*, 28 September 2010.

⁵⁶ Interview with representatives from Jordanian National Commission for Women in Amman, Jordan, December 29, 2014.

⁵⁷ Mohmmad Ghazal, “Empowered by law, more Jordanian women file for divorce,” Ammonnews.net, April 1, 2010, accessed February 13, 2014, <http://en.ammonnews.net/article.aspx?articleNO=5662>.

to flick a tiny man from her hand, which illustrates the feeling of emasculation and disempowerment felt by men under the new law.⁵⁸ While such criticisms of the amendments are not as prevalent in official media sources, patriarchal norms, even those that could not be justified in Islamic terms, obviously carried some weight when it came to reforming the law in 2010.

Since the introduction of PSL amendments, those arguing for reform have found it advantageous to use Islamic evidence to support their position and respond to the opposition. Even secular groups, such as the JWU, have turned to new interpretations of Islam to gain more support for women's rights at the grassroots level.⁵⁹ Employing Islamic arguments to give credence to reform objectives is not new; Islamic reformers from the late nineteenth and early twentieth centuries found support in Islam for constructing new ideas of a "modern" Islamic family.⁶⁰ However, using Islamic rhetoric alone did not enable those advocating for PSL reform to introduce a draft law that was less contested than before; after all, early opposition to the PSL amendments found plenty of support for their claims in Islamic sources as well. Therefore, what seems to make those arguments effective in the reform process is not that advocates for reform employ an Islamic discourse to challenge the opposition using their own rhetoric, but

⁵⁸ "Khul' stays in Jordan," Khaberni News, January 19, 2010, accessed February 13, 2014, <http://www.khaberni.com/more.php?newsid=27570&catid=59>.

⁵⁹ Interview with women's rights activist, Jordanian Women's Union, December 31, 2014.

⁶⁰ John L. Esposito, *Women In Muslim Family Law* (Syracuse, NY: Syracuse University Press, 1982), 48.

rather that this discourse is used with authority and therefore has found some success in constructing one hegemonic discourse, at least pertaining to Islam. Part of this authority was made possible through the consolidation of religious institutions under the umbrella of the state, as well as the weakened position of the Islamists in parliament, which made the newly constructed, moderate Islamic discourse difficult to challenge.

As was discussed in the previous chapter, the religious institutions in Jordan are often an extension of the state, carrying out policies that serve state objectives. In the case of Jordan, however, the monarchy has also taken an active role in producing and regulating religious knowledge. In 2004, King Abdullah and a group of Islamic scholars issued a statement called “The Amman Message,” which defines what constitutes “traditional, orthodox, moderate Islam.” The Amman Message sought to combat extremism by informing Muslims of the core values of the faith so as to prevent them “from being influenced by illegitimate fatwas and sliding into *takfir* [ideology] and terrorism, as a visceral overreaction to poverty, injustice and mistakes in Western foreign policy.”⁶¹ Over the next two years, the declaration gained the support of over five hundred religious scholars, academics, and political figures from eighty-four countries.⁶² While the initial purpose of The Amman Message was clearly to respond to

⁶¹ “The Official Website of the Amman Message,” The Amman Message, accessed March 21, 2015, <http://www.ammanmessage.com>.

⁶² Ibid.

rising extremism and violence resulting from the U.S. occupation of Iraq, the widely-endorsed statement also helped legitimate some of the government's policies by promoting a moderate interpretation of Islam that would assure "balanced Islamic solutions for essential issues like human rights, women's rights, freedom of religion, legitimate jihad, good citizenship of Muslims in non-Muslim countries, and just and democratic government, all key issues that are essential to world peace and harmony."⁶³ Perhaps it is not surprising, then, that a link to the website of The Amman Message can be found on the homepage of nearly all Jordanian government websites, including those of the king, parliament, and the Chief Islamic Justice Department (CIJD).

Additionally, the Royal Aal al-Bayt Institute for Islamic Thought was established by law in 2007 with a number of stated goals, one of which includes presenting "a modern integrated Islamic conception of the values and systems of society, as well as to anticipate future developments and address the renewed problems and challenges of the time with practical Islamic solutions."⁶⁴ Although the institute presents itself as a non-governmental, independent organization, it has direct ties to the monarchy; the Chairman of the Board of Trustees is a member of the royal family, the organization's entire board must be appointed by royal decree, and all senior fellows at the institute must have the endorsement of the king. The Royal Islamic Strategic Studies Center, an

⁶³ Ibid.

⁶⁴ Law of The Royal Aal al-Bayt Institute for Islamic Thought, no. 32, art. 4b, (2007). The Royal Aal al-Bayt Institute for Islamic Thought had previously been The Royal Academy for Islamic Civilization Research, established by the late King Hussein in 1980.

independent research organization affiliated with the Royal Aal al-Bayt Institute for Islamic Thought, also strives to “provide suggestions for authentically Islamic solutions.”⁶⁵ What all of these organizations and initiatives have in common is their dedication to not only promoting moderate Islamic principles but also to spreading this message within Jordan and in the international community.

As was the case with royal women’s NGOs that dominated the arena of women’s rights activism due to the resources at their disposal, these Islamic organizations have benefitted from their royal status by bringing together a vast array of Islamic scholars who endorse a “traditional” Islam that fits within the monarchy’s vision of a “modern” Jordan. What is also noticeable among these organizations, and in the king’s speeches and overall rhetoric, is the repetition of key phrases, such as “traditional, orthodox, moderate Islam,” that help create the very idea that the monarchy is promoting. Why is opposition not turning to other, more conservative sources of Islamic authority, and why do alternative views of Islam not seem authoritative, particularly when it comes to legal reform? Lisa Wedeen argues:

People obey because they believe in the values, norms, and standards within which a particular regime operates, because it is in their material interest to do so, or because they fear the coercive consequences of *not* obeying. [These] explanations of why people obey . . . fail to account for the ways in which language and symbols mediate, structure, define, and continually reassert political power and obedience.⁶⁶

⁶⁵ “About R.I.S.S.C.,” The Royal Islamic Strategic Studies Centre, accessed March 21, 2015, <http://www.rissc.jo>.

⁶⁶ Lisa Wedeen, *Ambiguities of Domination Politics: Politics, Rhetoric, and Symbols in Contemporary Syria*, (Chicago: University of Chicago Press, 1999), 156.

Therefore, the constant use of religious rhetoric to establish an Islamic discourse that is viewed as adhering to “traditional” Islamic principles while accommodating “modern” notions of the family helps create a hegemonic discourse that reinforces the legitimacy of the monarchy and allows for legal reforms that expand women’s rights. This is not to suggest that PSL reform after 2010 is uncontested; the fact that the draft law has not been brought before parliament for a vote shows that ideas about women and culture are very much debated. However, arguments against the law do not appear to be framed in Islamic terms, which erodes the authority of the opposition, whose “tradition” on which the rejection of the law is based becomes purely a tribal one, void of religious legitimacy.⁶⁷

To return to Warrick’s theory of hegemonic discourse in Jordan, the debates over divorce law for women demonstrate how the two strands of discourse can be employed at the same time to effectively challenge the status quo. Religious opposition to the PSL reforms waned as the “liberal” discourse, which echoed international calls for women’s rights, gained legitimacy by utilizing Islamic rhetoric, yet the law still exhibited a response to a contested idea of tradition—albeit one that appears increasingly based

⁶⁷ Scholars, such as Betty Anderson, have discussed this melding of the traditional with the modern in Jordan, as well as how religion is used by the state to promote political ideas. See Betty S. Anderson, *Nationalist Voices in Jordan: The Street and the State* (Austin, TX: University of Texas Press, 2005). Fida Adely also describes how legitimacy and religious tradition are contested in Jordan, particularly around issues pertaining to women. See Fida Adely, “Performing Patriotism: Rituals and Moral Authority in a Jordanian High School,” in *World Yearbook of Education 2010: Education and the Arab ‘World’: Political Projects, Struggles, and Geometries of Power*, eds. André E. Mazawi and Ronald G. Sultana (New York: Routledge, 2010).

on patriarchal tradition rather than religious tradition. At the same time, the state is playing an active role in combining the two strands, the “traditional” and “royal-liberal” into one by using religious tradition to justify the interests of a “modern” state.

* * *

As this chapter shows, once the CIJD announced the new temporary PSL in 2010, the hegemonic discourse in Jordan had evolved. The public debate over the *khul'* law no longer rejected a woman's right to divorce her husband on religious grounds and instead focused more directly on changing notions of the family, particularly regarding gender roles and the rights of men and women in a marriage. While there is an underlying assumption that the legal amendments erode traditional Islamic family values, the regime helped diminish the strength of the opposition by ensuring that the rejection to the law was no longer framed primarily in Islamic terms as it had been a decade earlier. This was achieved, in part, by weakening the power of the political opposition in parliament, which often employed an Islamic discourse to support its rejection of regime policies. Many have continued to express concern that expanding divorce rights for women will lead to the destruction of the family, undermining Islamic family values, but some of these objections have been based on men's feeling of disempowerment rather than *shari'a*. The Islamic discourse has played a crucial role in enacting a less controversial PSL, but ideas about the role of women and the family in tradition and culture are still being contested. Now that the monarchy has achieved some success in expanding women's rights in a way that is viewed as more compatible

with (Islamic) Jordanian culture, it will be interesting to see how future objection to the law is framed and how much authority the opposition will have in objecting to the law on the basis on “tradition” and “culture.”

CONCLUSION

In discussing the monarchy's role in the most recent reforms to the PSL, one women's rights activist said, "If the [royal family] were supporting [the PSL], we would see the support. We know that there are a lot of members of parliament who are loyal to the king, so he could just order them to sign or to pass the law, as we see this pressure and influence on other issues. So why don't we see this on women's issues?"¹ This opinion that the monarchy is not concerned with women's rights was shared by more than one women's rights activist interviewed for this study and is a general sentiment among many activists working at the grassroots level.² However, whatever interest the monarchy might have in expanding women's rights is not the crux of the issue and in some respects is not an important question. When one examines family law reform in Jordan within its sociohistorical and political context, it becomes clear that the more important issue at hand is the complex relationship between the monarchy and other political actors, and the ways in which that relationship constrains legislative reforms that expand women's rights.

As this study has shown, the monarchy must balance competing interests of women's rights activists, tribal communities, the political opposition (particularly the Islamic Action Front), international organizations, and even individual foreign countries,

¹ Interview with women's rights activist, Amman, December 31, 2014.

² Curtis R. Ryan, "Political Opposition and Reform Coalitions in Jordan," *British Journal of Middle East Studies* 38, no. 3 (2011), 389.

who provide substantial and much-needed economic support to Jordan. Reform projects, especially those in the name of “modernization,” privilege the interests of the state, and in the case of Jordan, a primary concern of the state has been maintaining the legitimacy of the monarchy and preserving the existing regime rather than reforming it. Given the contentious nature of family law and the fact that the monarchy already faces opposition regarding other unpopular policies, the king cannot sustain too much criticism at once, as that would pose too great a threat to the legitimacy of the monarchy. Therefore, when legitimacy is challenged in times of instability or in moments when the regime’s favorability is weakened due to unpopular policies, women’s rights are sacrificed.

Yet, as the recent developments in PSL illustrate, the government under King Abdullah has been able to move forward with reform in a way that does not threaten the legitimacy of the monarchy. The draft PSL introduced in 2010 by the CIJD suggests that controversial legal reform is possible, despite that the original amendments were met with vehement opposition less than a decade earlier. By delegating authority to other members of the government and by extending the reach of the state into civil society, the monarchy is able to effectively manage the direction of reform in the country while avoiding direct criticism from the opposition. Whereas the visible actors in women’s rights legislation in 2001 were King Abdullah and his cabinet of ministers, the visible actors in PSL reform in 2010 were the shari’a judges and women’s rights organizations. Therefore, any criticism surrounding the draft PSL could easily be

directed toward those immediately involved in the reform efforts rather than the monarchy, even though the decision makers were appointed by the king. Although civil society groups are officially independent of the state, the monarchy's influence over the religious institutions and women's rights organizations have made the king a silent, yet powerful actor in the reform initiatives.

Moreover, the regime has been involved in altering the dominant discourse surrounding women's rights legislation by consolidating religious authority and the production of religious knowledge under its umbrella. The monarchy's role in defining "traditional, orthodox, moderate Islam," has not only helped the government reduce security threats by targeting religious extremism, but this state-sponsored Islamic discourse has also helped the regime achieve its reform goals by establishing a more hegemonic religious discourse that supports all state interests. Connected to this is weakened position of the Islamists, specifically the IAF, as an opposition force in parliament. Tracing the development of women's access to divorce from 2001 to 2010 shows how the regime has effectively taken religion from the traditionalists and has used religion to support expanded rights for women in the law. Therefore, while the early reforms were rejected on the basis of their deviation from Islamic "tradition," by 2010 there was no public discussion around whether women's rights were sanctioned by shari'a law. Instead, the Islamic discourse was effectively employed to promote family law reform.

Still, the PSL of 2010 has not been ratified, and in order to comply with Jordan's international commitments, the government will eventually need to eliminate all discrimination against women in Jordanian law. According to the National Agenda put forth in 2005, removing discriminatory articles in Jordanian legislation will be achieved by the end of 2015.³ How exactly this will be accomplished has yet to be seen, although the way in which the PSL reforms in Jordan have evolved since 2001 provides some indication regarding a strategy for reform. The king's increasing emphasis on democracy, constitutionality, and rule of law, particularly post-Arab spring, points to a change in the discourse surrounding the role of legislation in society. By promoting a balance of power in government and a democratic legislative process, the legitimacy of the monarchy is preserved because the process appears democratic, the king is protected from direct criticism, and the laws better reflect social norms. As Catherine Warrick notes, "the state benefits in terms of legitimacy by preserving sociocultural elements that serve to order life in a familiar way for most people . . . [but] the state's abstention from apparent and direct legislative creation of these laws does not . . . reduce its complicity in and responsibility for practices maintained under personal status law."⁴ Thus, while the legitimacy of the monarchy rests largely on the state's ability to implement laws that are deemed culturally appropriate, as the king, too, must

³ King Abdullah II, *National Agenda, 2007-2017*, accessed March 11, 2015, http://kingabdullah.jo/index.php/en_US/initiatives/view/id/2.html.

⁴ Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate Publishing Company, 2009), 114.

be seen as a “real” Jordanian and a suitable monarch, the regime should still be held accountable for any legislative outcomes that discriminate against women.

As this study of PSL reform in Jordan has shown, the regime has employed some authoritarian—yet constitutional—tactics in order to achieve lasting reform, which contravenes and undermines the democratic process that it promotes. Therefore, recent PSL reforms raise larger questions about democratization in Jordan and potential strategies that the regime must adopt to accomplish change. By examining the multilayered bargaining that has occurred over family law reform in Jordan, this study sheds light on the political realities in the kingdom and how those realities affect the government’s ability to improve the status of women in the law. The history of family law reform in Jordan demonstrates that the law only expands women’s rights to the extent that such rights correspond with state interests at a given moment—and those interests pertain to strategies to uphold the legitimacy of the monarchy. Looking forward, it will be interesting to see how and when PSL amendments are finally approved and adopted, as well as what impact such reforms might have on social practice. With women at the center of debates over religious and cultural legitimacy, one can only hope that as Jordan is forced to respond to multiple competing interests regarding women’s rights, the regime will be able to eliminate all discrimination against women in its amended family law.

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