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Woman In The Body Politic: Gendered Citizenship and Islamic Jurisprudence

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Introduction

Scholars contest ‘citizenship’ as a concept on a variety of dimensions – from its conceptual meaning¹ to political implementation.² In his influential classical formulation, T. H. Marshall defines citizenship as “a status bestowed on those who are full members of a community,”³ equal in their rights and duties. My analytical perspective draws on the Marshallian conceptualization, taking citizenship narrowly to mean legal membership of a *political*⁴ community (the nation-state). In theory, citizenship ascribes the same rights and duties of membership (however defined) to all individuals. Of course, in practice, a variety of factors – including socio-economic status,⁵ ethnicity,⁶ and more – mediate the exercise of citizenship rights. Indeed, as a system of ascribing membership and defining the terms of membership in a community, this type of inclusion and exclusion “represent the two sides of citizenship’s coin.”⁷

Drawing on this theoretical foundation, I argue that citizenship law can be a highly gendered enterprise, ascribing different rights and responsibilities and constructing women as second-class citizens. Though by no means unique to the region, discriminatory citizenship laws in the Middle East and North Africa region (MENA) are often grounded in the rhetoric of Islamic law. Therefore, this paper considers both the processes which gender citizenship law as well as how Islamic jurisprudence legitimizes (and may be used to reform) such laws.

¹ Bernd Reiter, “Conceptualizing Citizenship: Disjunctive, Dual, Divided, Entangled, or What?” in *The Dialectics of Citizenship: Exploring Privilege, Exclusion, and Racialization* (East Lansing: Michigan State University Press, 2013), pp. 23-42.

² David Owen, “Citizenship and Human Rights,” in *The Oxford Handbook of Citizenship*, eds. Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (Oxford: Oxford University Press, 2017), pp. 247-264.

³ T. H. Marshall, *Citizenship and Social Class (And Other Essays)* (Cambridge: Cambridge University Press, 1950), pp. 28-29.

⁴ William Safran, “Citizenship and Nationality in Democratic Systems: Approaches to Defining and Acquiring Membership in the Political Community,” *International Political Science Review* 18(3) (July 1997), pp. 313-315.

⁵ Jane F. Collier, Bill Maurer, and Liliana Suarez-Navaz, “Sanctioned Identities: Legal Constructions of Modern Personhood,” *Identities: Global Studies in Culture and Power* 2(1-2) (1995), pp. 2-4.

⁶ Darius Daukšas, “Defining Belonging: Citizenship as a Form of Ethnic Inclusion and Exclusion: The Case from Post-Soviet Lithuania,” *Acta Historica Universitatis Klaipedensis: Studia Anthropologica* 13(2) (2006), pp. 73-78.

⁷ Ruth Lister, *Citizenship: Feminist Perspectives* (New York: New York University Press, 1997), p. 42.

The first two sections of the paper explore the two primary processes which gender citizenship law: one, privileging patriarchy (as male right/rule⁸ through family law), and two, privileging patrilineality (through legal processes of transmitting citizenship through paternal lineage⁹). A qualitative analysis of Morocco and Jordan allows us to parse out these gendered dynamics of citizenship. While both countries share key similarities as Sunni-majority states with similar systems of governance,¹⁰ political strategies,¹¹ and women's movements,¹² the two diverge in their citizenship law and approach to women's citizenship. The last section of the paper considers the use of Islamic law in both Morocco and Jordan regarding citizenship law, demonstrating that Islamic jurisprudence has been used both to legitimize discriminatory citizenship law as well as to argue for reform.

Privileging Patriarchy

The first process of gendering citizenship ties women's citizenship to their status within patriarchal kinship systems. In the context of this article, I define patriarchal kinship systems as male right/rule over women in the family.¹³ Conventional conceptions of citizenship grant *individuals* citizenship rights which bring them into a political relationship with the state. Formally, this vision of citizenship confers the same rights and duties upon all individuals. Indeed, contemporary notions of legal citizenship explicitly seek to collapse social sub-divisions into a broader political entity that grants all citizens equal status.¹⁴ However, citizenship law may

⁸ Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002), pp. 11-13.

⁹ Suad Joseph, "Descent of the Nation: Kinship and Citizenship in Lebanon," *Citizenship Studies* 3(3) (1999), pp. 295-297.

¹⁰ Michael Herb, *All in the Family: Absolutism, Revolution, and Democracy in Middle Eastern Monarchies* (Albany, NY: SUNY Press, 1999), pp. 221-233 and pp. 255-267.

¹¹ Sean Yom, "Jordan and Morocco: The Palace Gambit," *Journal of Democracy* 28(2) (April 2017), pp. 132-141.

¹² Amy Y. Evrard, *The Moroccan Women's Rights Movement* (Syracuse, NY: Syracuse University Press, 2014), pp. 20-37; Ibtesam Al-Atiyat, *The Women's Movement in Jordan: Activism, Discourses and Strategies* (Berlin: Friedrich Ebert Foundation, 2004), pp. 91-145.

¹³ Barlas, *Believing Women in Islam*, pp. 11-13.

¹⁴ David McCrone and Richard Kiely, "Nationalism and Citizenship," *Sociology* 34(1) (2000), pp. 19-25;

also institutionalize such social sub-divisions (including gender) instead of seeking to transcend them, and it is precisely this dynamic that I trace in this section.

While most constitutions in the world generally take individuals to be the basic unit of society in constructing formally equal citizens, a majority of countries in the MENA region, including Morocco and Jordan, legally define the *family* as the basic unit of society.¹⁵ Such a framework of citizenship embeds what it means to be a citizen within a wider kinship structure.¹⁶ The majority of MENA countries institutionalize such patriarchal kinship practices to varying degrees, leaving women's legal citizenship and citizenship rights heavily dependent on family law. In particular, family law may be used to gender citizenship through: one, legal notions of marriage as a sexual contract mandating men's control over women (women's obedience to men);¹⁷ two, male guardianship laws, and three, *talaq* divorce laws which allow men to

Trevor Purvis and Alan Hunt, "Identity versus Citizenship: Transformations in the Discourses and Practices of Citizenship," *Social and Legal Studies* 8(4) (1999), pp. 457-459.

¹⁵ Libyan Constitution (2011), Article 5, accessed at: https://www.constituteproject.org/constitution/Libya_2011.pdf; Egyptian Constitution (2014), Article 10, accessed at: https://www.constituteproject.org/constitution/Egypt_2014.pdf; Moroccan Constitution (2011), Article 32, accessed at:

https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en;

Tunisian Constitution (2014), Article 7, accessed at: https://www.constituteproject.org/constitution/Tunisia_2014.pdf;

Sudanese Constitution (2005), Article 15, accessed at: https://www.constituteproject.org/constitution/Sudan_2005.pdf;

Bahraini Constitution (2002), Article 5, accessed at: https://www.constituteproject.org/constitution/Bahrain_2002.pdf;

Iranian Constitution (1979), Section: "Woman in the Constitution," accessed at:

http://www.servat.unibe.ch/icl/ir00000_.html;

Iraqi Constitution (2005), Article 29, accessed at: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en;

Jordanian Constitution (1952), Article 6, accessed at: https://www.constituteproject.org/constitution/Jordan_2011.pdf;

Kuwaiti Constitution (1962), Article 9, accessed at:

https://www.constituteproject.org/constitution/Kuwait_1992.pdf?lang=en;

Omani Constitution (1996), Article 12, accessed at:

https://www.constituteproject.org/constitution/Oman_2011.pdf?lang=en;

Qatari Constitution (2004), Article 21, accessed at:

<http://portal.www.gov.qa/wps/wcm/connect/5a5512804665e3afa54fb5fd2b4ab27a/Constitution+of+Qatar+EN.pdf?MOD=AJPERES>;

Saudi Arabian Basic Law (1992), Article 9, accessed at: <http://saudinf.com/main/c541.htm>;

Syrian Constitution (2012), Article 20, accessed at: <http://www.wipo.int/wipolex/en/details.jsp?id=16572>;

Turkish Constitution (1982), Article 41, accessed at: https://global.tbmm.gov.tr/docs/constitution_en.pdf;

Constitution of the United Arab Emirates (1971), Article 15, accessed at:

https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf;

Yemeni Constitution (1991), Article 26, accessed at: <http://www.refworld.org/pdfid/3fc4c1e94.pdf>.

¹⁶ Rania Maktabi, "Female Citizenship in the Middle East: Comparing Family Law Reform in Morocco, Egypt, Syria, and Lebanon," *Middle East Law and Governance* 5(3) (2013), pp. 281-284.

¹⁷ Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (London: OneWorld Publications, 2006), pp. 5-6.

unilaterally end marriages.¹⁸ These laws institutionalize male right/rule into family law. The link between family law and citizenship law makes such discriminatory practices an explicit and significant part of women's citizenship and their terms of membership in the political community. In short, "women are brought into the nation-state as appendages of husbands and fathers."¹⁹

A comparison between Morocco and Jordan demonstrates how family law systems may create discriminatory understandings of female citizenship and citizenship rights. Family law in colonial Morocco was modelled mainly on the secular French framework. But, after independence in 1956, the Personal Status Code (*Moudawana*) institutionalized patriarchal "religiously and tribally inspired law."²⁰ Subsequently, a long process of debating family law reform culminated in 2004 in a series of wide-ranging changes to the *Moudawana* addressing the key issues identified above: women's rights in marriage, male guardianship, and unilateral divorce (*talaq*). Men and women are now positioned as joint partners and heads-of-household within the marriage tie, and women are no longer legally mandated to be "obedient" to their husbands.²¹ The role of a guardian is optional, and women may enter marriages of their own volition.²² Unilateral divorce (*talaq*) falls under the strict oversight of civil judges. Not only are *talaq* practices restricted, men and women can also jointly seek divorce, and most significantly, women may initiate divorce proceedings.²³

¹⁸ Ibid., 25-29.

¹⁹ Suad Joseph, "Gender and Citizenship in Middle Eastern States," *Middle East Report*, Vol. 26 (Spring 1996). Accessed at: <http://www.merip.org/mer/mer198/gender-citizenship-middle-eastern-states>.

²⁰ Katja Zvan Elliot, "Reforming the Moroccan Personal Status Code: A Revolution for Whom?" *Mediterranean Politics* 14(2) (July 2009), p. 213.

²¹ Paul Scott Prettitore, "Family Law Reform, Gender Equality, and Underage Marriage: A View from Morocco and Jordan," *The Review of Faith and International Affairs* 13(3) (2015), pp. 32-33.

²² Articles 24-25, Sherifyan Dahir (Royal Edict) No. 1.04.22 (February 3, 2004) to implement Law No. 70.03 as the Family Code. Translated by the Global Human Rights Education and Training Centre at: <http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana/#24>.

²³ Ibid., Articles 94-114.

In Jordan, the British mandate (est. 1921) continued the family law system established under the Ottoman Law of Family Rights (1917), which provided for separate *shari'ah* courts to adjudicate family law. After independence in 1946, this parallel legal system was further entrenched (indeed, the post-independence law was clearly modelled on the 1917 Ottoman law).²⁴ In contrast to Morocco's reform process, however, Jordanian family law continues to position men as legal heads-of-household, obligating women to be "obedient" to their husbands.²⁵ Male guardianship laws persist – as the Personal Status Code states: "the *wali* [guardian] of a ward is the father" (article 223) and "the *wali* in marriage is according to the order of al-asaba [male blood relatives]" (article 14).²⁶ Unilateral repudiation divorce practices also continue, and though recent reforms have allowed women to initiate divorce as well, the laws are still restrictive²⁷ and crucially, not overseen by civil courts.²⁸

This brief analysis demonstrates the contrasting approaches to family law in Morocco and Jordan today. Since both countries explicitly connect family law and citizenship law, it is apparent that the degree and way in which they situate women as part of patriarchal kin structures influences women's citizenship and citizenship rights. Moroccan law positions women more as autonomous individual citizens, while Jordanian law embeds women's citizenship within patriarchal kinship practices to a much broader extent. It is important to note that many scholars have discussed the enforcement gaps that persist in Morocco,²⁹ particularly since

²⁴ Joseph Massad, *Colonial Effects: The Making of National Identity in Jordan* (New York: Columbia University Press, 2001), pp. 81-83.

²⁵ Prettitore, "Family Law Reform, Gender Equality, and Underage Marriage," pp. 32-33.

²⁶ Afaf Jabiri, *Gendered Politics and Law in Jordan: Guardianship over Women* (New York: Palgrave Macmillan, 2016), p. 15.

²⁷ Prettitore, "Family Law Reform, Gender Equality, and Underage Marriage," p. 33.

²⁸ Bianca C. Isaias and Fred Jennings, "Overview of the Hashemite Kingdom of Jordan Legal System and Research," *GlobalLex*. Accessed at: <http://www.nyulawglobal.org/globalex/Jordan.html>.

²⁹ Elliot, "Reforming the Moroccan Personal Status Code, pp. 220-223;

Paul Prettitore, "Ten Years after Morocco's Family Code Reforms: Are Gender Gaps Closing?" *MENA Knowledge and Learning Quick Notes Series No. 121* (Washington, DC: World Bank Group, 2014), accessed at:

reforms are fairly recent. However, the primary focus of this paper lies in the *narrow legal formulations* of citizenship. While there is a gap between such formalistic granting of citizenship and the meaningful exercise of citizenship rights, I focus on the “explicit constitutional recognition of women’s claims to equal citizenship” (or lack thereof), which is an essential stepping stone to any substantive exercise of citizenship rights.³⁰ Keeping in mind this focus, Moroccan family law reform, though not as wide-ranging and effective as one would hope, does “[rebalance] rights in favour of the individual over the collective,”³¹ thus significantly equalizing women’s formal citizenship with men’s in a way that Jordanian law does not.

Privileging Patrilineality

The second process that genders citizenship involves institutionalizing citizenship as descent through the father’s lineage – patrilineality or paternal descent.³²

Laws on right-of-blood descent (*jus sanguinis*) play a critical role in transmitting membership in any political community from one generation to the next.³³ However, such descent laws can be highly gendered, ascribing men and women different rights for transmitting their citizenship through right-of-blood. Since the “ties of blood descent are broader than merely parentage, for they suggest a broader...people to whom one belongs in a fictive relationship,”³⁴ descent laws that exclude women from transmitting their citizenship by blood delineate women in the body politic as second-class citizens compared to the rest of the “broader people” to which

<http://documents.worldbank.org/curated/en/477971468278715431/Ten-years-after-Moroccos-family-code-reforms-are-gender-gaps-closing>;

Silvia Gagliardi, “Violence against Women: The Stark Reality behind Morocco’s Human Rights Progress,” *The Journal of North African Studies* (August 2017), pp. 1-22.

³⁰ Lister, *Citizenship: Feminist Perspectives*, p. 5.

³¹ Francesco Cavatorta and Emanuela Dalmasso, “Liberal Outcomes through Undemocratic Means: The Reform of the Code De Statut Personnel in Morocco,” *The Journal of Modern African Studies* 47(4) (December 2009), p. 489.

³² Suad, “Descent of the Nation,” pp. 295-297.

³³ Myron Weiner, “Security, Stability, and International Migration,” *International Security* 17(3) (Winter, 1992-1993), pp. 110-111.

³⁴ *Ibid.*, 110.

they belong on a supposedly equal basis. A comparison of laws governing right-of-blood citizenship in Morocco and Jordan helps illuminate this legal differentiation between men and women which privileges patrilineal descent.

Under the colonial French and Spanish administrations, legal citizenship in Morocco primarily sought to differentiate settler colonials from “natives,” making national origin a significant part of citizenship law in the colonial era.³⁵ After independence in 1956, however, the new citizenship code introduced and institutionalized paternal right-of-blood descent. This notion of citizenship was “inspired by the principle of family national unity on a paternal basis,” which both denied women citizenship rights and the automatically ascribed a man’s citizenship to his wife and children.³⁶ However, in recent years, Morocco has moved to equalize its previously discriminatory citizenship laws. Since 2007, women (including those married to non-Moroccan spouses) are able to transmit their Moroccan citizenship to their children.³⁷ As of 2018, the government is working on legislation allowing Moroccan women to pass on their citizenship to their foreign spouses as well.³⁸ The Women’s Refugee Commission finds that even with the lack of conclusive empirical data from Morocco pre and post-reform due to the relative recency of these changes, qualitative reports indicate “highly positive” effects on family lives as well as reduced vulnerability to statelessness for children of Moroccan women married to foreign spouses.³⁹

³⁵ Delphine Perrin, “Country Report: Morocco,” *EUDO (European Democracy Observatory) Citizenship Observatory Country reports* (October, 2011), pp. 4-5.

³⁶ *Ibid.*, p. 7.

³⁷ Women’s Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013, p. 9. Accessed at:

https://www.womensrefugeecommission.org/images/zdocs/Our_Motherland,_Our_Country_final_for_web.pdf

³⁸ North Africa Post, “Moroccan Women will soon Pass Nationality to Foreign Spouses,” *North Africa Post*, March 18th, 2018. Accessed at: <http://northafricapost.com/22747-moroccan-women-will-soon-pass-nationality-foreign-spouses.html>.

³⁹ Women’s Refugee Commission, *Our Motherland, Our Country*, p. 9.

In Transjordan, the British mandate established a nationality law explicitly modelled on British domestic law, which institutionalized descent through paternal blood in the 1928 Jordanian Nationality Law. Post-independence (1946), the 1954 Nationality Law retained this notion of paternal descent.⁴⁰ Unlike Morocco, in Jordan, women still cannot pass on Jordanian citizenship to their children (except in situations where the father is unknown or stateless) or non-Jordanian spouses.⁴¹ In terms of demographic impact, approximately 89,000 Jordanian women are married to non-citizens, leaving 360,000 children stateless⁴² – a trend that will be severely compounded in the next few years considering Jordan is currently the seventh-largest refugee-hosting country in the world with a growing refugee population.⁴³

It is apparent how the idea that citizenship flows through *paternal* blood institutionalizes a discriminatory view of women's citizenship rights in Jordan – women are legally constructed not as equal citizens, but rather as actors deeply embedded within a patrilineal social structure. In contrast, the Moroccan view of right-of-blood citizenship clearly demonstrates an “individualization of rights”⁴⁴ which conceives of men and women as equal and autonomous citizens.

Islamic Jurisprudence: The Language of Religious Authenticity

Though with diverse colonial and post-colonial origins, politico-legal systems that gender citizenship are primarily *grounded in and legitimized through* Islamic law in the contemporary era. This section briefly explores how Islamic jurisprudence, both in the domestic and

⁴⁰ Massad, *Colonial Effects*, pp. 35-38.

⁴¹ Article 3, *Law No. 6 of 1954 on Jordanian Nationality (last amended 1987)*. Translation accessed at: <http://www.refworld.org/docid/3ae6b4ea13.html>.

⁴² Farah Najjar, “Is Jordan Likely to Change ‘Sexist’ Nationality Law?” *Al Jazeera*, 25th October, 2017. Accessed at: <https://www.aljazeera.com/news/2017/10/jordan-change-sexist-nationality-law-171025061456316.html>.

⁴³ UN High Commissioner for Refugees. “Global Trends: Forced Displacement in 2016,” p. 15.

⁴⁴ Cavatorta and Dalmaso, “Liberal Outcomes through Undemocratic Means,” p. 491.

international politics, is used to underpin family and descent laws that gender citizenship (discussed in detail above), as well as its reform potential.

In the marriage tie, conservative jurists argue that when husbands pay dower to their wives, they are paying for a “type of [sexual] control.”⁴⁵ Indeed, in Verse 2:236 of the Qur’an, the idea that men have not sinned if they “divorce women [they] have not touched”⁴⁶ suggests that dower is constructed as a form of payment for sexual control – if such sexual control is not exercised within the marriage tie, men may divorce women without blame. It is this conception of marriage as contract that jurists have further argued gives the husband the unilateral right to dissolve the marriage.⁴⁷ Unilateral repudiation (*talaq*) laws institutionalize the basic idea that “divorce is a man’s prerogative, while women may only obtain divorce for cause.”⁴⁸ This fundamental conceptualization of marriage where “the husband acquire[s] a limited [control] over his wife at the time of contract through payment of a dower and [can] unilaterally relinquish it whenever he [chooses]”⁴⁹ has guided marriage and divorce laws in several Muslim-majority countries.

Furthermore, verse 4:34 of the Qur’an dictates that “men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.”⁵⁰ This verse informs laws in Muslim-majority countries which mandate men’s guardianship over women and women’s obedience to men within the framework of family law.⁵¹ Finally, verse 33:5 holds that one ought to “call [children] by [the names of] their fathers; it is

⁴⁵ Ali, *Sexual Ethics and Islam*, p. 5.

⁴⁶ Sahih International Translation, “Verse 2:236.” Accessed at: <https://quran.com/2/236>.

⁴⁷ Ali, *Sexual Ethics and Islam*, p. 5.

⁴⁸ *Ibid.*, 34.

⁴⁹ *Ibid.*, 36.

⁵⁰ Sahih International Translation, “Verse 4:34.” Accessed at: <https://quran.com/4/34>.

⁵¹ Ali, *Sexual Ethics and Islam*, pp. 117-121.

more just in the sight of Allah.”⁵² In citizenship law, some have extrapolated this verse to mean that citizenship from one generation to another ought to pass through paternal blood (that is, through the “names of...fathers”). Together, these prominent verses on marriage, divorce, guardianship, and descent constitute the core of conservative Islamic jurisprudence which gives rise to gendered citizenship laws. Comparing Morocco and Jordan once again allows us to see how the rhetoric of Islamic law is deployed, as well as the potential for reform within the Islamic jurisprudential framework.

To begin with, on the domestic level, certain aspects and understandings of Islamic law are widely used in lawmaking contexts. The Jordanian political establishment presents itself as governing by Islamic law, with the ruling Hashemite family drawing legitimacy from its status as descendants of the Prophet Muhammad.⁵³ Family law falls under the exclusive jurisdiction of *shari’ah* courts,⁵⁴ and any reform in the Personal Status Code must emerge from the Office of the Chief Justice of the *Shari’ah* Courts based on Islamic jurisprudence (*fiqh*).⁵⁵ For example, during the controversial reform process to grant Jordanian women the right to divorce in 2003, Judge Wasif al-Bakri (a then-member of the *Shari’ah* Court of Appeals), argued that “Islamic reference for any change in personal status law was essential because the Constitution states that *shari’ah* courts are responsible for implementing *shari’ah* law and Jordanian society will accept only Islamic law.”⁵⁶ More recently, the former Chief Justice of the Jordanian *shari’ah* courts, Dr.

⁵² Sahih International Translation, “Verse 33:5.” Accessed at: <https://quran.com/33/5?translations=20>.

⁵³ Lamis el Muhtaseb, Nathan J. Brown, and Abdul-Wahab Kayyali, “Arguing About Family Law in Jordan: Disconnected Spheres?” *International Journal of Middle East Studies* 48(4) (2016), p. 724.

⁵⁴ Isaias and Jennings, “Overview of the Hashemite Kingdom of Jordan Legal System and Research,” *GlobaLex*.

⁵⁵ Prettitore, “Family Law Reform, Gender Equality, and Underage Marriage,” p. 33.

⁵⁶ Muhtaseb, Brown, and Kayyali, “Arguing About Family Law in Jordan,” p. 729.

Ahmad Hleil, emphasized that any legal developments in Jordan must draw from “different schools of *shari’ah*...consistent with the principles of Islam in letter and spirit.”⁵⁷

Jordan has also used the rhetoric of Islamic law on the international level. Particularly, in 1980, before signing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – the principal international legal instrument decreeing equal citizenship laws for men and women⁵⁸ – the government opted out of provisions mandating family and citizenship law reform.⁵⁹ Conservative groups and speakers used religious justifications to invalidate CEDAW’s “controversial” articles, such as those on citizenship law and equality in the marriage tie.⁶⁰ For instance, in a memorandum from the Ministry of Foreign Affairs discussing Jordan’s formal reservations regarding CEDAW, Sheikh Khayyat argues that “if this means that the children should follow the nationality of their mother...this is rejected by Islam. Almighty God says: ‘Call them by the names of their fathers: that is [more just] in the sight of God’ (Sura 33, Verse 5).”⁶¹

The Jordanian case shows how the language of religious authenticity may work to constrain women’s citizenship rights. In comparison, Morocco’s legal trajectory allows us to trace the *reform potential* of Islamic jurisprudence. In Morocco, many criticized early women’s movements that sought family law reform in the early 1990s through the rhetoric of Islamic law. In 1992, Muhammad al-Habib al-Tujkani, an expert on Islamic jurisprudence, issued a *fatwa* arguing that the women’s movement was “conspiring against Islam to eliminate it, to remove

⁵⁷ Prettitore, “Family Law Reform, Gender Equality, and Underage Marriage,” p. 33.

⁵⁸ Article 9, *UN Convention on the Elimination of all Forms of Discrimination against Women*, Copenhagen, 17th July 1980. Accessed at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>.

⁵⁹ Jordan – Reservations on CEDAW, *Declarations, Reservations, and Objections to CEDAW*, accessed at: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

⁶⁰ Muhtaseb, Brown, and Kayyali, “Arguing About Family Law in Jordan,” p. 730.

⁶¹ Abla Amawi, “Gender and Citizenship in Jordan,” in *Gender and Citizenship in the Middle East*, ed. Suad Joseph (Syracuse, NY: Syracuse University Press, 2000), p. 163.

what is left of Islamic law in Muslim world, and to achieve a complete westernization of the world.”⁶² The Ministry of Religious Endowments and Islamic Affairs also condemned the movement, going so far as to circulate a counter-petition against family law reform.⁶³ It was with the King’s explicit intervention in 1993 (mainly due to self-regarding political concerns⁶⁴) that the gradual process of family law reform took off.

After 1993, the women’s movement sought to realign the narrative of Islamic law. Advocacy groups argued against distortions of Islamic sources⁶⁵ and emphasized the compatibility of Islam with a human rights agenda.⁶⁶ Activists took up, for example, verse 4:34, - dictating that “men are in charge of women by [right of] ...what they spend [for maintenance]”⁶⁷ – which informs obedience and guardianship laws. They argued that this refers narrowly to men’s financial support to women,⁶⁸ and that the socio-economic realities of the modern family unit demanded rethinking the legal implications of this verse.⁶⁹ This allowed Moroccan advocacy groups to push for reconceptualizing the marriage tie as one between equals, eventually leading to legal reforms positioning men and women as equal heads-of-household, and further progress in guardianship, obedience, and divorce law.

Such “reformed reading of Islamic legal sources”⁷⁰ fostered a broad consensus in Moroccan domestic constituencies that allowed for progress in family and descent law. In the

⁶² Elliot, “Reforming the Moroccan Personal Status Code,” pp. 215-216.

⁶³ Ibid., 216.

⁶⁴ The campaign for family law reform in the early 1990s incited heated debate in both secular and Islamist camps. The politicization of the issue led King Hassan II to intervene in the process, since the survival of the royal family’s authoritarian rule depended (and continues to depend) on limiting any sort of political debate and opposition in the public forum (Elliot, p. 216).

⁶⁵ Ibid., 217-218.

⁶⁶ Cassandra Balchin, “Family Law in Contemporary Muslim Contexts: Triggers and Strategies for Change,” in *Wanted: Equality and Justice in the Muslim Family*, ed. Zainah Anwar (Kuala Lumpur: Musawah, 2009), pp. 222-223.

⁶⁷ Sahih International Translation, “Verse 4:34.” Accessed at: <https://quran.com/4/34>.

⁶⁸ Ali, *Sexual Ethics and Islam*, pp. 118-119.

⁶⁹ Balchin, “Family Law in Contemporary Muslim Contexts,” p. 223.

⁷⁰ Elliot, “Reforming the Moroccan Personal Status Code,” p. 218.

international arena, Morocco signed CEDAW with formal reservations on the issue of family and citizenship laws (like Jordan) in 1993.⁷¹ However, the domestic reform process discussed above allowed the government to withdraw these reservations from its CEDAW commitments by 2011, acceding to the full convention.⁷²

The earlier discourse around legal reform in Morocco illustrates the use and misuse of Islamic law by conservative camps. Today, however, Morocco's family law is a more egalitarian piece of legislation grounded explicitly in Islamic jurisprudence, demonstrating the tremendous potential of reformist jurisprudence. Indeed, the Preamble to the 2004 Personal Status Code elaborates on how the family law reform agenda is grounded in Islamic law, stating that "its provisions [were] drafted...in conformity with Islam's tolerant rules and exemplary purposes while [using] enlightened open *ijtihad* (juridical reasoning). This code further stipulates that *human and citizenship rights are accorded to all Moroccans, women and men equally, in respect of the holy divine religious references*"⁷³ (emphasis added).

In sum, this section illustrates the role of Islamic jurisprudence in the processes of gendered citizenship; on both the domestic and international level, Islamic law may be used to legitimize discriminatory citizenship law. However, Morocco's reform process in particular, highlights the reform potential within Islamic jurisprudence when advocacy groups engage substantively with Islamic sources to build broad-based consensus around a gender justice agenda.

Concluding Remarks

⁷¹ Morocco – Reservations on CEDAW, *Declarations, Reservations, and Objections to CEDAW*, accessed at: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

⁷² UNICEF, *Morocco: MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa*, 2011, pp. 1. Accessed at: <https://www.unicef.org/gender/files/Morocco-Gender-Equality-Profile-2011.pdf>.

⁷³ Preamble, Sherifyan Dahir (Royal Edict) No. 1.04.22 (February 3, 2004) to implement Law No. 70.03 as the Family Code. Translated by the Global Human Rights Education and Training Centre at: <http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana/#preamble>.

Citizenship in theory ascribes the same rights and duties of membership upon constituents of a political community. However, in practice, a variety of factors, including gender, mediate citizenship and citizenship rights.

Firstly, in a framework which embeds citizenship law within a wider patriarchal kinship structure by defining family as the basic unit of society, citizenship is mediated by family law (particularly those regarding marriage rights, male guardianship, and divorce). This makes discriminatory family law practices an explicit part of women's citizenship and their terms of membership in the political community. A comparative analysis of Morocco and Jordan demonstrates that Moroccan law positions women more as autonomous citizens, while Jordanian law embeds women's citizenship within patriarchal kinship practices to a much wider extent. Laws on right-of-blood descent (*jus sanguinis*) may also delineate women as second-class citizens. In the Jordanian context, the idea that citizenship flows through paternal blood has institutionalized a discriminatory view of women's citizenship rights, while the Moroccan view of right-of-blood citizenship clearly conceives of men and women as equal autonomous citizens.

Discriminatory laws governing family and right-of-blood citizenship derive their legitimacy from the rhetoric of Islamic law both in domestic and international politics. The debates around family law reform, as well as CEDAW in both Morocco and Jordan, involve competing interpretations of Islamic law. I have tried to highlight the processes of gendered citizenship as well as the language of religious authenticity used to underpin it. Morocco's reform process in particular, demonstrates the reform potential within the framework of Islamic law. Though tempered by critical enforcement gaps and lack of further legal progress in gender

justice reform in the country,⁷⁴ the Moroccan case is cause for cautious optimism in trying to reform discriminatory legal practices in the MENA region and beyond.⁷⁵

⁷⁴ Leila Hanafi and Sarah Alaoui, "Beyond the Law: Protecting Morocco's Women," *Al Jazeera*, 15th February, 2014. Accessed at: <https://www.aljazeera.com/indepth/opinion/2014/02/beyond-law-protecting-morocco--2014212104721165904.html>;

Elliot, "Reforming the Moroccan Personal Status Code," pp. 220-223;

Prettitore, "Ten Years after Morocco's Family Code Reforms," pp. 1-4.

Gagliardi, "Violence against Women," pp. 1-22.

⁷⁵ Rothna Begum, "The Middle East's Women Are Championing Their Own Change," *Human Rights Watch*, March 7th, 2018. Accessed at: <https://www.hrw.org/news/2018/03/07/middle-east-women-are-championing-their-own-change>.

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