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Author(s): Nadia Sonneveld and Monika Lindbekk

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# A Revolution in Muslim Family Law? Egypt's Pre- and Post-Revolutionary Period (2011-2013) Compared

NADIA SONNEVELD and MONIKA LINDBEKK\*

**Abstract** *In the weeks following the Egyptian revolution of 2011, a group of divorced fathers rose to demand a “revolution in family law.” Portraying extant family law provisions as symbolic of the old regime and as deviating from the principles of shari‘a, their call was given prominent media attention and, in the ensuing transitional period (2011 to 2013), women’s rights and family law emerged as contentious areas in Egypt.*

*By comparing public debates on family law reform in the decade preceding the 2011 revolution to the two years following it, we argue that Egypt’s “revolution in family law” actually started a decade earlier, in 2000, when Egyptian women’s new right to divorce unilaterally rocked the country.<sup>1</sup> This set in motion other legal reforms that challenged fundamental aspects of male authority in the family and slowly led to the emergence of innovative conceptions of motherhood and fatherhood.*

## Introduction

We won’t give up and we won’t go back again,  
Long live Maṣr,  
And we won’t abandon any claim,  
Long live Maṣr,  
Our human right is all we want,  
Long live Maṣr,  
Social justice (‘adāla ‘ijtimā‘iyya) and bread to eat,  
Long live Maṣr,  
We will no longer be quiet and we will not hide what we think,  
Enough injustice and poverty, and enough that happened to us,  
Long live Maṣr and long live freedom,  
Revolution until victory,  
In ‘umm al-dunyā....

In the above song, penned during the 2011 revolution, two terms are employed to designate Egypt: Maṣr—the usual way for Egyptians to refer to Egypt—and ‘umm al-dunyā—the mother of the world. While ‘umm al-dunyā is used by Egyptians to refer to both Egypt and Cairo in a loving manner, the term simultaneously reveals a symbolic connection between motherhood and

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\* Nadia Sonneveld is a researcher at the Radboud University Nijmegen, the Netherlands, and scholar-in-residence at Al-Akhawayn University Ifrane, Morocco for the academic year 2014-2015. Monika Lindbekk is a Doctoral Research Fellow at the University of Oslo.

<sup>1</sup> In this article, we use the terms family law and personal status law interchangeably.

the nation, suggesting that women's identity is intrinsically linked with reproduction, nursing and upholding the family as the cornerstone of society.<sup>2</sup>

In post-revolutionary Egypt—the period between the resignation of former President Mubarak in February 2011 and the forced removal of his successor Muhammad Morsi in July 2013—Muslim family law was a contentious issue. This testified to the centrality of “the [nuclear] family” and the rights and duties of husbands, wives, and children within the social structure of Egypt. The importance of the family in shaping a new Egypt was also a major focus of the first part of Egypt's 2012 Constitution (replaced in January 2014), which dealt with the “Fundamental Principles” of the new state. One principle stipulated that “the family is the basis of society, founded on religion, morality, and patriotism, and the state and society are intent on ensuring the authentic character of the Egyptian family, its coherence and stability, and the protection of its traditions and moral values; as regulated by law.”<sup>3</sup>

Hence, in the post-revolutionary context men's and women's rights were debated not only with respect to the *waṭan* (homeland) but also with respect to the smaller circle of the family and the household.<sup>4</sup> For example, in the months following the revolution, groups of divorced fathers, among others, stood up and started challenging the existing family law provisions, most particularly those pertaining to women's unilateral divorce rights, child custody and visitation rights, and educational guardianship of children. They argued that these provisions were against the *shari'a*, would cause the breakdown of Egyptian family life, and were a Western invention introduced to the country by the wife of the ex-president, Suzanne Mubarak. They concluded that the family laws were “Suzanne Mubarak laws” and in need of a “revolution” in order to purge Egypt of any remnants of the authoritarian regime.<sup>5</sup> Their call could have remained an isolated incident attracting little media attention. After all, why would the Egyptian people be interested in changing the laws that regulate family life matters, possibly the only haven of stability in an otherwise chaotic transitional period? The opposite became true, however, as the divorced fathers gained the support of many different groups—from Muslim Brotherhood members to Salafists, judges, and even liberals.

In this article we take a longitudinal approach. By comparing public debates surrounding Muslim family law in the period preceding the 2011 revolution to those taking place between February 2011 and July 2013, we want to make clear that the protests by fathers' rights groups should be understood in the context of almost a century of Egyptian family law reform that culminated in a series of controversial reforms introduced in the 2000s. These reforms changed both the husband-wife and parent-child relationship considerably.

The article consists of three sections. In section one, we provide a short history of family law reform in Egypt with a special focus on men's and women's divorce rights as well as legal rules concerning child custody and guardianship. We will focus on the period from 1919—when the stage was set for the first family law reforms—until the first decade of the twenty-first century when a series of reforms was implemented. Analyzing these reforms and the controversy they

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<sup>2</sup> Beth Baron, *Egypt as a Woman: Nationalism, Gender, and Politics* (Cairo: The American University in Cairo Press, 2005), 7.

<sup>3</sup> Article 10 of December 2012 Constitution. Translation by the authors. This article was retained in the 2014 constitution.

<sup>4</sup> It is important to note that this prevalence of the family over the individual is not new; Egypt's 1971 Constitution, which was immediately abolished after the revolution, also stipulates state support for the family (Article 9) and the protection of motherhood and childhood (Article 10).

<sup>5</sup> Cf. Egyptian newspapers *Al-Ahrām*, 29 April 2011, *Al-Dustūr*, 29 April 2011, *Ahram Online*, 23 May 2011, *Al-Shurūq*, 9 May 2011.

caused will make clear that women's organizations and the alliances they established with high-ranking politicians and religious experts were often instrumental in bringing about family law reforms that diverged from existing notions of what it meant to be a man or a woman in the Egyptian context.<sup>6</sup>

Focusing on the period between the ouster of Mubarak in February 2011 and that of his successor Morsi in July 2013, we will continue in section two by describing how fathers' rights groups entered the public debate. Although small, these groups became quite vocal. We will also pay attention to the pleas of small groups of divorced mothers who fought against the divorced fathers and for the preservation of the extant family law provisions.

In section three, we will describe how the fathers' and mothers' rights groups were able to establish alliances with the political actors and institutions that rose to political prominence after the ouster of Mubarak in order to see their aims realized. We argue that the controversies about family law during the post-revolutionary period must be analyzed in a context where the partial disintegration and transformation of the old system paved the way for both old (al-Azhar, the Ministry of Justice, the High Constitutional Court) and new actors and institutions to assume the power to interpret Islamic *shari'a*. The most outstanding feature of the new post-revolutionary Egyptian public sphere was not only the inclusion of new actors but also the extent to which some of them, such as the divorced fathers' and divorced mothers' groups, had a *direct* and *personal* interest in changing or retaining the status quo. In order to achieve their goal, these groups established alliances with both established and new actors. Given the myriad of political formations established in this process, we warn against studying the transformation of the public sphere and the impact it has on extant family law through the use of oppositional categories. Both before and after the 2011 revolution, for example, it is hard to discern between the Islamist and the feminist.<sup>7</sup> Should we label as Islamists the divorced fathers who seek political support from the Muslim Brotherhood and the Salafists or should we label them as feminists for expressing a desire to divide childcare duties between mothers and fathers more evenly? And do the divorced mothers of Egypt, who claim that childcare is the exclusive duty of mothers and financial maintenance is the duty of fathers, represent a feminist voice? Can it be said that they fight for "women's rights" and the divorced fathers for "men's rights"? Because it is generally not easy to establish what "men's" and "women's rights" are, let alone establish in this particular context which groups defend "women's" or "men's rights", we have decided to simply speak in terms of the divorced fathers' and the divorced mothers' groups.

### **A Short History of Family Law Reform in Egypt: 1919-2008**

The year 1919 was remarkable in Egyptian history for two reasons: it marked the beginning of the Egyptian people's revolt against British domination and the participation of women in the large-scale demonstrations against the British. Marching separately from the men, it was the first

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<sup>6</sup> See Diane Singerman, "Rewriting Divorce in Egypt: Reclaiming Islam, Legal Activism, and Coalition Politics," in *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. Robert W. Hefner (Princeton, N.J.: Princeton University Press, 2005), 161–88; Mona Zulfikar, "The Islamic Marriage Contract in Egypt," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, ed. A. Quraishi and F.E. Vogel (Cambridge, Mass.: Harvard University Press, 2008), 231–74.

<sup>7</sup> For the pre-revolutionary situation, see Nadia Sonneveld, *Khul' Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life* (Cairo and New York: American University in Cairo Press and Oxford University Press, 2012), chapter 2.

time in Egyptian history that women took to the streets and made their presence so publicly visible.<sup>8</sup> In fact, in 1919 the liberation of the nation from British occupation was closely related to *tahrīr al-mar'a* – the liberation of women, which is vividly illustrated by the fact that the women demonstrators, mostly members from the middle and upper classes, fought not only for national freedom but also for personal freedom within the realm of the family. Subjugated to arranged marriages to husbands who could marry polygamously and divorce at will, these women had a direct and personal interest in changing existing traditions regulating family life, most notably those concerning polygamy, women's access to divorce, a minimum age for marriage, and choice of spouse.<sup>9</sup> Adopting the ideals of companionate marriage, both national reformers and the women demonstrators (some of whom later united in the Egyptian Feminist Union in 1923) believed that giving women more rights would strengthen the marital bond—the foundation stone of the emerging nation—and by extension prevent Egyptian society from falling under foreign domination again. Although this led to a series of reforms in the 1920s, women's rights activists felt the reforms reflected few of their demands and they soon directed their attention to issues beyond family law reform.<sup>10</sup>

In terms of marital rights and responsibilities, the reforms stressed a husband's duty to provide maintenance (*nafaqa*) to his wife and the wife's duty to pay obedience to her husband in return (Article 1 of Personal Status Law (hereafter PSL) no. 25 of 1920). When a husband was providing *nafaqa*, a wife had the legal obligation to ask her husband for permission to leave the house. But if the husband was not providing, due to illness or imprisonment, for example, a woman could ask the judge for a divorce and subsequently marry again.<sup>11</sup> In turn, new procedural restrictions made it more difficult for a man to divorce his wife/wives. The triple repudiation, for example, was no longer valid as a final divorce (Article 3 in PSL no. 25 of 1929). In terms of parental authority, the husband, as head of the household, was accorded the right and duty to guardianship of his children. This meant that he should supervise the children in financial affairs and matters such as the choice of school (*wilāyat al-māl* and *wilāya ta'līmiyya*). In these reforms, custody (*wilāyat al-ḥaḍāna*), meaning the day-to-day care of children, remained the right and duty of mothers (Article 20 of PSL no. 25 of 1929, explained in more detail below).

In this era, legal reformers believed that men who uttered the repudiation at whim were responsible for the high divorce rate. They hoped that the new legal measures would safeguard the foundation of the Egyptian family.<sup>12</sup> Statistics indeed show that at the beginning of the 1930s

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<sup>8</sup> Beth Baron, *Egypt as a Woman*, 113.

<sup>9</sup> Margot Badran, *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt* (Princeton: Princeton University Press, 1996), chapter 1.

<sup>10</sup> Badran, *Feminists, Islam, and Nation*, 125-6.

<sup>11</sup> These grounds are as follows: prolonged absence of the husband without legitimate cause for a period exceeding one year (Article 12 of Personal Status Law no. 25 of 1929); imprisonment of the husband for a period exceeding three years (Article 14 of Personal Status Law no. 25 of 1929); mental or grave and incurable sickness of the husband of which the wife had no knowledge at the time of contracting the marriage (Article 9 of Law no. 25 of 1929); a husband's failure to provide maintenance or a husband's harming of the wife (Article 6 of Personal Status Law no. 25 of 1929; amended by Personal Status Law no. 100 of 1985) (cf. Nathalie Bernard-Maugiron, "Quelques Développements Récents dans le Droit du Statut Personnel en Égypte," *Revue Internationale de Droit Comparé*, II (2004), 355–85, esp. 360.

<sup>12</sup> See Hanan Kholoussy, "The Nationalization of Marriage in Monarchical Egypt," in *Re-envisioning Egypt 1919-1952*, ed. Arthur Goldschmidt, Amy J. Johnson and Barak A. Salmoni (Cairo, the American University in Cairo Press, 2005), 317-50.

50 percent of all registered marriages in Cairo ended in divorce.<sup>13</sup> Interestingly, while women as upholders of the family were seen as the cornerstone of the new nation, their relationship to the nation was not articulated in the 1923 Constitution. Although they had actively participated in the revolutionary activities, Egypt's first constitution was silent on the role of women as members of the new nation and its political system.<sup>14</sup> It would take another thirty-three years before women's membership of the nation was finally proclaimed under Nasser (r. 1952-1970) in Article 61 of the 1956 Constitution. In general, the Nasser regime encouraged women to participate in public life through voting and wage work but no substantive amendments to the family laws were introduced.<sup>15</sup> As a result, women remained the dependents of men in the realm of the family despite an official commitment to gender equality.<sup>16</sup>

### *Personal Status Law under Sadat and Mubarak*

It was not until under Sadat (r. 1970-1981) that substantive family law was reformed again. The reforms issued under Sadat's leadership, as codified in PSL no. 44 of 1979, were very controversial, both in their content and in how they were promulgated. Their introduction coincided with the first and second UN Conferences on Women, held in Mexico (1975) and Copenhagen (1980) respectively. With Sadat's wife, Jihan, heading the Egyptian delegation in Copenhagen, it was thought by many that Jihan was behind the reforms and, consequently, the reforms became widely known as "Jihan's laws." Jihan's laws changed the personal status laws of 1920 and 1929 considerably, as the definition of the conjugal relationship was altered in various ways. For example, a woman's right to maintenance (*nafaqa*) from her husband was not affected if she went out to work without the consent of the husband (Article 2). One of the most controversial issues concerned a woman's right to petition for judicial divorce from a husband who married a second wife without her consent, a divorce which she would be granted automatically under the new law (Article 6). Also controversial was the right of women custody-holders to keep the marital home in case of a divorce (Article 4).

While Sadat tried to expand women's rights by introducing changes in the field of family law as well as by signing a number of international UN treaties on women, most notably the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) in 1981, he simultaneously had to respond to a global wave of Islamic revival which led various groups in Egyptian society to demand a complete implementation of Islamic *shari'a*. Sadat reacted by including a provision in the constitution decreeing that the principles of Islamic *shari'a* were *a* (1971) and *the* (1980) main source of legislation. He also altered women's citizenship rights considerably. Whereas Article 19 of the 1956 (Nasser) Constitution had stated that "The state makes it possible for women the accommodation between her work in society and her duties towards the family" [translation by authors], Article 11 of the 1971 (Sadat)

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<sup>13</sup> Philippe Fargues, "Terminating Marriage," in *The New Arab Family*, ed. Nicholas S. Hopkins (Cairo: American University in Cairo Press, 2003), 247-73, esp. 258.

<sup>14</sup> Mervat Hatem, "The Pitfalls of the Nationalist Discourses on Citizenship in Egypt," in *Gender and Citizenship in the Middle East*, ed. Suad Joseph (New York: Syracuse University Press, 2000), 33-57, esp. 38.

<sup>15</sup> In 1955, the Nasser government abolished the *shari'a* courts and transferred the jurisdiction over personal status law (hereafter, PSL) affairs to the civil courts (Law no. 462 of 1955).

<sup>16</sup> Laura Bier, "The Family is a Factory": Gender, Citizenship, and the Regulation of Reproduction in Postwar Egypt," *Feminist Studies* 36, 2 (2010), 404-432. See also, Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India* (Cambridge: Cambridge University Press, 2013); Sonneveld, *Khul' Divorce in Egypt*; Malika Zeghal, "Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952-94)," *International Journal of Middle East Studies* 31, 1 (1999), 371-99.

Constitution read “The state supports the accommodation between women’s duties towards the family and her work in society, and her equality with men in the political, social, cultural and economic arenas, *without violating the principles of Islamic shari‘a*” [translation and emphasis by authors]. By taking the *shari‘a* as a reference point for women’s role in society, gender equality only applied when it did not contradict the *shari‘a*.<sup>17</sup> This was confusing because the *shari‘a*, as reflected in Egypt’s personal status laws, claimed that a woman should be obedient to a husband who is providing *nafaqa* (maintenance) for her.<sup>18</sup> In practice, this meant that women had the right to study, were able to work outside the home legally, and could even occupy posts as ministers. Yet in order to leave the house, they still needed their husband’s permission.

In 1985, the High Constitutional Court (HCC) struck down Sadat’s PSL no. 44 from 1979 on procedural grounds. The 1980s were marked by an increase in women’s rights activism, and ahead of the 1985 UN conference on women in Nairobi, Sadat’s successor, Hosni Mubarak, was under considerable pressure to prevent a return to the legal situation prior to the 1979 law.<sup>19</sup> This resulted in the passage of the 1985 Personal Status Law (which was a watered-down version of the repealed 1979 PSL) and in the period after its passage<sup>20</sup> a group of women activists sought the cooperation of the Ministry of Justice, and particularly of a high-ranking official named Fathi Najib, in order to address the subordinate position of women in personal status law. In order to make the reforms conform to Islamic *shari‘a*, they also sought the approval of high-ranking religious scholars within al-Azhar. The activists, who called themselves “The Group of Seven,” first set out to reintroduce the old Islamic marriage contract, which had included the right to enter substantive stipulations. According to Mona Zulfiqar, lawyer and prominent member of The Group of Seven, when the campaign for the new marriage contract realized that it lacked popular support (ca. 1995), they decided to change their focus to the passage of a new procedural personal status law.<sup>21</sup> Five years later, on 26 January 2000, the Egyptian People’s Assembly passed a new procedural law on personal status called the Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters. Three days later, former President Hosni Mubarak promulgated the law in the Official Gazette as Law no. 1 of 2000.<sup>22</sup> The new law aimed to facilitate and speed up litigation in matters pertaining to personal status disputes such as divorce by compressing the 318 clauses of the old procedural law into seventy-nine. Interestingly, the new procedural law also contained a few substantive clauses, such as the legalization of divorces from *‘urfi* marriages (Article 17).<sup>23</sup> Both clauses provoked much

<sup>17</sup> Selma Botman, *Engendering Citizenship in Egypt* (New York: Columbia University Press, 1999), 79, and Hatem, “The Pitfalls of the Nationalist Discourses on Citizenship in Egypt,” 53-4.

<sup>18</sup> Articles 1 and 11 bis. 2 of PSL no. 100 of 1985.

<sup>19</sup> Iman Bibars, *Women’s Political Interest Groups in Egypt*. A thesis presented to the economics-political science department at the American University in Cairo, 1987, 150; Fawzi Najjar, “Egypt’s Laws of Personal Status”. *Arab studies quarterly*, 10. 3 (1988), 319-344, esp. 342.

<sup>20</sup> The main difference between the 1979 and the 1985 PSLs was the absence of the clause that restricted a man’s right to polygyny. The 1985 PSL still offered a woman the ability to divorce her husband if he took a second wife, but she needed to prove to the judge that polygyny had caused her harm. In contrast, the 1979 PSL simply declared polygyny injurious to the wife. Under the old PSL of 1929, the judge decided whether polygyny was harmful to the wife or not.

<sup>21</sup> Zulfiqar, “The Islamic Marriage Contract in Egypt,” 240.

<sup>22</sup> Cf. Nathalie Bernard-Maugiron, “Quelques Développements Récents dans le Droit du Statut Personnel en Égypte.”

<sup>23</sup> *‘Urfi* marriages are marriages that are not registered with the relevant state authorities. For a fuller discussion see Nadia Sonneveld, “Rethinking the Difference Between Formal and Informal Marriages in Egypt,” in *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. Maaike Voorhoeve (London and New York: I.B.

controversy, but the clause that met with the most resistance included a new interpretation of *khul'* (divorce procedure through which a wife pays the husband a sum of money in exchange for release from the marriage contract, Article 20). The fact that the law became popularly known as the "*khul'* law" testifies to this.

### The *Khul'* of 2000: Setting in Motion a Revolution in Family Law

If anything, the public debate on *khul'* witnessed a great number of participants who all used religious arguments to justify their position on the new divorce provision. The Group of Seven, leading figures within al-Azhar, and high-ranking figures within the Ministry of Justice did their best to convince the public that *khul'* was based on Islamic tradition and in line with the *Qur'ān* and the *sunna* of the Prophet. In particular, they referred to a *ḥadīth* in which the Prophet grants a woman a divorce without inquiring about the consent of her husband.<sup>24</sup> However, opponents ranging from the liberal *al-Wafd* newspaper to the Islamists' mouthpiece *al-Sha'b* fiercely opposed the article on the grounds that the four schools of Sunni jurisprudence all define *khul'* as a consensual divorce which requires the explicit approval of the husband. Some opponents also stated that *khul'* was a Western invention and part of a Zionist conspiracy, introduced to Egypt by Westernized women's rights groups.<sup>25</sup>

Opponents also castigated the late sheikh of al-Azhar, Tantawi (1928-2010). In fact, Sheikh Tantawi's reputation as a figurehead representing the views of the government was a recurring topic in the debates on *khul'*, especially after Tantawi did not hesitate to claim repeatedly in front of the People's Assembly that the majority of the members of the Academy for Islamic Research had expressed their approval of the new law as well of its conformity with Islam.<sup>26</sup> This prompted some members of the Academy to give anonymous interviews in the Islamist newspaper *al-Sha'b* asserting that this was not true. Tantawi, they said, was behaving like a *muwazzaf* (civil servant) and not as the sheikh of al-Azhar.<sup>27</sup>

In general, both liberal and conservative opponents claimed that *khul'* deviated from the principles of *shari'a* and would therefore destabilize the Egyptian family, and, by extension, Egyptian society. While in the early twentieth century "rash and irrational" husbands were held responsible for the high divorce rate, almost a century later women started to bear the brunt of the blame. In cartoons in liberal newspapers, for example, women were portrayed as having low sexual morals and as willing to ask for a divorce for frivolous reasons. The tolerance of such behavior, opponents argued, would lead to an increase in the divorce rate and cause children to grow up as vagabonds.<sup>28</sup> Advocates of the divorce reform were quick to point out that *khul'*

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Tauris, 2012), 77-102. See also Monika Lindbekk, "Enforcement of Personal Status Law by Egyptian Courts," in *Adjudicating Family Law in Muslim Courts*, ed. Elisa Guinchi (London: Routledge, 2013), 87-106.

<sup>24</sup> This is a reference to the so-called *Habiba ḥadīth*. The most common wording of this *ḥadīth* is presented by al-Bukhari, who reported: "The wife of Thabit b. Qays b. Shammas [*Habiba*] came to the Messenger, peace be upon him, and said: 'O Messenger of God, I do not hate Thabit neither because of his faith nor his nature, except that I fear unbelief.' The Messenger of God, peace be upon him, said: 'Will you give back his orchard?' She said 'Yes' and she gave it back to him and he [the Prophet] ordered him and so he [Thabit] separated her" (Abū 'Abd Allah al-Bukhārī, *Kitāb al-jāmi' al-saḥīh*. Vol. 3. edited by Ludolf M. Krehl (Leiden: Brill, 1868), 266.

<sup>25</sup> Sonneveld, *Khul' Divorce in Egypt*.

<sup>26</sup> Cf. *Al-'Ahālī*, 19 January 2000, 10; *Al-Sha'b*, 18 January 2000, 3.

<sup>27</sup> *Al-Sha'b*, 21 January 2000, 2.

<sup>28</sup> For more, see Sonneveld, *Khul' Divorce in Egypt*, chapter 2.



would put more balance into the marital relationship and that it would not affect the alimony rights of children.<sup>29</sup> Notwithstanding the public upheaval, in 2002 the HCC decided that the article on *khul'* was constitutional by referring to the Habiba *ḥadīth* mentioned above, among other things. Although it is difficult to establish to what extent the general public saw (and still sees) the magistrates of the HCC as authorities in matters pertaining to *shari'a* and family law,<sup>30</sup> it is significant that while the introduction of *khul'* in 2000 made headlines, the court's eventual ruling in 2002 on *khul'* was hardly contested in the press.<sup>31</sup>

### Children

In the early twentieth century, nationalist discourse had extolled the mother as the primary parental authority; the nationalist duty of the father was merely to “control the wife as educator within the family.”<sup>32</sup> In the field of family law, however, matters were different and bore a close resemblance to Hanafi jurisprudence: according to Article 20 in PSL no. 25 of 1929, a mother was accorded the right of custody of daughters and sons until they reached the age of nine and seven, respectively, at which point the father would assume *wilāyat al-tarbiya* and supervise the education of the children. Kholoussy indeed notes that judges on the *shari'a* courts in early twentieth-century Egypt consistently gave fathers the primary responsibility for raising children. Interestingly, she also notes that, under influence from nationalist discourse, judges in the early decades of the twentieth century began to extend the custody rights of divorced women. This development would gain momentum toward the end of the twentieth century and reach its apex in the early 2000s. In 1985, custody rights were amended by PSL no. 100, requiring boys to stay with their mothers until the age of ten and girls until the age of twelve. The judge was empowered to extend the custody of the boy until he reached fifteen and the girl until she married (Article 18).<sup>33</sup> Later, in 2000, a ministerial decree was issued declaring that the non-custody holder was entitled to see his or her children for a minimum period of three hours a week (Article 5 of Decree no. 1087 of 2000). While this amendment was intended to protect the rights

<sup>29</sup> See third paragraph of Art. 20 of PSL no. 1 of 2000.

<sup>30</sup> Lombardi argues that the HCC has managed to secure its role as a responsible and therefore legitimate tribunal for arbitrating the Islamic legitimacy of Egypt's laws. See Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden: Brill, 2006). Fadel believes that the reason behind this is that the HCC operates in the fashion of a common law court. That is to say, by giving reasoned and sometimes lengthy opinions justifying its decisions and explaining its understanding of the *shari'a*, the Court shows how the rule relates to that conception of the *shari'a*, even if the conclusions it reaches, may be controversial. See Mohammad Fadel, “Judicial Institutions, the Legitimacy of Islamic State Law and Democratic Transition in Egypt: Can a shift toward a Common Law Model of Adjudication Improve the Prospects of a Successful Democratic Transition?”, *International Journal of Constitutional Law* 11, 3 (2013), 646-665.

<sup>31</sup> Sonneveld, *Khul' Divorce in Egypt*, 54-55.

<sup>32</sup> Hanan Kholoussy, *For Better, for Worse: The Marriage Crisis that Made Modern Egypt* (Stanford: Stanford University Press, 2010), 102.

<sup>33</sup> This provision amended Art. 20 of PSL no. 25 of 1929, which had set the custody age for boys and girls at seven and nine respectively. Judges were authorized by the same article to extend the age of custody to nine for boys and eleven for girls if this was dictated by the best interest of the child. See also, 'Abd Allāh Mabruk al-Najjār, *Al-Taḥdīd Al-Fiqhī li-Sinn Ḥadāna Al-'Umm li-Tifliha: Dirāsa Muqārana Fī Al-Fiqh Al-'Islāmī* (Cairo: Dar Al-Nahda, 2003-2004), 30. For an overview of how the provision pertaining to custody was religiously sanctioned, see “Ḥadāna al-Atfāl,” National Council for Women, 9 August 2012, <http://www.ncwgypt.com/index.php/ar/docswomen/pslara/282-custogyara>.

of the non-custody holder, in practice this led to children seeing their fathers three hours per week only, and sometimes even less.<sup>34</sup>

Since it usually was, and is, the father who becomes the non-custody holder upon divorce, in practice this meant that many fathers were prevented from intensive involvement in the lives of their children. This became even more difficult, when 2005 legislation prescribed that, in the event of divorce, both boys and girls would stay with their mother until the age of fifteen (Art. 1 of Law no. 4 of 2005). After this age, the law provided the child with the right to choose whether to stay with the mother (without custody fees) or the father. The girl was allowed to decide to remain with the mother until she married and the boy until he reached “maturity of mind” (*sinn al-rushd*). Finally, in 2008 an amendment to the child law transferred educational guardianship from the father to the custody holder (Art. 54 of Law no. 126 of 2008), which, in most cases, was the mother. This potentially controversial reform, which was unique in the region,<sup>35</sup> was justified by referring to the interest (*maslaha*) of the child.<sup>36</sup>

Prior to these reforms, which began in 2000, it was still possible for an academic to accurately claim that “[The fact t]hat in almost all Islamic law, upon divorce, control of children eventually has reverted to the father and that the father’s family has had priority over the mother when the father is dead or not available is evidence of men’s property in their children.”<sup>37</sup> In twenty-first century Egypt, this was no longer the case. On a legal level, women could divorce at will while simultaneously keeping their children.<sup>38</sup> Meanwhile the father’s right to guardianship of the children had become increasingly limited by law. Formally, however, the husband remained the head of the family and thus kept the duty to provide maintenance for his family while his wife had a legal duty to remain obedient to him, on penalty of losing her right to *nafaqa* (maintenance).

### The 2011 Revolution: the Counter-Revolution of Men?

After the ouster of Hosni Mubarak, women gathered at Tahrir Square on 8 March 2011—this time to celebrate International Women’s Day. They were confronted with groups of men who harassed them by shouting that they had to go home because they belonged in the kitchen. Some women were even physically harassed. The event was not an isolated incident: since the ouster of Mubarak, calls for freedom, dignity, and social justice have been heard alongside demands to curtail women’s rights, especially in the field of family law.

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<sup>34</sup> See court records on file with Lindbekk.

<sup>35</sup> By way of comparison, the Moroccan Family Code of 2004 (*Mudawwana*), which is widely regarded as progressive, states that the father is the tutor of his children by law (Art. 236). The mother only becomes the tutor of her children in case of absence of the father or when the father is deprived of his capacity, is dead, absent or incapacitated (Art. 231).

<sup>36</sup> According to Egyptian judge and al-Azhar lecturer Ahmed Tawfik, the draft law was submitted to al-Azhar before it was sent to the Parliament for approval. Referring to the Islamic concept of *maslaha* (the interest of society), in 2008 the religious scholars of al-Azhar justified the change in educational guardianship by arguing that it was in the interest of the child (interview by Sonneveld with Ahmed Tawfik, 17 April 2013).

<sup>37</sup> Suad Joseph, *Gender and Citizenship in the Middle East*, ed. Suad Joseph (New York: Syracuse University Press, 2000), 21.

<sup>38</sup> They will, however, lose custody of their children when they remarry. In contrast, divorced mothers in Morocco can remarry without losing custody of children who are under the age of seven or when separation would inflict harm on the child (Art. 175 of the *Mudawanna* 2004).

The most fervent opposition has been in the hands of groups of divorced fathers. It is important to note that while some of these groups were already established before the 2011 revolution, the Egyptian revolution opened space for a new type of gender politics through which these small groups of divorced fathers suddenly gained prominence.<sup>39</sup> In the face of the extensive family law reforms of the 2000s, the divorced fathers' groups advocated a restoration of manhood, including new ideas on the meaning of fatherhood. Calling for a revolution in family law, the groups included "The Movement for Saving the Egyptian Family," "The Movement of the Revolution of Men," "Egypt First", and "The Network of Men Harmed by the Personal Status Laws." An important focus for the men's groups was the *khul'* law of 2000, which some argued had led to higher rates of divorce, broken kinship ties, and even religious extremism.<sup>40</sup> They also targeted the wave of PSL reforms, which followed in its wake. These groups may have been too small to merit the term "movement," but they compensated for their size by being rather vocal, having arranged demonstrations outside Egypt's first freely elected parliament and other high-profile places such as the cabinet, the ministry of justice, and al-Azhar.<sup>41</sup> The divorced fathers not only claimed that the "Suzanne Mubarak laws" were passed in an undemocratic way, but they also believed these laws contradicted *shari'a* as well as Egyptian culture (*thaqāfa*).<sup>42</sup> The former first lady was frequently described as an agent of the UN, as were Egyptian women's rights organizations. Accordingly, the laws were described as threatening the Egyptian family and social order with collapse through a breakdown of traditional cultural norms.<sup>43</sup> Occasionally, they were also portrayed as part of a Zionist conspiracy against the Egyptian family and therefore also "the Arab family."<sup>44</sup>

The sense of emasculation under the Mubarak regime appeared to be a politically resonant issue. Pratt and Abdalla have linked this emasculation to authoritarian neo-liberalism which strengthened existing social, economic and political structures while eroding work opportunities.<sup>45</sup> This made many men unable to fulfill their part of what Kandiyoti calls the "patriarchal bargain," that is to say their ability to provide *naafaqa*.<sup>46</sup> According to Abdalla (2014), many middle-class men voted for the Muslim Brotherhood in Egypt's first free parliamentary election in 2012 because they "felt emasculated" during the Mubarak regime, a sentiment which pervades Egyptian films and cartoons of that period.<sup>47</sup> "The Movement for Saving the Egyptian Family," for example, aimed to restore the figure of *al-rajul al-ḥaqīqī* (the real man) who had regained his strength at home, as religious law guaranteed him, and who could be "a father to children who have been legally seized from him by their mother, who took custody and left him just to write checks." In line with this, the "real man" was also "a husband

<sup>39</sup> This also applies to the mothers' rights group, which we will discuss in more detail below.

<sup>40</sup> Monika Lindbekk, "En Revolusjon i Egyptisk Familielov?", *Babylon - Nordisk Tidsskrift for Midtøstenstudier* 2 (2011), 22-38.

<sup>41</sup> See, for example, *Al-Shurūq*, 28 April 2011 (issue 817, page 3) and 17 May 2011 (issue 836, page 4).

<sup>42</sup> See, for example, *Al-Ahrām*, 29 April 2011, copy on file with Sonneveld, and 11 July 2011, copy on file with Sonneveld, *Al-Dustūr*, 28 April 2011, *Al-Shurūq*, 28 April 2011 (issue 817), 9 May 2011, 17 May 2011 (issue 836).

<sup>43</sup> Ibid.

<sup>44</sup> Flyer from "The Revolution of Men" (*thawrat al-rijāl*) shown to Lindbekk.

<sup>45</sup> Mustafa Abdalla, "Masculinity on Shifting Grounds: Emasculation and the Rise of the Islamist Political Scene in Post-Mubarak Egypt," in *Masculinities in Egypt and the Arab World: Historical, Literary, and Social Science Perspectives*, ed. Helen Rizzo (Cairo: American University in Cairo Press, 2014), 53-73. Nicola Pratt, "Women and the Egyptian Revolution," *Narratives of the Arab Spring*, conference convened at Cairo University, February 2012.

<sup>46</sup> Deniz Kandiyoti, "Contemporary Feminist Scholarship and Middle East Studies," in *Gendering the Middle East: Emerging Perspectives*, ed. Deniz Kandiyoti (London, New York: I.B. Tauris, 2002), 137.

<sup>47</sup> Sonneveld, *Khul' Divorce in Egypt*, Chapter 3.

who seeks a wife who does not intend to cause him the pain that other wives cause their husbands, and who will not divorce him illegally (i.e. against *shari'a*).<sup>48</sup> According to “The Network of Men Harmed by the Personal Status Laws,” men “who fought colonialism and drank the blood of Zionists in the Sinai are these days unable to have custody of their children for two days.” In order to rectify this situation, they called on the “men of Egypt [to] shout in the streets in order to see and raise their children as the law of God says.”<sup>49</sup> Here, redeeming masculine identity and privilege in the family were linked to the defense of the homeland.

One of the most clamorous groups refers to itself as “The Revolution of Men” (*thawrat al-rijāl*). The movement is led by a lawyer from the delta town of Tanta named Walid Zahran. Walid Zahran has strongly opposed the CEDAW and its principles of equality in family relations, which he viewed as an alien imposition threatening to destroy Egyptian family relations and the nation as a whole. He has argued that the convention promotes equality and freedom without limit (*musāwāh wa ḥurriyya dūna ḥudūd*) and poses a threat to traditional cultural norms. Meanwhile he has wished that Suzanne Mubarak would “burn in hell” for having tried to destroy the Egyptian family in return for foreign funding. It was important for Walid Zahran that his movement, which included around 3000 men by his count, should remain a grass roots organization, and resist both elite decadence and what he called “foreign influence.”<sup>50</sup>

Many of the arguments put forward by Walid Zahran and the other groups of divorced fathers hardly differed from those aired by the political actors and organizations opposing family law legislation in the decade preceding the revolution.<sup>51</sup> There was, however, a shift in the debate’s tone. This is evidenced by a comparison of the political cartoons that appeared in the newspapers of the 2000s to cartoons in opposition newspapers and street art after the revolution. Whereas the former generally articulated a message of sex and gender reversal – (men would become women and women would become men), their post-revolutionary counterparts frequently portrayed men as protectors in relation to passive and submissive women.<sup>52</sup> This difference shows that the 2011 revolution opened up space for those wishing to redeem men’s shattered pride and re-establish their authority in the family, a wish that was articulated by the widespread call to abolish the provision on *khul’*, a symbol of men’s submission to women.

It is important to note that although a reversal of the *khul’* law figured among the demands of the fathers’ groups, priority was given to amending the laws regulating parental responsibilities. Walid Zahran (from “The Revolution of Men”) and Samih Hasan (from “The Network of Men Harmed by the Personal Status Laws”) have argued that the nuclear family can continue to be strong in the event of divorce even if the parents have less contact. Both men have advocated a concept of joint care (*ri’āya mushtaraka*), the ideal whereby both parents take care of the children on the basis of mutual trust and consultation instead of delegating this task to the

<sup>48</sup> Document on file with Lindbekk.

<sup>49</sup> Ibid.

<sup>50</sup> Interview by Lindbekk with Walid Zahran, 26 April 2012.

<sup>51</sup> For an overview of the public debates surrounding the introduction of these controversial reforms, the *khul’* reform in particular, see Essam Fawzy, “Law No. 1 of 2000: A New Personal Status Law and a Limited Step on the Path to Reform,” in *Women’s Rights and Islamic Family Law: Perspectives on Reform*, ed. Lynn Welchman (London and New York: Zed Books, 2004), 58–86; Singerman, “Rewriting Divorce in Egypt,” 161–88; Sonneveld, *Khul’ Divorce in Egypt*, chapters 2 and 3; Huda Zakariyya, “Al- Khul’: Dirāsa fī ‘Ilm al- ‘Ijtīmā’ al-Qānūnī,” in *Al-Haṣād: ‘Āmayn ‘alā al-Khul’*, ed. Azza Sulayman and Azza Salah (Cairo: Center for Egyptian Women’s Legal Assistance, 2003), 45–81.

<sup>52</sup> Pervine Yehia El Refaei, “Being or Becoming: Egyptian Women in the Cartoons, Caricatures and Graffiti of the Revolution,” *The Eleventh International Symposium On Comparative Literature*, conference convened at The Department of English Language and Literature Faculty of Arts, Cairo University, 13–15 November 2012.

mother alone. While the men's movements blamed the current personal status laws for imposing Western values on Egyptian society, it is worth noting that their conception of joint care was influenced by the UN Convention on the Rights of the Child and the regulations concerning visitation in European countries.<sup>53</sup>

In the hierarchy of priorities held by the fathers' groups, the desire for joint care after divorce appeared to be their main concern. In the words of Samih Hasan: "I want to see my daughter, feed her and buy her clothes." Yet, according to Hasan, he was only allowed to see her in a public place for three hours per week and even this was frequently made difficult by the child's mother. Hasan also argued that the limited amount of time he could spend with his daughter prevented her from getting to know her grandparents on his side as well as the children from his new wife. Hence, in addition to rectifying injustice against men (by abolishing *khul'* and allowing joint care), "The Revolution of Men" and "The Network of Men Harmed by the Personal Status Laws" also sought to strengthen the bonds between the members of the nuclear family (through the concept of joint care) and the extended family by demanding the right of children to see their grandparents and other relatives on both sides of the family instead of merely those of the custody holder. Although it is certainly true that these groups denounced current family laws for importation of "Western values" and sought to strengthen male authority in the family through a masculine discourse, the movement did not merely seek the reinstatement of the traditional male family head. Instead, they advocated child-centered companionate marriage under mutual supervision and care from an early age by both the mother and the father. Advocates also believed that introducing joint care was easier than amending other provisions because it could be altered with a ministerial decree and did not require new legislation.

In comparing their views to the period preceding the revolution, it is clear that the same arguments prevailed to a great extent: the reforms were a Western invention that opposed the principles of *shari'a* and were intended to destroy the Egyptian family and Egyptian society. Both before and after the revolution, the issue of women's rights in marriage and the family provoked much controversy. Yet throughout the twentieth century reformers assigned upon mothers the duties of child-rearing and education,<sup>54</sup> while in the post-revolutionary period some discourses moved away from these conceptions of motherhood and fatherhood and instead seemed to promote the ideal of both husband and wife jointly taking care of their child(ren)'s education and upbringing.

This shift in discourse on the law is partly related to the sense of emasculation so characteristic of the Mubarak-era. As previously discussed, Egyptian personal status law dictates that it is the husband's responsibility to provide for his family. In return for this, a husband has the right to demand obedience from his wife, even to the extent that she must ask his permission to leave the house. Yet, with high levels of unemployment making it impossible for many men to fulfill their marital obligations, or even worse to marry in the first place, an abundance of males cannot take on their share of the patriarchal bargain. Furthermore, many women now work outside the house and contribute to the costs of marriage and setting up the matrimonial home.<sup>55</sup>

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<sup>53</sup> Interview by Lindbekk with Walid Zahran, 26 April 2012, and with Samih Hasan, 12 November 2012.

<sup>54</sup> Omnia Shakry, "Schooled Mothers and Structured Play: Child Rearing in Turn-of-the-Century Egypt," in *Remaking Women: Feminism and Modernity in the Middle East*, ed. Lila Abu-Lughod (The American University in Cairo Press, 1998), 126.

<sup>55</sup> See Mulki Al-Sharmani, "Love and Other Things: Discourses on Marriage, Relationships, and Family Law in Egypt," paper presented at the international conference *Islamic Family Law in Modern Europe and the Muslim World: Normative, Legal and Empirical Approaches Beyond the Women's Rights Issue*, Radboud University, 19-21 June 2013. See also, Sonneveld, *Khul' Divorce in Egypt*, chapter 4.

One may argue that with the deterioration of the husbands' role as sole breadwinner, the groups of divorced fathers looked for alternative ways to define their place in the family and their relationship to their wives and children. The next pertinent issue to gauge, however, is the reaction of the divorced mothers of Egypt to this challenge.

*Difficulties in Pointing Out the "Feminist" and "Hominist" Voice*

Divorced women have felt threatened by the demands of the vocal fathers' rights groups. The *'ummahāt ḥāḍanāt maṣr* ("Mothers: the Custody Holders of Egypt") in particular fought against the demands by fathers' groups to change the existing family law provisions, focusing on *khul'*, custody, and *ru'ya* (visitation). This group argued that the reforms as suggested by the father's groups would have a negative impact on both their welfare and their children's. They further contended that the laws governing custody and women's divorce rights were not imported Western ideas imposed on Egyptian society by Suzanne Mubarak and the women's NGOs under her wing, but were based on Islamic religion and in line with the principles of the *shari'a*.<sup>56</sup>

Although the emergence of the fathers' group is not surprising because there were few, if any, groups representing their demands, the founding of "Mothers: the Custody Holders of Egypt" is remarkable particularly because the group is headed by two men: Muhammad Jamal al-Din al-Lishi and Ibrahim Naddan. Apart from being fathers of divorced daughters,<sup>57</sup> another possible explanation for the establishment of this movement under the leadership of two men might be the fact that Egyptian women activists have frequently been labeled as agents of Western imperialism both before and after the revolution. As a consequence, women's groups were reluctant to enter the public debate in the period immediately following the revolution. This especially applied to those who had worked in uncomfortable alliance with Suzanne Mubarak's National Council for Women (NCW). This did not mean that there were no advocates for women's rights in the post-revolutionary era. Spurred by the deposition of Mubarak in February 2011, NGOs that aimed to address gender inequalities created a number of new coalitions. The Coalition of Egyptian Feminist Organizations (CEFO) was among the most significant. Independent from the NCW, CEFO drafted a proposal containing principles and provisions meant to ensure women's equal political and economic rights as citizens in the post-revolutionary constitution. In an attempt to gain democratic legitimacy for their demands, the CEFO consulted women nationwide through opinion polls and questionnaires.

Interestingly, the coalition's draft document did not touch on the issue of family law, although this issue was raised by many women whose opinion was sought. This perhaps reflected the reluctance with which women activists approached the issue of family law after the revolution. Moreover, the document did not mention the word "family" at all. In the document, the coalition attempted to move away from the identification of women primarily in terms of their reproductive and nurturing role within their families. In ways similar to the vision of the divorced fathers' groups, the coalition sought to safeguard childcare (*ri'āyat al-ṭifl*) as a joint responsibility between the parents and proposed to deal with the issue of childhood and women's citizenship rights under separate paragraphs.<sup>58</sup> This division was also present in a statement made by one of the most prominent ex-members of the NCW—lawyer Mona Zulfīqar. In the run-up to the national referendum on the draft constitution in December 2012, Zulfīqar issued a statement

<sup>56</sup> See, for example, their declaration of 28 April 2012:

<http://www.masrawy.com/ketabat/ArticlesDetails.aspx?AID=165295> [accessed on 5 September 2014].

<sup>57</sup> Interview by Lindbekk with member of *'ummahāt ḥāḍanāt maṣr*, February 2013.

<sup>58</sup> Document on file with Lindbekk.

that included suggestions for amending the draft constitution. This included the suggestion that the state should offer both mothers (*al-'ummahāt*) and fathers (*al-'ābā'*) the opportunity to reconcile their duties towards the family and their work.<sup>59</sup> By seeking to carve out a space for women independent of their historical role as mothers of the nation, both of these documents represented an important transition away from the nationalist discourse of the beginning of the twentieth century which identified domesticity and women's role as caretakers as the basis for women's citizenship.<sup>60</sup>

While CEFO was reluctant to touch on issues of family law and attempted to avoid defining the rights of women in the context of the family, the top priority for the "Mothers: the Custody Holders of Egypt" was the family and its sole aim was to defend the existing family law provisions against the claims of men's groups. In opposition to the NCW and the CEFO, their Facebook declarations did not portray childcare as a joint responsibility between parents, but rather as a duty of mothers, if only because Islamic *shari'a* gave mothers the right to have custody of their children.<sup>61</sup> Their statements also displayed their belief that it is the father's duty to provide *nafaqa* for the children. Specifically, they argued that it was hypocritical for fathers to demand an increase in the weekly visitation from three to forty-eight hours when they simultaneously petitioned the court to reduce the amount of *nafaqa* they are supposed to pay for their children. Moreover, they argued that when fathers failed to provide, mothers had a *shari'a*-based right to divorce (through *khul'*).<sup>62</sup> In general, the "Mothers: the Custody Holders of Egypt" emphasized the dual roles of mothers as nurturers and fathers as providers.

It is interesting to note that "Mothers: the Custody Holders of Egypt" shared this view with a new prominent player in the public sphere: the female section of the Muslim Brotherhood which was in fact Egypt's largest organization of women activists. It is beyond the scope of this investigation to explore their post-revolutionary emergence in great detail but it is important to note that while the female section of the Muslim Brotherhood also emphasized mothers' duty as caretakers and fathers' as providers, there were significant differences between their positions and those of the divorced mothers. For instance, female MPs from the Muslim Brotherhood's Freedom and Justice Party used the People's Assembly to severely criticize the extant legal provisions on custody and visitation.

Hence, in Egypt's transitional public debate it was not easy either to give a definition of men's and women's rights or to highlight who represented the "feminist" or "hominist" voice. While the divorced fathers and the CEFO seemingly shared the same notions on motherhood and fatherhood, they differed on the roles of a husband and a wife within marriage. And while the divorced mothers and the female members of the MB differed in their understanding of what it means to be a father and a mother, they had similar views on the roles of a husband and a wife within marriage. In this pluriform field of participants, the smaller groups sought the support of the 'bigger players' with considerable political and religious influence.

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<sup>59</sup> Mona Zulfikar, "Comments on the Draft of the Egyptian Constitution," December 2012. Zulfikar's statement was distributed in different social media circles. Copy on file with Sonneveld.

<sup>60</sup> Hatem, "The Pitfalls of the Nationalist Discourses on Citizenship in Egypt," 42-44.

<sup>61</sup> See, for example, their declaration on *al-Wafd's* website (17 April 2011): [http://www.alwafd.org/index.php?option=com\\_content&view=article&id=35475](http://www.alwafd.org/index.php?option=com_content&view=article&id=35475).

<sup>62</sup> Ibid. See also *Al-Shurūq*, 28 April 2011 (issue 817, page 3).

## High Politics and the Exigencies of the Transition Period

### *The Divorced Fathers' and Mothers' Courtship with the Muslim Brotherhood, the Salafists, and al-Azhar*

For most of 2011, the armed forces were the official rulers of the country. Towards the end of 2011, however, the political situation started to change considerably when Egyptians elected a new parliament in two rounds (November 2011 and January 2012), along with a new president (elections in May and June 2012). Between January 2012, when Egypt's new parliament first convened, and June 2012, when it was abruptly dissolved, five different law proposals dealing with minimum age of marriage, judicial divorce through *khul'*, child custody, and visitation rights after divorce were submitted by individual MPs to the Committee of Proposals and Complaints.<sup>63</sup> However, since the Islamist-dominated parliament was dissolved by Egypt's High Constitutional Court in June 2012, none of these law proposals moved beyond this committee. The proposals nevertheless provide an opportunity to analyze important discursive battles between agents and institutions with different and sometimes conflicting interests.

During Mubarak's presidency the vast majority of law proposals were initiated by the executive which was dominated by the former president's National Democratic Party.<sup>64</sup> This was different in the post-revolutionary period when a great number of civil society organizations approached members of parliament in a bid to see their aims realized. Throughout the transitional period, the fathers' and mothers' groups staged demonstrations in front of such places as the cabinet, the Ministry of Justice, and al-Azhar. Meanwhile, following the parliamentary elections in which the Brotherhood and the Salafist political party *al-Nūr* won the majority of seats, the divorced fathers decided to court these central parties along with several other political actors.

This, however, did not turn these groups of divorced fathers into Islamists. Voorhoeve has pointed out that in post-revolutionary Tunisia and the Arab World in general, one should be careful to not analyze family law debates along a divide of Islamists versus secularists/feminists because there is a tension between these categories and actual social complexities.<sup>65</sup> The same applies in Egypt.<sup>66</sup> That the founders of both "The Revolution of Men" and the "The Network of Men Harmed by the Personal Status Laws" did not support the Muslim Brotherhood's Freedom and Justice Party (although they expressed some sympathy with them and the Salafist political party *al-Nūr*) testifies to this. Both Walid Zahrin and Samih Hasan expressed deep disappointment with Egypt's first freely elected parliament and especially with the performance of the Muslim Brotherhood who they believed only served "their own narrow interests." They nevertheless made a conscious choice to court any political party that could help them turn their proposals into law. For example, following a large-scale demonstration outside the People's Assembly on 23 April 2012, "The Revolution of Men" submitted a leaflet to several members of parliament containing their demands, with the notable exception of the *khul'* law. The fact that

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<sup>63</sup> The Committee of Proposals and Complaints is the first step in the legislative process. It is responsible for reviewing law proposals from parliament members and determines whether they should be forwarded to the Constitutional and Legislative Affairs for further consideration.

<sup>64</sup> Maye Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule* (London, Colorado: Lynne Rienner Press, 2004), 29.

<sup>65</sup> Maaïke Voorhoeve, "Women's Rights in Tunisia and the Democratic Renegotiation of an Authoritarian Legacy," *New Middle Eastern Studies*, 5 (2015), <<http://www.brimmes.ac.uk/nmes/archives/1411>>.

<sup>66</sup> See also Abdalla, *Masculinity on Shifting Grounds*.



this demand was dropped suggests that an amendment to this law was viewed as less feasible, particularly after the Committee of Proposals and Complaints had rejected the proposal of an independent MP – Muhammad al-Umda—to abolish *khul'* on 8 April 2012.<sup>67</sup>

On 28 April 2012, just a few days after the divorced fathers' demonstration in front of the People's Assembly, the Proposals and Complaints Committee received a bill submitted by Hamida Sulayman, an MP from the Salafist *al-Nūr* party. Interestingly, the proposal included many of the demands made by "The Revolution of Men", most notably the provisions on custody, visitation, and educational guardianship. Sulayman proposed to lower the age of custody to seven and nine years for boys and girls respectively and added the stipulation of mutual supervision (*ri'āya mushtaraka*) with the non-custody holder having the right to see the child two days per week. The latter, he argued, was necessary for the father to play a larger role in upbringing (*tanshī'*) and education (*tarbiya*) as well as for the child to get to know the family on the side of the non-custody holder. In addition to this, he proposed to return educational guardianship to the father in accordance with *shari'a*.<sup>68</sup>

The "Mothers: the Custody Holders of Egypt" and CEFO fiercely rejected this proposed law. Announcing their full adherence to the *shari'a*, the divorced mothers argued that al-Azhar's Academy for Islamic Research had repeatedly approved the existing personal status laws (in 2007, 2009 and 2011) to counter the argument of the opposition that these laws were anti-*shari'a* because they had been issued during Mubarak's presidency.<sup>69</sup> Meanwhile, the members of the CEFO signed a document addressed to both houses of parliament expressing their opposition to Hamida Sulayman's law proposal. They did not reject the proposed law on religious grounds, but rather argued that the propositions were against the best interest of the child and contradicted the principles of both the revolution and human rights treaties on the rights of women and children ratified by Egypt.

Fighting for the preservation of extant PSL provisions, "Mothers: the Custody Holders of Egypt" frequently sought support for their position by referring to the opinions of the religious scholars of al-Azhar, much in the same way the women's NGOs had done in the period preceding the January 25 revolution. The scholars of al-Azhar had provided the latter's reform proposals with religious legitimacy, yet they steered a more independent course in the transitional period. For instance, on 22 May, shortly before the dissolution of the parliament in June 2012, al-Azhar's Academy for Islamic Research arranged an emergency meeting during which it rejected the demand of the previously mentioned independent MP—al-Umda—to cancel the *khul'* law. The Academy argued that *khul'* is a right guaranteed to women by Islamic *shari'a* in the same way that repudiation is permissible for men. It also upheld a previous opinion endorsing the rules on the age of custody for boys and girls. However, on the point of

<sup>67</sup> In a memorandum accompanying the bill, al-Umda said *khul'* had been granted to women at the behest of the NCW, which is widely regarded as the vehicle for former first lady Suzanne Mubarak to promote her favorite causes. Al-Umda said *khul'* was an offense to Islamic law and an attempt to Westernize Egypt (see, for example, *Al-Shurūq*, 17 March 2012, <http://shorouknews.com/news/view.aspx?cdate=17032012&id=b98eeade-39d4-4db7-b010-62dbbcaa80f4> [accessed on 5 July 2013]). However, his proposal was swiftly refused by the parliament's Committee of Proposals and Complaints (see, for example, *Al-Masry Al-Yawm*, 8 April 2012, <http://www.almazryalyoum.com/node/759121> [accessed on 5 July 2013]; *al-Yawm Al-Sāba'*, 8 April 2012, <http://www3.youm7.com/News.asp?NewsID=647868&SecID=65&IssueID=168> [accessed on 5 July 2013]; *Egypt Independent*, 8 April 2012, <http://www.egyptindependent.com/news/parliament-rejects-proposal-cancel-womens-right-divorce> [accessed on 5 July 2013]).

<sup>68</sup> Law proposal and explanatory memorandum on file with Lindbekk.

<sup>69</sup> 28 April 2012, <http://www.masrawy.com/ketabat/articlesdetails.aspx?AID=165295> [accessed on 5 September 2014].

educational guardianship, the Academy deviated from the law by claiming that educational guardianship is a right that belongs to the father instead of the custody holder as is claimed in the law, although it added that it was not an absolute right since the participation of the mother is mandatory in deciding on the type of education and school.<sup>70</sup>

*Defining the Principles of Islamic Shari'a in a Changing Constitutional Order: The Case of Educational Guardianship*

At the time of the Academy's declaration in June 2012,<sup>71</sup> the provision on educational guardianship had been under legal review for a few years. In 2009, a divorced father had lodged a claim with the Supreme Administrative Court wherein he argued that the article on educational guardianship, which transferred this right from the father to the custody holder, was violating the principles of the *shari'a* (Art. 54 of Law no. 126 of 2008).<sup>72</sup> The Supreme Administrative Court issued a temporary ruling in January 2010 stating that this right would be returned to the father until the HCC issued a ruling on the article's compliance with the constitution.<sup>73</sup>

Since its inception in 1979, the HCC has often played a decisive role in controversial matters, such as the *khul'* article of the Personal Status Law no. 1 of 2000, which it declared constitutional in December 2002. Although the al-Azhar law of 1961 states that the Academy for Islamic Research is the supreme religious establishment in Egypt (Law 103/1961), the HCC established itself as the ultimately authority concerned with the interpretation of the Islamic tradition in 1993.<sup>74</sup> The 2012 constitution challenged the position of the court as the ultimate authority concerned with the interpretation of Islam by clearly stating in Article 4 that al-Azhar, which was confirmed as an independent institution, should be consulted in all matters pertaining to Islamic law.<sup>75</sup> Similar to the magistrates of the HCC, however, the scholars of al-Azhar were limited in their interpretation of Islamic law by the introduction of a new constitutional provision. While open to considerable interpretation, Article 219 assigned an important place to the teachings of the four Sunni schools of law.<sup>76</sup> This represented a departure from the 1993

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<sup>70</sup> Cf. *Al-Yawm Al-Sāba'*, 22 May 2012,

[http://www3.youm7.com/News.asp?NewsID=685054#.T7u2e54\\_7WQ.facebook](http://www3.youm7.com/News.asp?NewsID=685054#.T7u2e54_7WQ.facebook) [accessed on 15 September 2014].

<sup>71</sup> In June 2011, the Academy had already declared that educational guardianship belongs to the father. See, for example, *Bawāba Al-Ahrām*, 28 June 2011, <http://gate.ahram.org.eg/News/87850.aspx> [accessed on 23 July 2013]; *Al-Masry Al-Yawm*, <http://www.almazryalyoum.com/node/472506> [accessed on 19 December 2014]. They merely reiterated this position in June 2012.

<sup>72</sup> Cf. *Al-Masry Al-Yawm*, 1 March 2010, <http://today.almazryalyoum.com/article2.aspx?ArticleID=238926> [accessed on 19 December 2014]; *Al-Ahrām*, 9 August 2009, <http://www.ahram.org.eg/Archive/2009/8/9/Inve1.htm> [accessed on 19 December 2014].

<sup>73</sup> This was confirmed by Egyptian judge and al-Azhar lecturer Ahmed Tawfiq (interview by Sonneveld, 17 April 2013).

<sup>74</sup> For a fuller discussion, see: Arabi, Oussama, "Beyond Power: Neo-Shafi'ism or the Islamic Constructive Metaphor in Egypt's High Constitutional Court Policy," *Arab Law Quarterly* 4, (2002), 323–54. Clark Lombardi and Nathan J. Brown, "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law," *American University International Law Review* 21, 3 (2006): 379–435, 418.

<sup>75</sup> In February 2013, senior scholars of al-Azhar elected Egypt's Grand Mufti, seemingly without interference of the executive authority.

<sup>76</sup> The constitutional provision stated that: "the principles of Islamic *shari'a* include its general evidences, foundational and jurisprudential rules, and sources accepted in the Sunni schools of Islamic jurisprudence and the larger community" (Article 219). The more independent status of al-Azhar was discussed in different Egyptian media. See, for example, *al-Akhbār*, 19 March 2011, <http://www.masress.com/elakhbar/32169> [accessed on 28 November 2014]; *al-Ahrām al-Raqāmi*, 31 January 2012,

ruling where the HCC's judges had identified the principles of Islamic *shari'a* as those rulings whose origin and interpretations are definite (not open to interpretation), with no binding reference to the orthodox interpretations of the four Sunni schools of law. It also contrasted with the approach adopted by the religious authorities of al-Azhar who had officially endorsed the family law reforms passed in the 2000s, also by surpassing the teachings of the four schools of law.

With the case on educational guardianship being the only "Suzanne Mubarak" provision which reached as far as the HCC after the revolution, it could have provided a few answers about how these issues would be decided in the post-revolutionary legal realm. It would have been interesting to see whether the magistrates of the HCC would have consulted the scholars of al-Azhar on this matter and whether the final court ruling would take into account the teachings of the four schools of Islamic jurisprudence. This ruling would also have shed more light on the future of this provision in particular and the "Suzanne Mubarak" provisions in general. However, when the Morsi government was removed, the case on educational guardianship was still pending<sup>77</sup> and in the transitional constitutional declaration issued by Interim President Adli Mansur in July 2013, Article 4 on the new position of al-Azhar was removed while Article 219 was retained as part of Article 1 concerning the state's identity, language, and religion.<sup>78</sup> In the period between the ouster of Hosni Mubarak and Muhammad Morsi, the revolutionary family law reforms of the 2000s remained unchanged. Which interpretations of *shari'a* will be made to apply in Egyptian family law in the future is likely to depend on the dynamics of Egyptian politics where old and new actors claim the interpretive authority of Islam.

## Conclusion

In this article we have compared public debates and controversies surrounding family law in pre- and post-revolutionary Egypt. We began by focusing attention on the period from 1919—when the stage was first set for family law reforms—up until the first decade of the twenty-first century, when a series of legislative reforms were promulgated that significantly changed the rights of men and women in the family. The so-called law of *khul'* granted women the right to divorce without a husband's consent. In the case of divorce, women were given primary responsibility for the daily care of their children to such an extent that educational guardianship—formerly a right and duty of the father—was transferred to the mother in cases of divorce. Meanwhile, men remained responsible for providing financially for their wives and children.

This article highlighted some important similarities between the two periods. Both before and after the 2011 revolution, the protection of the Egyptian family was of primary concern,

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<http://digital.ahram.org.eg/articles.aspx?Serial=785263&eid=746> [accessed on 28 November 2014]. See also, Morsy Ahmed and Nathan Brown, "Egypt's al-Azhar Steps Forward," *Carnegie Endowment for International Peace*, 7 November 2013.

<sup>77</sup> At the time of writing, the case on educational guardianship is still pending (communication by Sonneveld with Egyptian judge and al-Azhar lecturer Ahmed Tawfik (23 December 2014)).

<sup>78</sup> Article 1 of the transitional constitutional declaration from July 2013 combines Articles 1, 2 and 219 of the suspended 2012 Constitution and reads as follows: "The Arab Republic of Egypt is a state which system is democratic, based on the principle of citizenship; Islam is the religion of the state; Arabic is its official language; and the principles of Islamic *shari'a* - which include its general evidences, its foundational and jurisprudential rules, and sources accepted in the Sunni schools of Islamic jurisprudence and the larger community- are the main source of legislation" [translation by authors].

among proponents as well as opponents of the reforms. Whereas in the early twentieth century husbands were castigated for causing the high divorce rate, at the start of the new millennium, women bore the brunt of the blame. It was argued that women used their newly acquired divorce rights frivolously and caused a dramatic increase in the divorce rate. Religious authority also played an important role as family law remains anchored in Islamic *shari'a*, albeit in a codified form.

We also found some significant differences. While the family law reforms of the 2000s were passed in a top-down manner, we argued that the Egyptian revolution of 25 January 2011 opened space in the public debate for a new group of political actors that had a personal interest in seeking to strengthen the rights of fathers and mothers in the case of divorce. Seeking to amend and preserve the extant PSL provisions, these groups of divorced fathers and mothers, although small, became vocal. We argued that their demands should be seen in the light of renegotiation of gender relations. Where classical Islamic law and modern day personal status codes dictate that a husband should be the provider and a wife obedient in return, economic hardships in Egypt make it increasingly difficult for many husbands to live up to this ideal. This has forced many husbands to redefine their position within the family by promoting new ideas concerning parenthood where childcare was recast as a shared responsibility. This represented a major departure from the discourse of twentieth century reformers who assigned upon mothers the duty of taking care of child(ren)'s upbringing and education.

In an attempt to realize their goals, the groups of divorced fathers and mothers forged alliances with prominent political actors and institutions that competed over authority to define Islamic *shari'a* after the ouster of Mubarak. While this constituted a new form of activism, debates over family law should also be read in conjunction with changes in the constitutional order. In the period between the promulgation of the December 2012 constitution and the constitution of July 2013, the future of the family law reforms issued during the 2000s looked uncertain, especially after the controversial Article 219 was added to the 2012 constitution. Although ambiguous, Article 219 assigned an important place to the teachings of the four Sunni schools of law, whereas the so-called Suzanne Mubarak laws all deviated from the teachings of the four schools of law. It was therefore not unlikely that the judges of the High Constitutional Court would have been forced to change the provisions on *khul'*, age of custody, and educational guardianship should a lawsuit concerning their conformity to Islamic law have been raised. In the 2014 constitution, Article 219 was replaced by a preamble, which reaffirmed the principles of *shari'a* as interpreted by the High Constitutional Court in the 1990s. Hence, the HCC appeared to have consolidated its authority as the institution responsible for arbitrating the Islamic legitimacy of Egypt's laws. At the same time, the position of al-Azhar remains strong in the January 2014 constitution. While the constitution no longer makes it obligatory to consult al-Azhar on matters dealing with Islamic *shari'a*, it does state that al-Azhar is the main reference for Islamic affairs (Article 7). At the time of writing, it remains to be seen how the judges on this court will discharge their responsibilities outlined in the constitutional preamble, and whether they will seek the assistance of al-Azhar. In November 2014, the religious scholars of al-Azhar issued a *fatwa* in which they stated that fathers can only see their children with the consent of the mother. The maternal custody age, so they argued, should remain as it is.<sup>79</sup> This indicates (the divorced fathers' grass-root activism notwithstanding) that for the time being the dynamics of family law reform and especially the top-down manner in which *shari'a* is defined have not been disrupted in post-revolutionary Egypt.

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<sup>79</sup> See *Al-Ahrām*, 5 November 2014, <http://www.ahram.org.eg/NewsQ/336098.aspx> [accessed on 4 December 2014].