REVIEW OF WOMEN'S STUDIES

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INTRODUCTION

In her keynote address to the Institute of Women's Studies 2012 conference, Professor Saba Mahmoud (University of California, Berkeley), took the audience on a far-ranging intellectual journey with the aim of re-thinking "the nexus between family law, gender and sectarian conflict." Beginning with a detailed examination of recent incidents of Coptic-Muslim conflict in Egypt, sparked by interreligious marriage and claims of the abduction and conversion of Coptic women, Mahmoud then analyzed how "the gendered and sexualized dimensions of interreligious conflict… are best understood as a product of the unique paradoxes produced by the simultaneous privatization of sexuality and religion under the modern post- colonial state." Placing religion-based family law as a component of the modern national project, rather than an archaic remnant of patriarchy, Mahmoud showed that "getting right women's rights" – the title of the 2012 conference – required grappling with complex issues, including "the secular", which she termed religion's "Siamese twin."

An excellent example of addressing the complexity of "getting right women's rights" is Professor Hoda Elsadda's important intervention on women's rights activism in post-January 25 Egypt which she has kindly allowed the Review to re-publish. She points to the backlash against women's rights

and in particular against Mubarak-era reforms of family law which are termed by opponents "Suzanne's laws," after the former and much despised First Lady. "Combatting the First Lady syndrome," Elsadda argues, means re-claiming the long history of independent women's activism.

The titles and programs of the Institute of Women's Studies last two annual conferences (2011 and 2012) speaking tellingly of scholars and activists seeking to understand the complicated trajectory of law and gender justice in Palestine (and elsewhere) in a Palestine under colonial control, in an imperial globe, and in a rapidly shifting region. The 2011 conference, entitled "Re-thinking Gender and Governance in an Age of Empire," opened with two keynotes that provided two productive and stimulating, but quite different, paradigms, one creatively deploying contemporary political theory and the other developmental and rights-based discourses. Rema Hammami, a faculty member at the Institute, gave a compelling portrait of the "politics of life and death" in Palestine and argued for its global significance. In this issue of the Review, we feature a brief intervention by Hammami, based on her presentation, that asks "Governance or Governmentality?" and compellingly argues for the latter as she reflects on the Palestinian Authority. We hope "Interventions" will be a regular feature of the Review and invite contributions.

Aruna Rao, in her 2011 keynote address on "Gender and Governance, Claiming Rights in Post-Colonial Contexts," shares Hammami's concern that discourses and practices of "governance" need to be unpacked (and are certainly not "gender-neutral") and colonial legacies and post-colonial realities taken into account. Nonethless, she takes gender and governance as a starting point to argue for an integrated approach to institutional change, providing working models from her long experience in gender and development. Rao and another keynote speaker, Kalyani Menon, brought a welcome lens on gender scholarship and activism from India and Southeast Asia to Palestine, and further exchanges and discussions are very much on the agenda. A slightly shortened version of Menon's dissection of the Indian economic project – "Shining India" – and her examination of an accompanying rise in violence against women, throws light on the consequences of a key neoliberal project in today's globalized economies.

In the 2012 conference, Professor Nadera Shalhoub-Kevorkian examined another form of violence as sanctioned and implemented by current Israeli legislation forbidding Palestinian spouses from the West Bank and Gaza from residing with their partners in Israel, including East Jerusalem. Her dissection of Israeli discourse around the 2003 Citizenship and Entry into Israel Law and its amendments, and her interviews with Palestinian women living the law's consequences, incisively showed both law as a destroyer of family relations and intimate life and the intricate twinning of a "theology of security" and a demographic agenda underpinning this racialized law.

Finally, Penny Johnson's contribution to the 2011 conference complements Rema Hammami's analysis of "governmentality" and the Palestinian Authority with a presentation focusing on the re-configuration of the Palestinian social contract in the troubled post-Oslo terrain, looking at the emergence of "the poor" and the movement of political prisoners to the margins of the unsovereign Authority and the Palestinian political project.

In the Arabic section, which also features a translation of Professor Saba Mahmoud's 2012 keynote, Reem Botmeh of Birzeit's Institute of Law reviews and evaluates key pieces of Palestinian legislation from a women's rights perspective, arguing that "legal reform must take place hand-in-hand with broader initiatives for change if it is to be an effective tool for tackling gender inequality." Ala Azza, a lecturer in anthropology at Birzeit University, delivered a 2011 keynote that argued for an alternative paradigm of civil society that is unlinked from governance models and statist structures (including of course the Israeli occupation). Azza pointed to the experience of the first Palestinian intifada in proposing that Palestinian society could direct its own affairs and suggested that work proceed on a local, voluntary basis. Also in the 2011 conference, political scientist Mtanes Shehadeh, a researcher with Mada-Karmel in Haifa, discussed the economic situation of Arab women in Israel – and in particular in the city of Jaffa – and linked their marginalization both to Israeli policies of housing and urban planning and to the consequences of economic globalization, a factor, he noted, that has not been addressed in local research. And finally, in the 2012 conference, Maha Abu Dayyeh, the director of the Women's Center for Legal Aid and Counselling, reflected on post-Oslo gender legal strategies, enumerating strategies, achievements and failures.

The 2011 conference concluded with a roundtable of testimonies from Sheikh Jarrah by women from the Al-Ghawi, Hanun and Al-Kurd family fighting the dispossession of their families from their homes by a powerful Israeli settler movement. The roundtable and a visit to Sheikh Jarrah prompted Kalyani Sen-Menon to write a moving and incisive article on Palestinian women resisting eviction for an Indian periodical (now posted on our website) that both shows the ties of solidarity that academic exchange can forge and offers a lesson of resistance in our time. The title of her article are the words of Mayssa al Kurd: "We will weep but we will stay."

ARTICLES

Sectarian Conflict and Family Law in Contemporary Egypt

Re-thinking the Privatization of Sexuality and Religion in the Post-colonial State

Saba Mahmood

Although Saba Mahmood was unable to travel to Ramallah for her keynote speech at the Institute's 2012 conference due to medical reasons, Mahmoud, an Associate Professor of Anthropology at the University of California, Berkeley, spoke via video link from her office, followed by a lively question and answer period. Her rich and complex presentation, which the Institute also publishes here in Arabic, explores a key site of conflict between Muslims and Copts in Egypt – interreligious marriage and conversion. She offers a detailed examination of these conflicts, in particular accusations of the abduction and conversion of women, and convincingly shows that they are concretely grounded in a "crisis in Coptic divorce," but also reveal a "fundamental tension intrinsic to the project of modern nationalism." Mahmoud rethinks, in her words, "the nexus between family, law, gender and sectarian conflict through the examination of both the history of Egyptian family law and the simultaneous relegation of religion and sexuality to the private sphere in the modern period." The Institute of Women's Studies thanks Saba and the American Ethnologist for permission to publish "Sectarian conflict and family law in contemporary Egypt," which appeared under that title in American Ethnologist, Volume 39, No. 1.

In the months following the overthrow of the Mubarak regime, Egypt has witnessed a number of violent clashes between Coptic Christians and Muslims that challenge the much-celebrated Coptic–Muslim solidarity that was on display during the protests leading up to the "January 25 Revolution."[1] Accounts of the uprising proudly describe how, despite the millions that swarmed city streets, not one church was attacked and how Muslims and Copts came together to forge a collective political future in a manner not seen since the 1919 Revolution. This show of Christian–Muslim unity during the protests was often contrasted with the escalating sectarian tensions that had been front-page news under the

Mubarak regime over the previous decade. The Tahrir demonstrations held out the hope that perhaps interreligious conflict was a sign of a bygone era, the product of a destructive and dehumanizing political order rather than a regular feature of Egyptian society. Dramatic eruptions of interreligious violence in post-Mubarak Egypt have put this hope to rest, the most decisive blow coming on October 9, 2011 when more than 30 Copts were killed and over 200 wounded. The violence, this time, was not just the handiwork of extremist Muslims; the army itself shot at peaceful Coptic protesters, running armed vehicles into the crowds gathered not far from Tahrir Square and using the state-run media to issue calls to Muslims to "protect" the Egyptian army against the "Christian mob" (Hendawi and Michael 2011). This brutal and opportunistic use of force sealed the sense among many Copts and Muslims that the interim military government is no different than the Mubarak regime in its perpetuation of sectarian violence to serve its nefarious ends.

While each sectarian incident has its own morphology, certain systemic factors continue to spark tensions now as they did under the Mubarak government. Key among these are restrictive laws relating to the building and reconstruction of churches, interreligious conversion and marriage, and a broader discriminatory ethos against Copts that prevents them from participating equally with Muslims in the civic and political life of the country.[2]

Despite the presence of a robust Coptic elite, few are represented in the army, judiciary, and the government, and poor and lower-income Copts are subject to discrimination that their Muslim counterparts are spared—all of which has solidified the sense among Copts that they are treated as second-class citizens in their own country.[3] In addition to these systemic factors, the past 15 years have also witnessed increasing attacks on Copts and their communal and private property that have gone largely unprosecuted by the government. Human-rights groups charge that the notorious state security police (State Security Investigation Service, SSI) often instigated these attacks in the past, and many suspect that its members continue to play a role in fomenting violence, as was evident in the most recent attacks by the military government on Coptic protesters. Egyptians fearful of the corrosive effects of interreligious strife hold on to the hope that a newly elected democratic government will reform the discriminatory laws and establish a structure of accountability and prosecution that will not permit perpetrators of religiously motivated violence to act with impunity. Others fear that sectarian tensions have deeper roots and that governmental reform, although necessary, may not be sufficient to address more systemic forces that continue to hijack civic and political projects that level (rather than exacerbate) religious differences.

In this brief essay, I focus on one of the key causes of sectarian conflict that continues to disrupt the possibility of peaceful coexistence between Copts and Muslims: the issue of interreligious marriage and conversion, which has recently garnered the attention of the international media as well. It is important to

clarify at the outset that the conflict around religious conversion is complex, a product of discriminatory state practices that make conversion from Islam to Christianity difficult while facilitating conversion from Christianity to Islam. Here I touch on the issue of religious conversion insomuch as it pertains to interreligious marriages that have been at the root of a series of sectarian clashes in post- and prerevolutionary Egypt. As a cursory glance at the last ten years of Muslim–Coptic conflict reveals, a vast number of sectarian incidents are set off by rumors about an interfaith romance, a woman's abduction, and marriage. This was the case on May 11, 2011, when clashes broke out in the working-class neighborhood of Imbaba, leaving 12 people dead and scores injured. Not unlike similar incidents in the past, it all started when a Muslim man was rumored to have come to Imbaba looking for his wife, whom he claimed had converted to Islam the previous year but had suddenly disappeared (Kirkpatrick 2011b). He alleged that she had been kidnapped by her Coptic family and was being held against her will in the local church, an allegation that local Coptic residents and the neighborhood police denied. However, when rumors circulated that a group of Salafi Muslims was coming to attack the church, things degenerated quickly and an armed battle ensued between groups of Muslims and Copts within clear view of the police, who stood by and did nothing to prevent the violence.[4] By the end of the night, the Muslim crowd had burned and ransacked two churches in the neighborhood, leaving the Coptic community irate at the impunity with which the attacks were allowed to occur.[5]

The rumors and allegations that provided the narrative structure for this incident exhibit a pattern that is by now familiar to observers of Coptic–Muslim strife. A year earlier, in July 2010, similar events had unfolded. A woman by the name of Camillia Zakhir, the wife of a Coptic priest, had disappeared from her home. Her husband charged that Muslims had abducted her and forced her to convert and marry a Muslim man. Copts took to the streets and demanded that the state find Zakhir and return her to the Coptic Orthodox Church and her family. A few days later, the state security forces did, indeed, locate Zakhir and brought her back to her family. The family then handed her over to the Coptic Church, which promptly announced that Zakhir had not converted to Islam but had left her home because of marital problems (Ramiz and Abdul Sabbur 2010). Zakhir was sequestered in the Coptic Church until her appearance on television almost a year later.[6] Subsequently, various Muslim groups started a public campaign that accused the church of kidnapping Zakhir in collusion with the state, demanding that she be "restored" to the Muslim community. A number of attacks were then launched on Coptic churches, and many within the Coptic community linked the deadly and unprecedented bomb attack on a prominent church in Alexandria (on January 1, 2011) to the protests around the Zakhir controversy.[7]

Six years earlier, an identical story had circulated about a woman named

Wafa Qustuntin, also the wife of a Coptic priest. After she went missing, Copts charged she had been abducted and forcefully converted to Islam by a Muslim colleague at her place of work. Thousands of Coptic Christians took to the streets to demand that the state security forces bring her back to the church, and the current Coptic patriarch, Shenouda III, used his personal relationship with then president Husni Mubarak to pursue this demand. On presidential orders, the state security police arrested Qustuntin and handed her over to the church authorities, who promptly announced she had not converted to Islam and was holding firm in her faith. Qustuntin has not been seen or heard from since and reportedly lives in the seclusion of the pope's monastery in Wadi al-Natroun. These are only some of the better- known examples of the form sectarian struggles take in Egypt; there are countless others in which interreligious romantic liaisons and women's conversion figure prominently.

Religious and Sexual Difference

These stories seem emblematic of the symbolic weight accorded to women as reproducers of a community's culture and tradition insomuch as women serve as placeholders for broader claims about culture, identity, and territoriality. As some feminists have observed wryly, women might be the objects of such narratives (to be saved or repudiated), but they are seldom its subjects or agents (Mani 1998). One might recall here the pivotal role played by the figure of the abducted woman in a number of myths—such as the Helen of Troy and Ram and Sita stories—to think about how gender and sexuality serve as the ground over which epic struggles about territoriality and morality have been historically waged. That women's bodies figure prominently in almost all nationalist and communitarian struggles (whether ethnic, racial, or religious) in the modern period only serves to strengthen this claim.[8] Given this pattern, it would seem that these Egyptian controversies are yet another example of the anxiety that haunts relations of power across lines of sexual and gender differences.

In what follows, I rethink this received wisdom by bringing it into conversation with the recent scholarship on secularism, particularly the secular state's regulation of sexual and religious difference. I argue that the gendered and sexualized dimensions of interreligious conflict (of the kind I describe here) are best understood as a product of the unique paradoxes produced by the simultaneous privatization of sexuality and religion under the modern post-colonial state. Even though this intertwining of religion and sexuality exhibits a normative structure that cuts across the West and non-West divide, in societies like Egypt it also takes a particular form in the institutionalization of religion-based family law (also known as personal status law) in the modern period.[9] In this model, state-recognized religious communities are granted judicial autonomy

over family affairs, often creating a pernicious cathexis between religious identity and issues of gender and sexuality. Any attempt to reform family law tends to be seen by religious communities (especially religious minorities) as a violation of their collective right to religious liberty and of their sovereignty over a domain in which they are understood to have jurisdiction.[10] As I argue, rather than see this resistance as simply an example of religious intransigence and patriarchy, one needs to think critically about how modern secular power has transformed the concept of "the family," religious identity, and intracommunal relations, often exacerbating earlier patterns of religious hierarchy and gender difference.

Coptic Orthodox Christians, who constitute approximately 10 percent of the Egyptian population, have their own family law, distinct from Muslim personal status law as well as from that of five other Christian denominations. Coptic Orthodox family law currently prohibits divorce and remarriage unless one of the spouses has either committed adultery or changed their religion. Because Muslim family laws are much more lax in both these respects, Coptic women and men sometimes convert to Islam so they can divorce and remarry. That both Wafa Qustuntin and Camillia Zakhir were married to Coptic priests with whom they reportedly had marital problems led many to argue that the issue was not so much conversion as it was Coptic family law itself. Shortly after the Qustuntin incident, Karima Kamal, a leading Coptic journalist and the author of a widely acclaimed book on the history of Coptic divorce and marriage laws, wrote, "The explosion of the crisis of Wafa Qustuntin opened the door to [a public discussion of] … the relationship of Copts with the state on the one hand and the church on the other. But the most important issue [that came to the fore] was the crisis of Coptic divorce that has been going on for the past thirty years without any solution" (2006:12). Kamal (2006:23, 32) goes on to quote statistics from various parts of the country that cite conversion to Islam as the primary reason for divorce between Coptic spouses. Notably, Coptic men's conversion to Islam is subject to a different calculus than women's: Whereas Christian male converts to Islam can remain legally married to Christian women, when a Christian female converts to Islam, her marriage to a Christian man is immediately annulled according to both Muslim and Coptic Christian family laws. Given this combination of laws, it is easy to see why many critics of the Coptic Church believe that Coptic women who are in difficult marital situations might be tempted to resort to conversion to have their marriages automatically annulled by law.

Kamal further points out that, whereas a number of popes in the past had permitted Copts to divorce under a variety of circumstances, the current pope, Shenouda III, rescinded such permission with the Papal Decree of 18 November 1971 (reiterated in 1996) deeming divorce and remarriage to be a violation of biblical edicts. Kamal argues that Pope Shenouda III's policy de facto encourages Copts to either commit adultery or convert to get out of bad marital situations. She makes a plea for the adoption of a state-sponsored

1979 bill, crafted in cooperation with other Christian denominations, to create a unified Christian family law that makes divorce and remarriage easier for Coptic Orthodox Christians (Kamal 2006:18–19, 24). Pope Shenouda III has resisted such attempts on the grounds that they violate biblical injunctions and constitute an illegitimate intervention into the right of the Coptic community to religious freedom guaranteed by the Egyptian constitution. Notably, the pope is not alone in perceiving the issue in this manner. A large number of lay Copts also see state-sponsored attempts to reform Coptic family law as a violation of the religious freedom of the minority community. Ironically, on this position, they have an ally in the Muslim Brotherhood—the largest Islamist political group in Egypt and long viewed as an antagonist by Copts—on the ground that family law represents the core of a religious tradition and must not be tampered with (Kirkpatrick 2011a).

Matters are even more complicated when one considers discriminatory Egyptian norms and regulations governing religious conversion. When Muslims try to convert to Christianity, they face a series of obstacles, key among them, the state's refusal to extend official recognition, making it impossible for the convert to procure the legal documents necessary for the conduct of daily civic and political life.[11] Even though there is no explicit law that prohibits interreligious conversion, in practice, the Egyptian state makes conversion from Islam to another religion almost impossible while facilitating the reverse. For the first time in 2007, a Muslim convert to Christianity brought his case to the Supreme Administrative Court to demand that his conversion be recognized by the state and listed on his identity card, a request the court denied (Ibrahim 2010). Since then, this issue has gained further prominence as Coptic lawyers, with the support of the Coptic Church, have brought a case involving a number of former converts to Islam who want to reconvert to Christianity (called "al-'aidin") to the Supreme Constitutional Court, where it is currently pending. Given this combination of factors (both internal and external to the Coptic community), it is easy to see why Coptic women's conversion and marriage with Muslims is a constant source of anxiety among Copts and has proved to be such an explosive issue in Egypt.

This anxiety manifests itself quite clearly in the belief within the Coptic community that there is an organized pan-Islamic plot to abduct Coptic girls and coerce them to convert to Islam. Despite the disputed nature of this claim, news of Coptic girls' forced conversion to Islam circulates widely in the national and diasporic Coptic media. A recent article in the Egyptian daily al-Masry al-Youm reported that "since the toppling of Hosni Mubarak there has been a spike in the number of families seeking help over alleged kidnappings [of their daughters]" (Beach 2011). The article reports that these claims are highly contestable. Even Coptic lawyers who register these complaints often remain skeptical about whether Coptic women are being kidnapped, even though they are critical of the broader pressure young Coptic women often feel to assimilate to the majoritarian Islamic

ethos. Muslim clerics have added fuel to the fire by making a countercharge that there is a Coptic plot to abduct Christian women converts to Islam to force them back to Christianity.

Over the past five years or so, the U.S. evangelical movement has stepped into this volatile context, amplifying the abduction claim and bringing it to international attention. In 2009, Christian Solidarity International, an evangelical organization that is part of a global network devoted to campaigning against the persecution of Christians world- wide, with a particular focus on Muslim countries, released a report in partnership with the Coptic Foundation for Human Rights. The report does more than seek to "document" an organized Muslim conspiracy to abduct Coptic women and to coerce them to convert to Islam (Christian Solidarity International and Coptic Foundation for Human Rights 2009): It elevates the charge of Coptic women's abduction to "sexual slavery," regarded as a crime by the U.S. State Department (under its Trafficking Victims Protection Act) and by the United Nations protocol on human trafficking.[12] The aim of the report is to pressure the Obama White House and the United Nations to investigate and prosecute alleged abductions of Coptic women by Muslims in Egypt. The report makes wide use of post–9–11 rhetoric of Islam's inherent violence and misogyny, portraying Coptic women as the vulnerable victims of predatory practices of Muslim men that are "rooted in Islamic traditions that legitimize violence against women and non-Muslims" (Christian Solidarity International and Coptic Foundation for Human Rights 2009:1). Importantly, this report (along with the broader campaign of which it is a part) argues that the conversion of Coptic women constitutes a violation of the right to religious freedom of the Coptic community as a whole. It makes no mention of the Coptic Church's role in the sequestration of women like Zakhir and Qustuntin, casting the issue as a matter of the minority group's right to religious liberty. Notably, in this framing, a Coptic woman's submission to Coptic ecclesiastical authority emerges as the paradigmatic act that secures the community's collective exercise of religious liberty—in doing so, it further solidifies the cathexis between religious identity and the gendered regulation of sexual and familial relations.

Secularization of Family Law?

The persistence of religion-based family laws in Egypt and the broader Middle East is often seen as a sign of the incomplete secularization of these societies and the failure of the postcolonial state to draw a firewall separation between religion and the state. When contrasted with most Western liberal democracies, where family relations are adjudicated by civil courts, the persistence of religion-based family law appears to be antiquarian and out of date. This state of affairs is often understood to be a result partly of the deeply religious ethos of Middle

Eastern societies and partly of a colonial policy that abstained from interfering in the religious affairs of colonized peoples. Some argue that even as colonial powers instituted secular civil and penal laws in the colonies curtailing the scope and reach of religion, they left family laws intact as the space par excellence of the religious autonomy of native people. Consequently, religion-based family laws of societies like Egypt are understood to exhibit an ossified and recalcitrant quality that should have been remedied by the secularizing force of civil law. The assumption is that if these societies had gone through a complete process of secularization, if colonial powers had done their duty, then the religious basis of family law would surely have been abolished, taking down with it the patriarchal norms of kinship grounded in religious doctrines.

This account is flawed for a number of reasons. To begin with, the telescoping of religious law into the domain of the family is not so much a violation of secular principles as it is a product of the simultaneous relegation of religion, family, and sexuality to the private sphere under the regime of modern governance. As Talal Asad has argued, the colonial powers' enshrinement of religion in family law was not so much a sign of their tolerance of local religion as it was a part of "the secular formula for privatizing religion" (2003:228) that, in turn, helped secure the foundational distinction between the public and the private so central to political secularism. The privatization of these aspects of social life did not mean, of course, that they fell outside the purview of the state; rather, they came to be increasingly regulated by the centralized state and its various political rationalities (no longer administered by local muftis, qadis, customary norms, and parochial moral knowledges). Family law, under the auspices of the modern state, is therefore not simply a tool for the execution of divine law but one of the techniques of modern governance and sexual regulation.

Family law as a distinct legal domain is a modern invention that did not exist in its present form in the premodern period. Classical sharia jurisprudence did not, for example, entail a separate domain called "family law." As historians of the Middle East show, what is now associated with the core and essence of religion (Christian and Muslim alike), that is, personal status or family law, is an amalgam constructed from a variety of customary and religious jurisdictions that came to acquire an autonomous and distinct character in the modern period (see Cuno 2009; Tucker 2008). Through a comparative reading of marriage contracts from ancient to modern times in Egypt, Amira Sonbol (2005) shows that "the family" was neither conceptualized as a social unit responsible for the reproduction of the society nor linked to spouses and descendants in the premodern period, as it came to be in modern family law. The modern conception of the family— understood as a legal unit primarily formed through the conjugal bond— stands in contrast to the network of kin and affines embedded in a system of rights and obligations that constituted what is retrospectively called "the family" in the premodern period. Paradoxically, even as the family was assigned to the domain

of the private sphere in the 19th century, it also became a key site of intervention for projects of social reform undertaken by the state. Thus, in Egypt, as early as 1931, the family came to be associated with the semantic field of public order in the sharia and milli (non-Muslim) courts, and, by 1956, Gamal Abdel Nasser declared it to be the foundation of the society itself (see Pollard 2005). One important effect of this process is the historical transformation wrought in the concept of "the family" from a loose network of kin relations and affines to the nuclear family, with its attendant notions of conjugality, companionate marriage, and bourgeois love.[13] As elsewhere in the modern world, the family in the Middle East has come to be associated with privacy, affect, spirituality, nurturance, and reproduction — ideologically distinct from the individualistic and competitive rationality of the public domain and the market.

Insomuch as both Muslim and Coptic family laws are unfair to women (in matters of divorce, inheritance, child custody, and so on), they are often assumed to be so because of their religious character, engendering the hope that if these laws were secularized they would yield greater gender equality. Although there is no doubt that in both religious traditions women are regarded as subservient to men, gender inequality in family law cannot be understood in religious terms alone. As the work of a number of historians shows, once the family became a cornerstone for the modernization of society in the Middle East, this often led to greater gender inequality, particularly within the institution of marriage. According to Judith E. Tucker, for example, in the premodern period, Muslim women had far more flexi bility in stipulating conditions in their marriage contracts:

> By Mamluk times a variety of stipulations had become commonplace such as allowing a wife to opt for divorce should her husband drink wine or fail to house and support her children from previous marriage. In the Ottoman era, the technique of expanding a bride's rights through contractual stipulation continued apace: a woman might insert clauses into her contract that gave her the right of divorce if the husband did a number of things, including taking a second wife, changing their residence against her will. [2008:62]

Women's ability to stipulate such conditions almost disappeared in the modern period, as "the state stepped up its regulation of marital institution and self-consciously sought to bring marriage practices of its citizens into sync with its vision of modernity" (Tucker 2008:70). In refusing to recognize prenuptial conditions added to marriage contracts, Sonbol argues, modern courts effectively foreclosed "the most important method by which a [woman] could control her marriage" (2005:183) and, by extension, access to divorce. Perhaps the most dramatic example of the curtailment of women's ability to negotiate divorce under the modern nation-state was the creation, in 1920, of an unprecedented

institution in Egypt called the "house of obedience" (bay al-t'a) that gave the state authority to forcibly return a woman to her marital home if she left her husband without his consent (Tucker 2008:74). Not surprisingly, the "house of obedience" provision was also adopted in Coptic family law because it pertained not to the particularity of a religious faith but to the sanctity of the nation that all citizens had to uphold.[14]

The religious basis of Egyptian family law is certainly distinct from its secular counterparts in Western liberal societies, but there are paradigmatic features that cut across this divide. Religion-based family laws of postcolonial societies share a global genealogy that has been recently analyzed by legal theorists Janet Halley and Kerry Rittich (2010) in a landmark study on comparative family law. In this study, Halley and Rittich argue that modern family law emerged in the 18th century for the first time as an autonomous juridical domain distinct from other regulatory spheres and came to be adopted globally. They show that modern family law, in comparison with other juridical domains, exhibits "exceptional" qualities in at least two senses of the term. First, even though it purports to be descriptive, family law enfolds normative claims about cohabitation, marriage, sexuality, and sexual division of labor that pertain to the domain of obligation, status, and affect (in contrast to the domain of rights, will, and rationality). Second, family law is exceptional in that it is supposed to emanate from and express "the spirit of the people," their traditions, particularity, and history. In this important sense, family law is distinct from contract law, against which it is juxtaposed and which is understood as "the real domain" of universality. In the words of Halley and Rittich, "It is in the nature of contract law to become the same everywhere and in the nature of family law to differ from place to place" (2010:771). Pursuant with this logic, while European colonizers imposed their own forms of commercial, criminal, and procedural codes in the colonies, the family laws they devised were understood to emanate from the religious and customary laws of the native peoples. Insomuch as religion was understood to embody the "true spirit" of the colonized people (recall the Orientalist construction of "the East" as essentially religious and spiritual), it is not surprising that family law came to be grounded in the religious traditions of the communities the colonial powers ruled over a period of 150 years. Notably, just as family law was invented from fragments of various juridical and customary traditions, so was the univocality and unanimity of the religious traditions to which the newly formulated family law was supposed to correspond. It is therefore not surprising that proponents and defenders of Coptic and Muslim family law in Egypt regard it to be consubstantial with the defense of the religious tradition itself.

Halley and Ritchie lay out the global genealogy within which religion-based family laws are embedded, but it is also important to understand the historical particularity of Middle Eastern family law. Importantly, the religion-based family laws of Egypt are derived from a larger sociopolitical order from the Ottoman

period, in which religious difference was conceptualized and organized in a manner distinct from the system of postcolonial nation-states in which it is now inserted. As is well known, the Ottoman Empire under the millet system accorded various non-Muslim religious communities (known as dhimmis) juridical autonomy over aspects of their internal affairs (including marriage but other relations as well). This juridical autonomy was one of the primary ways in which the Ottomans managed to rule over an immense diversity of religious faiths for over six centuries. Importantly, this "nonliberal model of pluralism" (Kymlicka 1995:156) was different from the liberal model in that each religious community's autonomy was justified not in terms of group versus individual rights but in terms of a political order in which difference was paramount. The Ottomans did not aim to politically transform difference into sameness; instead, various contiguous religious groups were integrated through a vertical system of hierarchy in which Muslims occupied the highest position. Various aspects of this older arrangement were slowly transformed over the course of the 19th century, and the millet system was replaced with that of the nation-state predicated on the principle of civil and political equality—with one key exception, namely, the legislative autonomy of religious communities over family affairs. This parsing was consistent with the genealogy traced by Halley and Ritchie above in that family law was supposed to correspond to and reflect "the true spirit of the people" and their traditions. One significant element of the Ottoman millet system that has survived to the detriment of non-Muslim minorities is that Islamic family law is upheld as the law of the state to which interdenominational marriages of Christians and non-Christians alike are subject.[15] Similarly, the interdiction against Muslim conversion to Christianity and restrictions imposed against the public display of non-Muslim faiths are also fragments from the Ottoman system. Needless to say, all of these provisions adversely affect Egyptian religious minorities (which include not only Copts but also the increasingly visible Bahais and Shiite Muslim minority).

All of these elements may be taken as evidence of Egypt's incomplete secularism insomuch as Islam remains integral to the operation of the state, thereby compromising the secular principle of state neutrality toward religion. Such an argument ignores much of the recent scholarly literature on secularism, which shows that throughout modern history secularism has seldom been about state neutrality toward religion.[16] Rather, it has historically involved the rearticulation of religion along certain lines in all societies (across the West and non-West divide) that is modeled on a dominant understanding of religion rooted in the majoritarian religious tradition. Secularism in this understanding does not simply institute a firewall separation between religion and state but entwines them intimately, an intertwining that is shot through with contradictions and paradoxes. Taking this insight as a starting point, one might begin to see that one of the contradictions entailed in the secularization of Middle Eastern societies

is that just as religious authority becomes marginal to the conduct of civic and political affairs, it simultaneously comes to acquire a privileged place in the regulation of the private sphere (to which the family, religion, and sexuality are relegated). In the Middle East, this is, no doubt, in part a result of the insertion of a fragment from an older sociopolitical order into the modern system of the nation-state. It is also, however, a product of secularism's foundational divide between the public and the private that, on the one hand, relegates religion and sexuality (of which family is a part) to the latter and, on the other hand, makes both consequential to the former. (This is manifest in the central place accorded to "the family" as the social unit responsible for the building of the modern nation-state and society.) The paradoxical intertwining of religion and sexuality in Egypt and in the broader Middle East, then, is neither an expression of the essential religiosity of these societies nor a diagnosis of their incomplete secularism. It is another mutation of the Janus-faced character of modern secularism, in which "religion" is ineluctably tied to its Siamese twin, "the secular," an intertwining that is often disavowed by those who speak in its name.

Concluding Remarks

In summary, I have argued that religion-based family law in modern Egypt sutures a fragment from the Ottoman millet system to the political calculus of majority–minority national demographics. When inserted in the context of the nation-state, this transmuted model of multiple jurisdictions is predicated on a fundamental tension intrinsic to the project of modern nationalism: On the one hand, this project requires the leveling of difference (enshrined in the principle of political and civil equality), and, on the other hand, religion-based family law divides the citizenry into separate legal communities, exacerbating their differences. To put it in another way, this older fragment of the millet system, when placed within the grammar of nationalism and civil and political equality, renders difference problematic and recalibrates it to the calculus of majority and minority (which, in itself, is conceived as a means for resolving difference). In this framework, the attempt by any minority to preserve difference cannot but be understood as a threat to national unity. In this sense, at the same time that the current crisis of Coptic–Muslim relations no doubt reflects increasing prejudice and sectarianism of Egyptian society, it is also a product of the structural tensions internal to the postcolonial state and the model of religion–state accommodation adopted in the modern period (see Mahmood in press).

The challenges facing post-revolutionary Egypt are manifold, key among them, the alleviation of interreligious conflict. The question of secularism looms large, and many liberals and radicals are invested in creating a "truly secular" Egypt, one in which religious discrimination would be an anomaly and interreligious conflict

would wither away. These are worthy goals, without which it is hard to imagine a peaceful multireligious society. Yet, in this moment of hope and restructuration, it is also imperative to think critically how political secularism—with its modern state apparatus and nationalist ideology—is not simply a neutral mechanism in the negotiation of religious and sexual difference. Political secularism also aims to transform both and, in the process, does not simply level differences but exacerbates and realigns them in unique and contradictory ways.

Although there is no doubt that the Mubarak regime and its corrupt policies exacerbated Coptic–Muslim tensions, manipulating them to achieve their own opportunistic ends (and the current military government seems to be continuing the same trend), it would be naive to think that religious sectarian tensions will melt away in post-revolutionary Egypt. Many of the reasons for these tensions are structural—such as the system of multiple legal jurisdictions (of which family law is a part), the Islamic identity of the state, and the nationalist calculus of majority–minority identities that weighs political and civil equality differently. Any attempt to address the sectarian consequences of these political arrangements must not only countenance the peculiarity of Egyptian history but also acknowledge that secularism is not simply the answer to the problem but also constitutes it. This does not mean that one can simply reject secular political forms but requires that one reckon with the strengths and weaknesses of these forms in a manner that does not resurrect the hoary and polemical religious and secular divide. As to whether the Islamist, liberal, or Coptic political parties in Egypt can rise to this challenge remains to be seen.

Endnotes

1. I have worked in Egypt since 1995. My first book (Mahmood 2005) analyzes women's participation in the Islamic piety movement in Cairo. I am currently working on a book project that analyzes the politics of religious freedom for non-Muslim minorities in postcolonial Egypt within the larger context of international laws pertaining to religious liberty and minority rights. On this latter project, see Mahmood in press.

2. Evidence of this kind of discrimination continues to sour Muslim–Coptic relations in post-Mubarak Egypt. For example, when a Copt was appointed governor of the Qena province by the new interim government in April 2011, Muslims protested the appointment. As Mariz Tadros (2011) reports, although the ostensible reason for the protest was the candidate's ties to the Mubarak regime, it was clear that his Coptic identity was at issue.

3. For a short overview of the discrimination faced by Copts in postcolonial Egypt, see Soliman 2009.

4. It is unclear whether these attacks

were the work of the socalled Salafis—a brand of hard-line Islamists who have gained prominence in post-Mubarak Egypt for targeting Sufis, Copts, and unveiled women across the country. Following the events in Imbaba, a number of self-described Salafi websites denied that Salafis had participated in these events. For an eyewitness account by a staff member of the main human-rights organization that monitors religious strife, see Egyptian Initiative for Personal Rights 2011b. For an investigative report on May 2011 incidents released by the same organization, see Egyptian Initiative for Personal Rights 2011a.

5. The state security apparatus and secret police have long been accused not only of tolerating but also of fomenting attacks on Copts. For a report that establishes this charge, see Egyptian Initiative for Personal Rights 2010.

6. Camillia Zakhir appeared on television on May 7, 2011, in the company of her husband and son, to state that she had not converted to Islam and was not being held captive in the church but that she had left home because of a marital dispute. Some Egyptians have interpreted the attack on the Imbaba church four days after Zakhir's public statement as a retaliation by Muslim extremists to settle the score. See Tadros 2011 for a discussion of this point.

7. Rumors have surfaced that the state security apparatus was involved in the bombing of the Alexandria church to distract political opposition targeted at the government. Files retrieved after the Egyptian uprising from the state security offices seem to implicate Habib el-Adli, the interior minister under Mubarak, in the Alexandria bombings. See El-Rashidi 2011.

8. In India, for example, stories about women's abduction figured prominently during Hindu–Muslim clashes in the early 20th century leading up to the partition of the subcontinent. See Datta 1999.

9. Apart from Egypt, religion-based family law is practiced in a variety of countries, such as India, Israel, Lebanon, Malaysia, and Indonesia. In Lebanon alone, there are 15 different family laws that pertain to different religious confessions.

10. It might be useful here to recall the legendary Shahbano controversy in India. In 1985, the Supreme Court of India ruled that Shahbano, a divorced Muslim woman, was to be paid alimony by her ex-husband, a ruling that was contrary to Muslim Family Law but in accord with the Criminal Procedure Code of India. The Muslim minority of India protested this ruling as an unfair incursion by the state into affairs over which it had legal autonomy, and the government decided to exempt Muslim women from the requirements of the Criminal Procedure Code. For an insightful analysis of the sectarian context within which this debate unfolded, see Agnes 2007.

11. It is mandatory for Egyptians to declare their religion on national identity cards, without which they cannot function in society. Copts face difficulties not only in having their religious conversion documented in state records but also in having it altered on their identity cards. As a result, most converts from Islam to Christianity try to get by without bothering to attain state recognition.

12. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children was adopted by the United Nations General Assembly in 2000. For an insightful analysis of the Christian evangelical mobilization that led to passage of the UN protocol and of U.S. antitrafficking legislation (also in 2000), see Bernstein 2007.

13. Thus, even though male polygamy is allowed in Egypt in accord with Islamic precepts, it is the nuclear family that remains the dominant form. On this point, see Abu-Lughod 1998.

14. This institution was abolished in 1967. On this issue, see Sonbol 2005 and Tucker 2008.

15. Notably, in many Middle Eastern countries (such as Syria and Jordan), interdenominational marriages across Christian sects are subject to the family law of one of the two non-Muslim spouses. See Berger 2001.

16. I cannot do justice to this literature in this short space. For an overview, see Asad 2003, Asad et al. 2010, Taylor 2007, and Warner et al. 2010.

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Intervention: Governance or Governmentality?

Reflections on the Palestinian Authority

Rema Hammami

> *In her 2011 keynote address, Rema Hammami, an anthropologist and faculty member at the Institute of Women's Studies, delivered an incisive and thought-provoking analysis of "Palestinian Governmentality: Between the Politics of Life and Death." For this issue of the Review, we asked her to contribute a brief intervention based on her address. Hammami argues that the "current crisis as one of Palestinian governmentality rather than simply governance."*

As a technology of governance, development reproduces the underdevelopment it seeks to ameliorate.

(Mark Duffield 2005)

What is my priority as a woman? My priority is that Fateh and Hamas end their conflict and Israel lifts the blockade. Then I don't need anything from anyone…
Woman in Gaza who lost her home in 2009
during Operation Cast Lead, April 2010

We will continue to pursue policies that empower women in Palestine and ensure their full contribution to the endeavor to build the state.
Report on the Second Year Program
of the 13th PNA Government, August 2010

Since at least the mid-1990s, political debate in the occupied Palestinian territory (oPt) and the Palestinian diaspora has been dominated by the crisis of the Palestinian national movement and ultimately, of the national project. That almost every sphere of Palestinian political and civic life has at some point been a focus of these debates (including; law and human rights; economic and social policy; development; negotiation and/or resistance strategies; the role and nature of NGOs, political parties, the PLO, and Palestinian Legislative Council) suggests the degree to which the crisis has been a totalizing one. Alhough there

is little agreement on the specific nature of the crisis or its solution, there is a general consensus on its origins: it is rooted in the transformation of the Palestine Liberation Organization into the Palestinian National Authority under the framework of the 1994 Oslo Accords. This points to another critical but unstated consensus – that the foundational dimension of the national crisis is one of Palestinian governance as practiced and embodied in the Palestinian Authority.

The chasm between the opening quotes above is suggestive of this dimension. On the one hand, a woman from Gaza, her home destroyed by Israeli bombing, represents her reality as defined by Israeli military violence, economic siege, and internal political conflict in the national movement. And on the other, in the same year, the discourse of the Palestinian Authority asserts a contrasting reality of a national government involved in carrying out a project of state building as if the Authority is operating in a post or non- conflict environment. There is no overlap between the two statements and no shared reality between the woman "citizen" and her ostensible government. The quotes also point to another fundamental problematic – that of power and agency. The homeless woman under siege expresses the limits of her agency by pointing to the configuration of power and domination that precludes her from rebuilding her home; the Israeli siege and control of Gaza, worsened by the conflict between Hamas and Fateh. In contrast, the Palestinian Authority's statement ignores the constellation of power in which it operates and asserts itself as the positive (and sole) agent of change involved in empowering women in the process of building the state.

This ongoing chasm between official discourse and the materiality of everyday existence under occupation is my starting point for trying to understand the current crisis as one of Palestinian governmentality rather than simply governance. The issue is not that the Authority is unresponsive to the needs of the population ostensibly under its authority, but that in entering into the Oslo process the Palestinian national liberation movement became hostage to the logics and practices of post-cold war global governmentality operating in what has been called "sovereignty conflicts" (Williams and Pecci 2004, Williams and Heymann 2004). In the case of Palestine, like Kosovo, South Sudan, Timor-Leste, and a host of other situations with unresolved national conflicts, peace agreements have been the entry point for the global institutions, practices and logics of "peace-building" and "state-building". In all of these cases this has resulted in national liberation movements becoming powerfully re-structured into local apparatuses of liberal governance, whose correct performance becomes the only basis on which they may graduate towards sovereignty (Williams and Pecci 2004, Williams and Heymann 2004). As such, in the post-cold war period, sovereignty for state-less

nations is no longer an inalienable right as enshrined in international law, but has been made a privilege that might be earned through good behavior based on the criteria of neo/liberal peace-building (Hooper et. al 2003). But as the experience of those other cases has shown, the unfolding logic of the "earned sovereignty" framework on the ground tends to produce much more governance and governing than it does sovereignty (Chopra 2002, Karadijs 2005).

Modern governance according to Foucault (who developed the concept of governmentality to describe it) is based on biopolitical power (or life-giving power) with modern rule accomplished through institutions and practices that are aimed at providing for the health and wellbeing of populations (Foucault 2007, Dean 1999). This conceptualization is relevant when we look at the practices of Palestinian Authority governmentality and of global governmentality operating through the Authority. Taking care of Palestinian health, education and economic wellbeing is the primary undertaking of the Palestinian Authority vis a vis the population under its "authority". In addition, through humanitarian and developmental aid the "international community" rules both directly and indirectly through biopolitical means over the subject population in the oPt. Two major points that emerge from Foucault's re-conceptualization of modern government are: rule over populations takes place through a dispersed range of practices and discourses across (and beyond) society, rather than being centered in formal political institutions; and that rule accomplished through the techniques of healthcare, science, welfare systems, development practice, or civic education is much more powerful because it operates not through simple repression but through producing subjects who articulate its norms as the normal, the correct, the modern or scientific (Foucault 2007, Dean 1999). From this perspective, the Palestinian Authority is as much a subject of rule as it is a bearer of it. And the effectiveness of global bio-political rule over occupied Palestinians can be measured by the degree to which its discourses and practices are reproduced by local actors and institutions across a host of social fields and locations in the oPt.

In the contemporary third world, global governmentality operates on local states primarily through the discourse and practices of neo-liberal development (Duffield 2005). In contexts of "sovereignty conflicts" like the oPt, neo-liberal development becomes part of the discourses of "peace or state-building" but a primary focus is put on securitization and good governance (Heathershaw 2008, Merlingen, and Ostrauskaite 2005). The promotion of human rights, democracy, free markets and rule of law goes hand in hand with a central focus on policing and security "reform". This is because in these contexts, the main priority of global governance is to promote an end to armed conflict (or undertake what is

called "stabilization"). All other dimensions of development, humanitarianism or state building are channeled towards this fundamental goal (Williams and Pecci 2004, Williams and Heymann 2004).

For Foucault, security forces and policing have an everyday bio-political function – to ensure that the techniques of ruling necessary for the wellbeing of the population proceed in an orderly way. But they also have a repressive function; in defending bio-political rule from fundamental threats to its existence (Hanna 2012, Merlingen, and Ostrauskaite 2005). In these circumstances, the death or repression of one part of the population is deemed necessary in order for the ruling apparatus to continue to provide wellbeing for the majority. These repressive functions of modern rule are always accorded a temporary status, as a "state of emergency", or exceptional circumstances that warrant an exception to the everyday norm of biopolitics. Thus, the repressive role of the Authority's security forces in putting down Palestinian resistance to "peace" is an integral aspect of its attempts to earn benchmarks towards sovereignty within the logics of the global biopolitical order that it is hostage to. The violent repression of Hamas in the West Bank, by the Palestinian Authority's security forces becomes celebrated as the achievement of law and order (under the tutelage of the United States'General Dayton) and a positive benchmark in the Authority's candidacy towards statehood.

But what about sovereignty? In the context of the "Earned Sovereignty" framework, Israel is the sovereign state and the Palestinian Authority is the "sub-state entity" to whom sovereign powers should be incrementally devolved through the peace process and under the guidance of the international community. In the modern inter-state system, sovereignty is defined as the exclusive jurisdiction of a state to exercise political power and authority within its own borders and to exercise all rights necessary to preserve its territorial integrity from external and internal threats. Foucault, in contrast, rather than looking at the formal attributes of modern sovereignty, defined it in relation to the evolution of a particular configuration of juridical power; the power over life and death. The supreme authority to decide who lived and who died, according to Foucault evolved from being the definitive power of the sovereign (monarch or feudal lord) in pre-modern autocracies to becoming the definitive power of the state in the modern period. As many writers have noted, the sovereign power of "independent" nation states at the end of the twentieth century has become increasingly unequal within the world system and dominated by what may be called "super sovereigns"(Duffield 2005, Mamdani 2009). Within the world system the Israeli state is a "super-sovereign." It is also the sole sovereign in the

oPt. And from Foucault's perspective, its sovereign power is characterized by the supreme authority it holds over Palestinian life and death within them (regardless of Oslo's area A, B and C geography). Thus while Palestinian governmentality attempts to proceed on the basis of life giving bio-power, it is over-determined by the logic of Israeli governmentality towards Palestinians under its sovereign rule which is based on the logic of death-making or necropower (Mbembe 2003). That Israeli rule over Palestinians under its sovereignty in the Occupied Palestinian Territory has been increasingly necropolitical since Oslo can be seen in the massive increase in Palestinian deaths at Israeli hands between the first and second intifadas; from 1,000 to more than 7,000. But necropolitics is not simply about ruling through murder. Its more constant logic is about the use of power in ways that makes the healthy life of populations impossible – active processes that undermine health, education,well-being and economy and thus undermine the ability of a population to sustain and reproduce itself in a healthy way.

In conclusion, once the Palestinian Liberation Movement entered into the Oslo Agreement, it became caught between Israel's necropolitical rule and the global bio-politics of Earned Sovereignty. What this led to was first an epistemic restructuring of Palestinian governmentality and then its subsequent implosion into competing Palestinian entities in the West Bank and Gaza. Whatever the rhetorical promise of "Earned Sovereignty", its global political rationale is to secure what Duffield calls "the sovereign frontier" – to contain conflicts seen as a threat to imperial power and its allies rather than to deliver self-determination for state-less nations. But more than anything, the Janus face of global governmentality operating in Palestine can be seen through the ease with which it is able to co-habit with the ongoing necropolitical logic of Israeli rule over Palestinian lives.

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Gender and Governance:

Claiming Rights in Post-Colonial Contexts

Aruna Rao

The opening keynote address at the 2011 conference was given by Dr. Aruna Rao, co-founder and Executive Director of Gender at Work, an international knowledge and capacity building work that institution that promotes women's empowerment and gender equality through institutional change. Dr. Rao offered a dynamic view of gender and governance issues grounded in her understanding that these issues "still bear the legacy of state-society relations which were produced under colonial regimes and have been further complicated by the dynamics of patriarchy." Rao offered an integrated and sophisticated conceptual framework "that connects rights with institutions in a process of social change," and in particular changes relations of power and the formal and informal rules that govern power relationships. Her rich experience in a range of development organizations – she was President of the Association of Women in Development (AWID) from 1998-2001— makes her institutional insights particularly useful. Below is a slightly shortened version of her paper.

Introduction

This paper examines the notion of ascribed social identity focusing on gender relations. It argues that while all societies have accorded different rights and opportunities to groups of people on the basis of social identity, colonialism exacerbated the status of women. As more universal principles of citizenship and human rights are adopted, the paper suggests a model for articulating and achieving women's rights through institutional and organizational change, presenting a conceptual model that integrates change processes along dimensions of individual and systemic transformation, and of formal as well as informal institutions. This represents a dynamic view of governance in a broad sense.

The word "governance" derives from the Greek word meaning to steer and from its roots in debates about justice, order and fundamental principles for the conduct of human life in ancient city-states to gender and citizenship debates in post-colonial contexts today, it has embraced both emancipatory ideals and blatant exclusions. The notion of citizenship and the role of the few in deciding

for the many in ancient Greece and the application of these principles in feudal Europe have been well researched.[1] Moreover, research also tells us that the context which gave rise to the idea of citizenship based on the rights of the individual in Enlightenment Europe varied considerably from the history of citizenship in Asian and African countries which were colonized by the European powers. As summarized by Kabeer (2002), liberal ideas of citizenship emerged as Europe was transforming from feudalism to capitalism, "from a society based on ascribed status to one governed by contract relations."

> *"These upheavals included the erosion of landed privilege, the spread of generalized commodity exchange and an all-embracing process of differentiation: between the private sphere of the family and kin and the public sphere of state, market and civil society and, within the public sphere, between the functioning of the state and the division of labour in the economy. Social relations were transformed from quasi-permanent and involuntary arrangements into 'voluntary, temporary and limited arrangements entered into out of individual self-interests' (Fraser and Gordon 1994: 95)...**The acting subject of the newly constituted public sphere was the individual whose existence preceded social relationships, who entered contracts as a free and independent being and who enjoyed rights that were guaranteed by law, regardless of social status**."[2]* (Emphasis mine)

In the colonies however, the story was quite different. The colonial state, according to Mamdani, shared a set of fundamental features because "everywhere the organization and reorganization of the colonial state was a response to a central and overriding question. Briefly put, how can a tiny and foreign minority rule over an indigenous majority?"[3] For the British colonizers and many others, the principle of association or indirect rule through intermediaries was the answer. The way this was practiced had profound effects on the societies they ruled. Gender and governance issues still bear the legacy of state-society relations which were produced under colonial regimes and have been further complicated by the dynamics of patriarchy operating through what are termed "ascribed relations" meaning communities based on caste, religious community and ethnicity. Drawing on available scholarship, this paper will untangle some of these threads in an attempt to frame thinking on gender and governance issues in postcolonial contexts, distinguishing formal and substantive rights. We will then discuss a conceptual framework that connects rights with institutions in a process of social change, and examine the gendered nature of formal organizations which mediate between policy and practice.

Gender and Governance in Postcolonial Contexts

Governance is essentially about decision making by a range of stakeholders including those in positions of power and ordinary citizens.[4] While governance is presumed to be gender neutral, the experience of women all over the world belies that assertion. As Ashworth points out,

> "*In fact, the discourse, procedures, structures and functions of governance remain heavily skewed in favour of men in general and certain groups of men in particular. This unequal sharing of power leads to an unequal sharing of resources - time, incomes, property - between men and women. The consequences of this maldistribution are evident in the disproportionately high number of women who are illiterate and living in extreme poverty.*" [5]

Mukhopadhyay and others inform us that, "the starting point of feminist critiques of the liberal view of citizenship is that it does not accommodate difference"[6] (Mukhopadhyay 2007). The liberal conception treats each person as an individual who is entitled to rights regardless of gender, class, race or caste. According to this view, ascribed relations have nothing to do with one's identity and entitlements as a citizen. In fact, what feminists have pointed out is that the individual that liberalism had in mind was elite, male and white. Thus, while rights standards are seemingly neutral, they are in fact deeply gendered. "Thus, entitling all citizens to the same rights does not necessarily promote equitable outcomes and formal rights do not ensure substantive equality or agency."[7]

Kabeer and Mukhopadhyay point out that this by no means is the whole story when it comes to the experience of women in colonized countries in much of Africa, Asia, and the Middle East. In these countries, ascribed relations continue to play a dominant role in state-society relations. This happened because colonial administrations formalized and codified what were hitherto "heterogeneous and fluid social and political arrangements through which relationships within and between diverse communities had been managed."[8] This in effect, set up separate communities each governed by its own customs and traditions. Using other forms of differentiation as well – for example, developing a schedule of caste which meant identifying those outside this schedule – which entrenched differences, the British in India aimed to ensure that these fairly unstable boundaries precluded collective action based on perceived common interests to challenge British rule.

A key piece of this construction was laws governing private relations in the family – what is called personal law or customary law.[9] In India for example, this entailed selective interpretation of scriptures and religious traditions and turning them into 'law'. In the subcontinent, this won the support of conservative

elements in various religious communities to colonial rule. In Africa, as explained by Mamdani, it took the form of establishing a dual system of law – one for the European colonizers and another for the colonized.

For women in particular, the codification of 'personal law' had two important implications:

> *"First, gender relations and women's position became emblematic of the authentic tradition of particular groups giving meaning to specific forms of ethnicity, caste and religious community belongingness. Second, the collaboration between indigenous male elites and colonial officers in the process of codifying custom and practice resulted in male elite interests being codified into law and reducing women to legal minors and dependents of men."* [10]

In other words, women had no claim to rights as citizens outside the boundaries of their ascribed communities. And within those communities, religious laws and traditions were discriminatory toward women. So, within the public domain, women are not individuals but they are mothers, wives, sisters, and daughters – their identity in relation to the state in through their connection with men in their family and community.

This has profound implications for women's emancipation, rights and entitlements. As colonies emerged to become nation states, these boundaries persisted. To retain their right to belong to these communities, women must accept their subordinate status. If women demand their constitutional rights they will be challenging the norms of their community and would face expulsion.

Not only can rights be accessed only through personal relationships and connections, equally important, as Goetz points out, "the problem is not (only) that the state does not address gender injustice, but rather, that it cannot. It is perceived to have no province nor remit pertaining to the relationship between women and men."[11]

The effect of poor women's subordination as citizens is manifest in material conditions and in their lack of voice and influence in key decision making processes that affect their lives. Among Hindus in India, for example, land has traditionally been held jointly by men in a household excluding women totally. A change in this law has allowed women to inherit but as some researchers point out, women do that to their peril. Speaking of the 'jat' kinship system in the Punjab, Das Gupta says that "if she should insist on her right to inherit land equally under civil law, she would stand a good chance of being murdered."[12]

How can we think about gender justice – or the righting of the injustices heaped on women – and rights and how we think about women claiming their rights? Women need economic and social rights to secure their livelihoods and

they also need to have a say in wider decisions affecting their lives. For that they need political and civil rights to influence key decision making processes in a range of institutions at different levels ranging from the household to global governance institutions. In other words, this speaks to the indivisibility of rights in the lives of the poor.

Gita Sen defined feminist politics as "completing the project of citizenship for all" and elaborated four dimensions of substantive equality:[13]

- *Political equality which refers to our interaction as citizens in relation to the state;*
- *Economic equality in relation to property, the labor market, and work;*
- *Norms and Values that are embedded in institutions of society; and*
- *Personal equality which refers to women moving from being viewed and acted on as property in the family, home, and relationships*

Thus, if citizenship operates at all these levels, then an absence of citizenship at any one level puts citizenship at other levels at risk. So, for example, you cannot be making significant progress on voting if you do not also have autonomy and agency in the reproductive sphere. Without the latter, you cannot fully engage in citizenship.

Gender Justice, Institutions & Social Change

The notion that all citizens have not only political and civic rights but also social rights was introduced into the theoretical thinking on citizenship in the 1950s and opened the door to thinking about addressing social and economic inequality and promoting the exercise of political and civil rights by groups with little power and resources.[14] The idea of "rights" was the basis of liberation struggles throughout the global south. The 1990s saw a new focus on governance and citizen participation and a new relationship between development and rights.

In 1986, the United Nations explicitly linked human rights with development when it passed the Declaration on the Right to Development. The United Nations work on Right to Development is based on 5 core principles: participation, accountability, transparency, equity, and non-discrimination (United Nations, 2004). A 'rights-based approach' essentially argues that all people are entitled to universal human rights and development should be oriented to meeting those rights. Some analysts suggest that a rights perspective politicizes needs and that while a needs-based approach identifies the resource requirements of particular groups, a rights-based approach provides the means of strengthening people's claims to those resources.[15] Most interpretations of 'rights based frameworks' by human rights organizations and development agencies tend to be either legalistic

in nature stressing policy advocacy, the change of laws or formulation of new laws, and legal education, or focus on strengthening people's voice and mobilization to demand their rights. Still others use a rights-based framework to shape their analysis and design assessments and checklists to guide their programming and against which to judge interventions.[16] Few however, directly address empowerment, the transformation of power relations or the role of institutions – both formal and informal – in the complex process of social change.[17]

However, claiming rights *is* a political process and it is played out as struggles between interests, power and knowledge of differently positioned actors. Social change involving distributive justice, equity, and people's well being too is a political struggle. At the heart of both is "transforming inequitable relationships and structures of power" and both approaches need to be "grounded in grass-roots empowerment."[18] In other words, empowerment is the process through which people can change the direction of systemic forces that marginalize them by building their own capacity to make choices and translate those choices into desired outcomes, improving their asset base and transforming the organizational and institutional context which govern the use of those assets.[19] Empowerment is about transforming power relations. Specifically, this means: (i) control over resources or assets (natural, physical, human, financial and social); (ii) control over ideology (beliefs, values, attitudes); and (iii) changes in the institutions and structures that support unequal power relations.[20]

This perspective is based on human rights agreements but the focus is on an understanding of rights as a political process that people forge and define through struggle as well as negotiation.[21] Because institutions mediate people's access to resources, rights, opportunities, mobility and power, we believe that a focus on institutions provides a fruitful meeting point between rights and development discourses and action.

Institutions are rules about how to structure human interactions and social relationships so as to make them more predictable, productive, and more effective.[22] Institutions can respond to peoples' interests and needs or they can repress people's voices. Some institutions have organizational forms such as state bureaucracies, banks, NGOs, and community groups, which are organized by formal rules and procedures. Some have more fluid boundaries such as caste and kinship systems. They dictate what has value in any given social interaction. Many of these rules perpetuate unequal relations of power and are obstacles to women's empowerment and gender equity. Because formal organizations are socially embedded, they reflect and reproduce existing power imbalances. So, while formal rules may specify non-discrimination in serving a population, organizations often operate according to values and rules that may be hidden – "rules in use" which marginalize the interests of certain groups such as the poor or women. But more than that, "dysfunctional institutions do not just fail to deliver services. They disempower – and even silence – the poor through patterns

of humiliation, exclusion, and corruption".[23] For poor women, socio-cultural institutions such as the household have proved particularly discriminatory sites.

Below, we posit a conceptual framework that connects rights with institutions in a process of social change.[24] Central to this process is changing relations of power – this means changing formal and informal rules that determine, who does what, who gets what, what counts, and who decides. In this framework, human rights provide the ethical, normative frame for development processes in two directions – from top down as a foundation for policy and institutional reform processes and resource decentralization toward greater social and public accountability and bottom-up as a foundation for processes of mobilization and voice.

The framework has four main components. From the top are the state and its role in providing an opportunity structure. From the bottom is the mobilization and empowerment of women to claim their rights. This struggle happens within a context—on the right side of the diagram are the organizations crucial to mobilization but often less than helpful when it comes to *women's* rights. On the left side of the diagram are informal institutions – ideology and culture maintained by unequal power relations – which once again constrain some action and make others possible. An analysis of informal institutions is important for strategic reasons (what is possible?) and for reasons of intention (what should change?).

Figure 1: Rights, Institutions and Social Change[25]

HUMAN RIGHTS FRAMEWORK

OPPORTUNITY STRUCTURE
- Economic, social and political opportunities for participation
- Transparency and accountability
- Decentralization of resources

SOCIAL CHANGE: transforming inequitable relationships and structures of power

- Mobilization and voice
- Rights and choice
- Capabilities, assets, resources

Informal Institutions/ Invisible Power
- Ideology and culture
- Unequal power

Formal Institutions/ Visible Power
- civil society, political parties, other organizational actors and their cultural, accountability, cognitive and political systems

EMPOWERMENT

Opportunity Structure: To change systems of power, relationships between people, institutions and organizations have to shift. From top down this means the state must create an opportunity structure, in other words, institutions meaning both rules and structures which provide legislative and constitutional guarantees of rights, mechanisms of inclusion in social, economic and political life as well as processes by which these mechanisms are enacted.[26] More specifically, the state must provide:

- **A legislative framework of rights and policies** which guarantee freedom from violence, equality before the law, inheritance and marriage rights as well as other internationally recognized rights. (Specifically, the rights guaranteed in the UDHR, CEDAW and the Beijing Platform for Action)
- **Mechanisms** to ensure access to land, credit, political processes, affordable health care (particularly reproductive and maternal health), information, education and political processes. The state must also ensure basic food security.
- **Processes** by which these policies and mechanisms are implemented. Some positive examples include gender budgeting, women's police stations, and training for judges on women's rights.

As we move from frameworks to mechanisms to implementation processes the difference becomes greater between rhetoric and reality. This is the difference between rules and their enactment. For example, if there is legislation against violence against women, are there awareness campaigns? Are cases reported to police? Are there fair trials, are wrongdoers punished? Similarly if there is legislative support for women's participation in politics, are there fair electoral procedures? Are there opportunities for women to challenge gender-biased systems? Are elected representatives endowed with real power and resources? If there are fair employment practices, do employers comply with the law? Are there tribunals that will hear alleged violations? Are there mechanisms of redress?

Empowerment: In fact, states do not lead social change - change depends on women's mobilization and empowerment (the bottom up aspect of the diagram). Social change requires that women mobilize, build their resources as movements and use these movements to claim their rights. Through mobilizing they strengthen their influence over institutions and hold them to account ensuring equity. One way of understanding what is required for women to mobilize to pursue their interests is that they require five categories of "assets":[27]

- Aspiration—a belief in the possibility of change and the self-confidence to believe that you can contribute to it

- Information—access to various forms of information through various means such as mobile phones, TV, radio, newspapers etc.
- Organization—membership in effectively led organizations
- Financial and material assets such as land, employment
- Personal assets—literacy, numeracy and health

However, neither the opportunity structure (top-down) nor mobilization and empowerment (bottom-up) happen in a vacuum. Both are influenced by contextual factors, chief of which are the existing organizations that conceivably will help the realization of rights (civil society organization, political parties and trade unions) and the cultural dynamics that exist at both national and local levels.

Formal and Informal Institutions: The two sides of the diagram represent the context in which the struggle takes place. On the right side of the diagram, we show the institutions that are essential to women's participation—civil society organizations, trade unions and political parties. The question is not only do these bodies exist but also do they function in ways that will support women's rights and empowerment. There is a growing literature on civil society organizations and their effectiveness but our interest is in the less obvious aspects of organizational functioning that prevent these organizations from championing women's rights. For example, Goetz and Hassim (2003) have documented how particular aspects of political parties support or block women's participation. Similarly, Rao and Kelleher (2002) have described how the "deep structure" of organizations such as CSOs can operate to block women's involvement in the organizations as well as prevent the organization from functioning effectively to challenge gendered power relations.

The "deep structure" of an organization, like the unconscious of individuals, is largely unexamined but constrains some behavior and makes other behavior more likely (Rao, Stuart and Kelleher, 1999). For example, one aspect of the deep structure is the separation between work and family. As Joan Acker pointed out, a key assumption in large organizations is that work is completely separate from the rest of life and the organization has first claim on the worker. From this follows the idea of the "ideal worker" dedicated to the organization, unhampered by familial demands, and …*male* (Acker, 1990).

The deep structure is that collection of taken for granted values, ways of thinking and working that underlies decision-making and action. Power hides the fact that organizations are gendered at very deep levels. More specifically, women are prevented from challenging institutions by four inter-related factors:

- **Political access**: There are neither systems nor powerful actors who can bring women's perspectives and interests to the table;

- **Accountability systems**: Organizational resources are steered toward quantitative targets that are often only distantly related to institutional change for gender equality;
- **Cultural systems**: The work-family divide perpetuated by most organizations prevents women from being full participants in those organizations as women continue to bear the responsibility for child and elderly care; and
- **Cognitive structures**: Work itself is seen mostly within existing, gender-biased norms and understandings.

Gender Justice and Institutional Change

Gender at Work posits a conceptual framework that connects rights with institutions in a process of social change. There is a growing consensus that to make significant impact on gender inequality, we must change institutions. By institutions we mean the rules (stated and implicit) that maintain women's unequal position in societies. The terms 'institution' and 'organization' are often used synonymously, but we find it useful to distinguish between the two. We understand institutions as the rules for achieving social or economic ends.[28] In other words, the rules determine who gets what, what counts, who does what, and who decides. These rules include values that maintain the gendered division of labor, prohibitions on women owning land, restrictions on women's mobility, and perhaps most fundamentally the devaluing of reproductive work. Organizations are the social structures created to accomplish particular ends but which embody the institutions prevalent in a society.

Although much has been accomplished toward gender equality, it is still true that in no region of the world are women and men equal in legal, social or economic rights.[29] We believe that this is because the bulk of development and human rights work toward gender inequality ignores the role of the institutions (formal and informal) that maintain women's unequal position. One clear understanding that has emerged is that institutions change (in large part) as a result of the actions of organizations. Whenever an organization intervenes in the life of a community it has the on-going choice as to whether to challenge or support existing community gender-related norms.

Gender at Work's[30] work links organizational change, institutional change and gender equality. This conception of institutional change is multi-factorial and holistic. It is concerned with the individual psychology of women and men, their access to resources and the social structures in which they live. From the point of view of an organization intervening to change gender-biased institutions, change must happen in two places - outside the organization and within.

The diagram below[31] (Figure 2) is an effort to show the changes required

outside the organization. The figure is called, ***What Are We Trying to Change?*** It shows the four interrelated clusters of changes that need to be made. The top two clusters are individual (changes in measurable individual conditions -resources, voice, freedom from violence, access to health) and individual consciousness (knowledge, skills, political consciousness and commitment to change toward equality). The bottom two clusters are systemic. The cluster on the right is of formal institutional rules as laid down in constitutions, laws and policies. The cluster on the left is the informal norms and cultural practices that maintain inequality in everyday life. Change in one quadrant is related to change in the others. The arrows show possible directions of relationship.

In order for an organization to act as an agent of change in one or more of the clusters it must have certain capabilities and cultural attributes. Among these are a particular type of leadership, accountability to women clients, and a capacity for dialogue and conflict resolution. The quadrants affect each other in a variety of ways. They are:

- Individual/informal: personal skills and consciousness, commitment and leadership.
- Individual/formal: resources and opportunities available to staff.
- Systemic/formal: organizational policies and procedures, ways of working and accountability mechanisms.
- Systemic/Informal: deep structure and organizational culture.

Figure 2: What Are We Trying to Change?
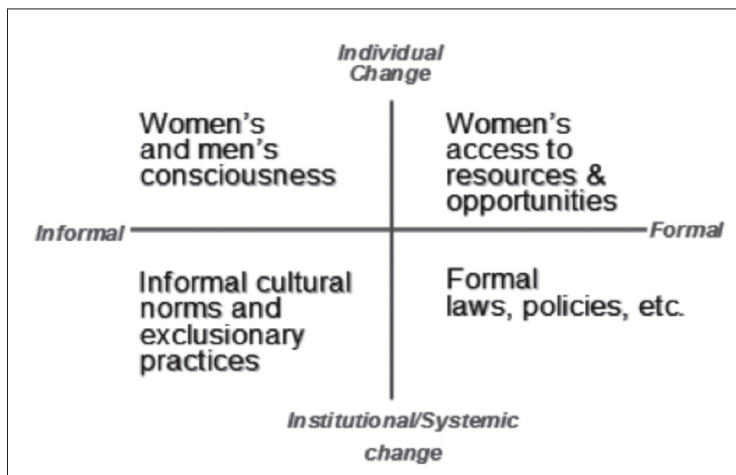
The function of this framework is not to delineate a fixed process, but rather present a way through which to analyze how an intervention promotes change.

As the sustainability of change is correlated with an approach that addresses change on formal, informal, systemic and individual levels, the framework also provides a tool to explore possibilities for directed efforts in other quadrants of change. Informal norms or values are often known but are perhaps not stated. Changes in these informal norms and values or institutional changes can then permeate rules and policies to create new opportunities and sanctions new kinds of behaviors. The more formal have to do with tangible changes, be they resources, policies or other tangible changes. A lot of the work around women's equality happens in the space of women's access to resources and opportunities, as these are tangible resources. Similarly the formal and more systemic change engages legal frameworks, such as CEDAW.

The same analysis can be applied to the implementing organizations themselves – see Figure 3 below, ***What Are We Trying to Change in Organizations?*** For example, what is the level of women and men's consciousness within the organization? Is there access to resources available to provide on these issues? What are the policies in the organization, and are they resourced or staffed? One can also then consider the organizational culture, power structures, and the way that the beliefs and systems work within the organization. For example, some organizations consider themselves to be learning organizations. The values that the organization holds shape the efficacy and sustainability of the initiatives it implements. In order for an organization to act as an agent of change in one or more of the clusters it must have certain capabilities and cultural attributes. Among these are a particular type of leadership, accountability to women clients, and a capacity for dialogue and conflict resolution. Figure 3 shows changes required within an organization. Similar to the earlier framework, the quadrants affect each other in a variety of ways.

Figure 3: What Are We Trying to Change Within Organizations?

When changes in these 4 quadrants (above) are not in sync, however, it is difficult for organizations or individuals to work together and successfully deliver on gender equality. It is crucial to be aware of how these factors interact with each other, in order to effect change. Also, it is necessary to strategically identify the direction and the nature of the change desired, and to analyze why the change is needed at various strategic points. There are numerous potential relationships between these different areas of change. Positive change in one dimension does not guarantee positive change in another dimension. These dimensions offer potential areas for action learning and change for each country context depending on the needs in each situation.

Conclusion

In this paper, we have examined some key threads in the gendered construction of identity and agency relevant to governance in postcolonial contexts. Turning then to universal principles of human rights, we posited a framework to think about the achievement of women's rights through institutional and organizational change. While in the real world seemingly contradictory and competing governance priorities and political struggles jostle for preeminence, historical experience suggests that women's substantive rights cannot be disengaged from primary political fights. Moreover, addressing internal governance dynamics at levels ranging from the household and community to national and global governance institutions will contribute to the sustainable realization of rights for the broad polity. Though the dynamics of cultural, institutional and organizational change are highly contextual, the inter-relationships between the individual and the systemic, and the formal and informal, can be explored in local contexts and contribute to a conversation about positive change for women's rights and improved governance structures.

Endnotes

1   For a succinct historical perspective of the evolving ideas of citizenship see Naila Kabeer, "Citizenship and the Boundaries of Acknowledged Community: Identity, Affiliation and Exclusion", IDS Working paper 171. October 2002.

2   Ibid., pp. 9-10

3   M Mamdani, Citizens and Subjects: Contemporary Africa and the legacy of late colonialism, Princeton University Press, 1996, p.16 cited in Kabeer, op. cit.

4   Alyson Brody, BRIDGE Pack: Gender and Governance, Overview Report. IDS, April 2009. P.1

5   Georgina Ashworth, Gendered Governance: An Agenda for Change. March 1996. http://nird.ap.nic.in/clic/rrdl100.html

6   Maitrayee Mukhopadhyay, "Situating Gender and Citizenship in Development Debates: Towards a Strategy" in Gender Justice, Citizenship and Development, Maitrayee Mukhopadhyay and Navsharan

Singh (Eds.), Zubaan Books, 2007 http://www.idrc.ca/openebooks/339-3/

7   Ibid., p.5

8   Ibid., p. 7

9   For a detailed discussion on the construction of 'bounded' communities see Kabeer (2002), Mukhopadhyay (2007) and Mamdani (1996)

10 Mukhopadhyay, op. cit., p. 9

11 Anne Marie Goetz, "Gender Justice, Citizenship and Entitlements Core Concepts, Central Debates and New Directions for Research, " in Gender Justice, Citizenship and Development, Maitrayee Mukhopadhyay and Navsharan Singh (Eds.), Zubaan Books, 2007 http://www.idrc.ca/openebooks/339-3/

12 M. Das Gupta, "Selective Discrimination against Female children in Rural Punjab" Population and Development Review, Vol. 13, No. 2 quoted in Kabeer, op. cit., p. 23.

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17 Lisa Veneklasen, et. al., Rights-based approaches and beyond: challenges of linking rights and participation, IDS Working Paper 235, IDS, December 2004

18 Ibid., p.7

19 The World Bank http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTEMPOWERMENT

20 Batliwala, Srilatha. 1994. "The meaning of Women's Empowerment: New Concepts from Action." Pp. 127-138 in Population Policies Reconsidered: Health, Empowerment and Rights. G. Sen, A. Germain, and L.C. Chen, eds. Cambridge, MA: Harvard University

21 Veneklasen, op. cit. p7

22 This discussion on institutions draws on Deepa Narayan, "Can Anyone Hear Us?" The World Bank, December 1999.

23 Ibid.

24 We recognize that economic factors are critical to women's empowerment; patterns of growth can support or curtail women's opportunities. But this framework is primarily about institutional factors that can both advance growth and equitable distribution or not.

25 This diagram and discussion is adapted from Aruna Rao and David Kelleher, "Is there Life After Gender Mainstreaming", Gender and Development, Oxfam GB, Oxford, July 2005 and Aruna Rao and David Kelleher, "Human Rights, Institutions and Social Change," Gender at Work, 2005

26 This categorization draws on the conceptual work of Jeremy Holland and Simon Brook in "Measuring Empowerment: Country Indicators" in Power, Rights, and Poverty: Concepts and Connections edited by Ruth Alsop. Report of a working meeting sponsored by DFID and the World Bank, March 23–24, 2004

27 Holland and Brook, ibid. p.94

28 Naila Kabeer, Reversed Realities: Gender Hierarchies in Development Thought, London: Verso, 1994

29 World Bank, Engendering Development Through Gender Equality in Rights, Resources and Voice, Washington DC: World Bank, 2001

30 Gender at Work is an international collaborative that strengthens organizations to build cultures of equality and social justice, with a particular focus on gender equality (www.genderatwork.org). For an in depth discussion see "Gender at Work's Approach to Change," http://www.genderatwork.org/gender-

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31 This framework is an adaptation of
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Casting Out "Citizenship":

Israel's Eviction of Palestinians

Nadera Shalhoub-Kevorkian

In her presentation at the 2012 conference, Dr. Nadera Shalhoub-Kevorkian, director of the Gender Studies Program at Mada al Carmel (Haifa) and associate professor at the Faculty of Law at the Hebrew University, dissected Israeli legal thinking and government discourse around the 2003 Citizenship and Entry Law which bans Palestinian spouses from the West Bank and Gaza from residing with their partners who live in Israel, including Jerusalem. Shalhoub-Kevorkian scrutinized both Israel's "security theology" and its underlying demographic agenda. In the light of a January 2012 decision of Israel's High Court upholding the constitutionality of this patently racist law, Kevorkian argued that the President of the Court, even while offering a dissenting opinion, configured the court in favor of the law's upholding, in order not to upset the dominant Israeli consensus, leading to an interesting discussion with advocate Hassan Jabarin of Adalah, a petitioner in the case, on whether the High Court should be a venue for Palestinian legal strategies. For reasons of space, this argument is not included here but can be found, along with a rich theoretical discussion, in the chapter, "Israel in the Bedroom," of her upcoming book, The Theology of Security, Surveillance and the Politics of Fear (forthcoming from Cambridge University Press), on which her conference presentation was based. We are grateful to Nadera and to Cambridge University Press for permission to publish this edited excerpt from her presentation and look forward to this important volume.

In early 2012, Manal, a 29-year-old woman with four children, became a widow after ten years of marriage. Her husband, Tayseer, died in his house in the old city of Jerusalem, following a battle with cancer. Manal is Tayseer's distant cousin, originally from a village that is a 15 minute drive from the old city of Jerusalem. The Israeli institutional logic of keeping Palestinians where they were born, in their small villages and neighborhoods, categorized Manal as a West Banker, with the right to remain in Jerusalem only if she gets an official permit, even if her

husband carried a Jerusalem ID that categorized him as a resident. During the two years of Tayseer's illness, Manal, Tayseer and their children lived on the children's welfare and Tayseer's disability allowances. The early and painful death of Tayseer left Manal in a state of fear, loss and confusion. It turned her not only into a single mother without the love and support of the father of her children, but also into an illegal entity in her own house. Her status – or lack thereof – restricted her mobility and denied her the right to take her daughter to the hospital when needed; it also prevented her from financially supporting her family due to the cut of her children's welfare allowances, a cut that was justified by the fact that she is a West Banker. After four highly insecure months, Manal decided to look for help, and requested the legal aid of a local human right organization to help prevent her family from being deported from her home in Jerusalem, The only legal way to keep Manal in her home was to apply for a permit, that would allow her to stay as a special humanitarian status, an exemption to the general ban on spouses with West Bank IDs residing in Israel, including Arab East Jerusalem, as mandated by the Citizenship and Entry into Israel Law, 2003. The fact that Manal's children were born in Jerusalem, and were registered in their father's ID, allowed them to be recognized as permanent residents (not as citizens), gave them medical insurance, and access to education in local public schools.

Her request to get an official permit to stay in Jerusalem for humanitarian reasons was accepted only 20 months following her application but with several conditions The approval letter stated the following:

> *"The special humanitarian reason is the fact that you had a permit to stay when your husband was alive and now following his death you remained the only natural guardian of your children. The permit is valid as long as the center of your life is in Israel and you are not married to a resident of the area/region or as the second wife of a polygamous man. When renewing the permit, the center of your life and your personal status, will be re-examined. In addition, a security and police oriented investigation will be conducted."*

Behind Manal's immense human suffering lies a well orchestrated legal system of population control and surveillance. In Israel, ID cards (including permits) were introduced in 1949, following the November 1948 census (Kassim, 2000). Accordingly, all Jews, whether residing in Palestine prior to 1948, or arriving from elsewhere, were granted cards. The 165,000 Palestinians that were not expelled from what would become Israel were granted ID cards as Tawil-Souri (2010)

stated: "not so as to incorporate them into Israeli civic and political life per se, but so as to prevent the return of the 750,000-plus Palestinian refugees who had been expelled or fled, who were then considered "absentees" and thus denied Israeli citizenship and any possibility of return."

Manal and Tayseer's family were also uprooted in 1948. Manal's present legal and psychosocial condition of living under constant uncertainty raises questions of how a state that was built on the uprooting of a group of people– namely the Palestinians–uses surveillance strategies and laws to intrude in intimate affairs, such as in the case of Manal. How does legislation superimpose on the natural instincts inherent in personal ties between kin, by situating communities in a constant fear of being exiled and displaced from their own homes and land? How can Manal's bedroom, body-politics, partnership, marital status, change of neighborhood, and other related behaviors become "security" threats, or "criminal" acts, that permit the state to deport or expel her, as the official temporary approval letter indicated? And for what reason would the Israeli Citizenship and Entry Law, have the jurisdiction to decide on an individual's personal status and ability to protect their own children?

To answer the previous questions, I will examine Israeli legal discourse and government discussions on Israel's Citizenship and Entry into Israel Law, 2003 (temporary order), approved and amended by the Knesset in March 2007, that denies Palestinian citizens and residents of Israel the right to acquire residency or citizenship for their family members, primarily spouses from the occupied Palestinian territory, but also from "enemy states." It also bans citizenship for "anyone living in an area in which operations that constitute a threat to Israel are being carried out" in the opinion of the security services.

Legalizing Discrimination

On January 11, 2012, in a 6-5 decision, the Supreme Court of Israel in the case of *MK Zahava Galon v. The Attorney General et al.* ruled to reject all appeals against the 2003 Citizenship and Entry into Israel Law (Jabareen & Zaher, 2012). According to a January 12, 2012 press release by the Association for Civil Rights in Israel, the law, which had originally been passed as a temporary provision but has since been renewed each year by the Knesset, prohibits Palestinian spouses or children of Israeli citizens from receiving both permanent residency status in Israel and Israeli citizenship (ACRI, 2012). The 2003 law permitted Palestinian spouses/children of Israeli citizens residing in the West Bank or Gaza who had

received temporary residency status in Israel before the enactment of the law to continue to renew their temporary status, but it prohibited them from upgrading their status to permanent residency or applying for Israeli citizenship. It also carried a provision stating that the Israeli government had discretion to strip such spouses of temporary status for any perceived national security concern (ACRI, 2012). A 2007 amendment to the law prohibited Israeli citizens' Palestinian spouses residing in Lebanon, Syria, Iran, or Iraq from applying for any status in Israel, either temporary or permanent. Applications for exemption are forbidden for males under the age of 35 and females under the age of 25 living in the West Bank, and for Gazans of any age.

The civil rights organization Adalah (one of the parties whose appeal to revoke the law was rejected by the Supreme Court ruling) argued that the decision, which upheld a law that deprived citizens of their right to have families in Israel based solely on the nationality or ethnicity of their spouses, constituted clear racial discrimination and contradicted the principles of equality enshrined in Israel's Basic Law (AIC, 2012). A law journal article published in 2005, two years after the law was originally passed, declared that the law was not only a violation of Israel's Basic Law, but it also constituted a violation of Israel's duties as a state signatory to both the International Covenant on Civil & Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Nifkar, 2005).

A report by the BADIL Resource Center for Palestinian Residency and Refugee Rights describes in plain terms how the ruling would force members of Palestinian families with different residency statuses to make a stark choice: live together abroad (putting the Israeli spouse at risk of losing his or her Israeli citizenship), live apart from one another, or risk living illegally together in one place (Badil, 2012). This report also discusses how targeting Palestinian families and forcing them to face such an intolerable choice provides proof of the true, race-based "demographic intent" behind the 2003 law: to maintain the Jewish racial majority of the state by barring Palestinians from any path to citizenship, and, more directly, by providing a legal means by which the government can engage in transferring Palestinian temporary residents from Israel. Statements by certain members of the Knesset welcoming the Supreme Court ruling provide further evidence of this intent. According to MK Otniel Schneller, "the decision articulates the rationale of separation between the two peoples and the need to maintain a Jewish majority…and character of the State." In the words of MK Yaakov Katz "the state of Israel was saved from being flooded by 2-3 million Arab refugees" (Badil, 2012). The stark invocation of a demographic threat also helps

to explain the remark of the conservative Supreme Court Justice Asher Grunis, who defended his vote for the majority ruling by stating that "human rights should not be a prescription for national suicide" (Clyne, 2012).

The Me'uhmashim:
Between the "Claim of Return" and the Right to Return

Rejecting all appeals against such law situate people like Manal in a constant condition of fear and uncertainty, while imposing on her the obligation- if she wishes to stay in Jerusalem- to never to marry, change her personal status, and make sure not to be defined as someone that is engaged with "police/criminal" or "security" related concerns. The question is: How Manal's family's safety, unity and security can be considered a threat?

Looking closely at the choice of nomenclature of published Israeli experts' opinions regarding such laws, including those of the leading researcher of Israel's demographic studies, Amnon Soffer, in a study published by the College for National Security (Soffer and Shalev 2004), we can identify distinct biases in the status of Palestinians based on rhetoric. The study notes:

> *"the 'return' of Palestinians to the sovereign territory of the State of Israel [entails] harsh ramifications….the national one is the population of Me'uhmashim [this is a militaristic mode of naming, referring to those that were granted family re-unifications permits or ID's] is creating a process of "Palestinization" among Arab Israelis that is replacing tendencies to "Israelize" such population….."* (page 7)

The fact that the researchers are using the word " return" and are pairing it with a military-oriented mode of naming that includes the term, *Me'uhmashim*, to discuss family reunification, points to the fact that the requests of Palestinians such as Manal's, are analyzed as requests for the right to return with its "security" dangers.

Investigating Palestinians who wish to unite with their family members in their own land, and portraying them as "security" threats, and "criminal" concerns, is reflected by Sofder and Shalev's (2004) argument that such unification could actualize Palestinian's "Claim to Return". Note that the researchers used the Palestinian's Right to Return, but then changed it into the "Claim to Return". They explain: (page 7)

> *"the Palestinian's "return" to the sovereign territory of the State of Israel has severe ramifications, in the economic field (huge payments for the National insurance allowances for children, unemployment; ……..); in the security field (on average every fifth attack involved an Arab Israeli that got an identity card due to family unification); the national field (the Meu'hmashim population created a process of "Palestinization" of Arab Israelis, instead of trends of "Israelization" of this population, and this hinders significantly the willingness of Israeli Arabs to integrate in the Israeli society); the criminal field (….drug offenses, property rights violations……..), and the demographic field (and numerical relationships between the Arab and Jewish population, pushing the Jewish population from the mixed cities; and strengthening the "Arab voice" in the political scene.*"

Discussing the issue of "return," while phrasing it in a manner that destabilizes the state's economic, national and security apparatus, produced Palestinians as unwanted others. It also aimed at justifying the construction of new regulatory legislations, and discriminatory laws. Furthermore, the politics of naming and the use of the word "return", supports thestate's colonial logic. This was clear in the use of the concept of the "Palestinization" of Arabs in Israel and the act of pointing out to the "criminality" of the "other."

Surveillance, Security and Demography

Discussing the issue of the Palestinian presence in their homeland, must also be analyzed through the logic of an offensive state constantly dealing with a social divide, in search of a *casus belli* against its minorities. As portrayed in Soffer and Shalev's message, Israel should control, through its surveillance strategies, count and manage Palestinians to make sure they do not resist oppression, they do not speak their political views, they do not raise the issue of their identity as Palestinians, and they do not produce too many children that might change the demographics of the ruling majority. To make sure, Palestinian's number do not increase, Israel should legislate laws, and create additional systems of control.

When trying to investigate whether similar issues were raised in committees dealing with the newly acted law, we learn that internal discussion in the Israeli Knesset (parliament) suggested these concerns. For example, on July 14th, 2003; (protocol number 47) :

Meni Mazouz (Deputy to the Legal Advisor of the State): *Everybody understands that this is not a simple proposed law...*

Isam Makhoul: *Why can't we be satisfied with the existing options that enable the government to take its time, to investigate? It looks like the real consideration is the demographic consideration.*

Ehud Yatom: *It is written here explicitly that the law came because there seem to be a growing involvement of Palestinians in the conflict. This should be taken into consideration. One can't ignore such an issue.*

Jamal Zahalka: *How many people are involved?*

Ehud Yatom: *We are talking about 140,000 people that settled between 1994 to 2002.*

Nisan Slomyanski: *Security element is made up of two things. 1. That there are terrorists and Mehablim1 2. That they are changing the demography. The right to return became the basis, the reason behind every agreement that exploded,2 that the State of Israel, including the Labor party, strongly opposes the right to return. When there is a group, that is willingly and consciously, applying the right to return, and that is beyond the subject of terrorism, the State, for sure, needs to protect itself."*

On Children, Securitization and the Law

In a recent publication of the Israeli National Council for the Child (NCC), it was revealed that children's statuses were also affected by security-centric ideologies and demographically focused interpretations. The statistics published by NCC in 2011 revealed that in May 2011, 155,000 children in Israel lived without citizenship. The report also explained that there is an increase of over 24% since 2001. Over three quarter (77.4%) of those children, are from East Jerusalem, positioning children in a state of "unauthorized legality" and "official unrecognizability." In the Knesset's protocol documents, the rhetorical tools put into place by the use of the prefix "un-" meant to convey "a lack of" adequately connotes the nuances of the problematic of identifying the children of the indigenous Palestinian population. During a discussion in the Knesset following the decision of the government in May 2002, that ordered the Minister of Interior to refrain from allowing couples from the West Bank or Gaza to have a legal status, or get a permit to "live in Israel"; Adi Landau from the the Israeli civil rights organization, Ha Moked, explained:

> Adi Landau*: Since the decision of the government, children who are residents of East Jerusalem are not registered in the population council. There is no way to arrange their status.*
>
> Yuri Stern, Chair (Knesset member)*: I do not think this issue belongs to the legislation at hand.*
>
> Adi Landau*: According to this legislation, child residents of Jerusalem will not be able to receive a status. The legislation refers to citizens and people that are residents of the area and that include children.*
>
> Yuri Stern*: The Jerusalemite children are permanent residents.*
>
> Adi Landau*: The Jerusalemite children are not automatically permanent residents. We represent hundreds of people that are in such conditions. Children of a widowed women, that were married to someone from the Shtahim3 stay without any official status, and they are candidates of deportation.*
>
> Nisan Slomyanski (Knesset member): *You are talking about those that were born in the Shtahim!*

The previous quotation shows that despite the efforts of the representative of Ha Moked to explain that many children that live in Jerusalem are living without an official legal status, the committee members did not heed her claim. Living without an official legal status means that children's mobility, their access to their educational institutions, their health and medical conditions, their safety and livelihood are jeopardized, due to their illegitimacy by the Israeli administrative standards. The committee chair and other Knesset members refused to acknowledge the conditions and dismissed the precarious status of children.

Moreover, both the members of the committee and the Ha Moked representative used the term *Shtahim* to refer to the Palestinian area. The use of the word *shtahim*, as being children of people from the *Shtahim*, or being born in the *Shtahim*, allowed the violation of children's basic rights, and denied them their rights for security, safety and destabilized – to say the least- their future status and conditions.

When looking further into the discussions carried out in the Knesset regarding the proposed law; the committee continued to stress the governmental concerns and its directing ideology; while generalizing all the population, and refusing to acknowledge children's rights. This was clearly portrayed in the committee's chair Yuri Stern conclusion (p.20):

> *"We are in a state of war with the Palestinian people. This legislation is an emergency legislation to a state of war. I want the ministry of Justice to review what happened in Europe or in the United States when they were in an armed conflict with some countries."*

Stern's concluding remark aimed at clearly stating - children or not children - Palestinians are all terrorists, and should not be granted any official status. Children's rights, in such securitized discourse, lose its value or morality while immorality of war prevails.

Security: Justification for Ethnic Cleansing?

As the previous quotations reflected, and as Yuri Stern concluded in the Knesset committee discussing Citizenship law, the members of the Knesset promoting the law masked clear oppressive and discriminatory intents behind language that indiscriminately identifies Palestinian residents of the *Shtahim* (including Jerusalem – mainly those parts of Jerusalem that are defined now as *Shtahim*, the West Bank and Gaza) married to Israeli citizens as terrorists and national security threats (Al-Haq, et al., 2012). As an article in the newspaper *Haaretz* reports, the justification of "national security" was much in evidence when the Knesset, less than one month after the Supreme Court's rejection of all appeals to revoke it, voted to extend the temporary for another year (with the expectation that it would be replaced by new, more permanent legislation sometime in the future). The preamble to the extended law quotes an assessment by the Shin Bet that Palestinians seeking family unification pose a "heightened security risk," and that, despite the decline in West Bank-originated terrorist attacks, "past experience… points to use of this population to carry out terror attacks in light of their access to targets in Israel." (Zarchin, 2012). The reliance on the specter of terrorism (despite being divorced from the reality of the decline in actual terror attacks) is a perfect example of Agamben's theory of the risk incurred by state "security reasoning": "A state which has security as its only task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to turn itself terroristic" (Agamben, 2005). Agamben's analyses is imperative, for it supports my claim that there is a new religion, new theology. The new theologians – and here I refer to the security generals and the *Shabak* people – leave no space for any questioning, and transform the analyses, to "home" it only in a house and language constructed by the persecution of the "other," the Palestinian, and sustain it with a securitized

logic of protecting Jews, without taking into consideration the rights of others, including those of Palestinian children.

Citizenship and Entry Law in Palestinian Bedrooms

"*We are originally from Yaffa, in 1948, my family was displaced and ended up in Jordan. In the 1950's my uncle, cousins and many family members decided to stay in Jerusalem. I was born in Jordan, but married my cousin's neighbor who met me in Amman during my cousin's visit, and proposed to marry me. I now live in Jerusalem…my close family never visited me...I live in an area filled with soldiers that are harassing us to protect the settlers...I live in Jerusalem like a thief, in my land like a criminal, always afraid…walk fast….look around... never relaxed... I need to renew my permit every year in order to stay in my own house with my family,…every year again and again…. and the last three years I did not get an official renewal, they kept on sending me back, asking for new documents, new papers, checking if I am still married to my husband, if I have a Tick (a "criminal file" in Hebrew...since 2000...since I got married...I live under so much fear and anxiety...last week, I was sleeping with my husband in bed….I was in an intimate condition with my husband, when we both saw a small red light, moving from one side to the other, from the cupboard to the wall, on the bedroom curtains and back…then it disappeared...then… we both noticed it again...we both froze...froze totally, and my husband said with such a low voice, in voice filled with pain, …Maysun, they came to take you...Hay usset tasreehek (This is the story of your permit)*" Maysun, 30 years old.

"*I live alone in my house, in Ras el Amud (a small village/neighborhood in Jerusalem); my husband is from el Khader, a village in Bethlehem area...something like 20-30 minute drive from my house here...of course without military checkpoints. I call myself a temporary widow, for I have a husband, but, he is prevented from reaching Jerusalem, and the children, and my family, and the children's schools, doctors, grandparents and my own work are all in Jerusalem. I am a nurse, certified nurse, living with my 4 children alone, and my youngest son misses his father a lot….I also miss him…. His father can't help me when they fight, when they are sick. He can't help them in their home work, nor can he spend*

time with me and be there for me. When he comes, when he sneaks in, we need to be quiet...we can sleep with each other, but like thieves ...we are both like this "law"...what do they call it? The absent-present law. We try to be absent when present...and want to be present...when they want to count us out." Nariman, 37 years old

In the dominant media representation, there is a clear investment of many individuals inside and outside Israel, to portray Israel as a "liberal-democratic state" a term whose meaning can vary almost indefinitely. It necessary to understand the meaning of such terminology as reflected in the voices and life experiences of the Palestinian indigenous population, and particularly in the voices of women such as Maysun and Nariman. These women's voices and narratives, discuss the way Israel, as demonstrated by its structural oppressions, and legalized (formal and informal) control and surveillance system, became a center for the articulation of gender and race politics. Although, these particularities are not all new, the second Intifada and the manifestations of hegemonic analyses on "terrorism", mainly following 9/11, revealed new dynamic relations among the Jewish state, race and gender. The role of race (in this context, as referring to Palestinians) and gender is now being used as a regulatory apparatuses, a mode of surveillance and control of the Jewish state.Our examination of Israeli legal discourse allows us to comprehend the way the subject of the Palestinian people emerges as a public policy issue, and the institutional regulatory and disciplinary responses to which turns them, as Maysun and Nariman explained, into criminals and outsiders. Nariman's and Maysun's life in Jerusalem, although seemingly unrelated to the functions of state power, can not be separately analyzed from the context of state's power Their voices reveal that n the Israeli discourse of "security" risks, and "demographic" threats, as racial and gendered categories created by disciplinary power, racialized and radicalized the law.

I argue that such racial formation resonates with the Israeli legal culture and system, through its "citizenship" law and practices. Nariman and Maysun's recognizability as "approved" subjects of discriminatory public policies is produced through their affiliation as Palestinians, created by racialized and gendered historical hierarchies invading the boundaries of the Palestinian bedroom. The relationship between the forms of Israeli government management and the nature of the Jewishness of the state, and its effect on Palestinian's right to family life, home, and spouse's privacy; is a contentious topic. Achille Mbembe uses Agamben's notion of "necropolitics" and argues that "necropower" (the economy of life and death) produces what he calls "death worlds" (Mbembe, 2003, pp.11-

40). Surveillance and control over Palestinian's live, family and bedroom, produces the disciplinary, biopolitical and necropolitical power of the Jewish state. Out casting Palestinians is possible not only simply through Israel's sovereign right to expel, but also through the right to preserve individuals in a state of uncertainty, waiting in an eternal waiting room as in a Kafka-style labyrinth of administrative processes. The "colonial order of things" as Stoler puts it, and as portrayed in the voices shared, can not be dissociated from the sexual and racial politics of the Israeli rule, and the formation of the Jewish-democratic state/self (Stoler, 1995, p.46). The self-making of the Jewish state, through the conceptualization and legalization of government practices, are central to understanding "Israel in the Palestinian bedroom".

Endnotes

1 This means "terrorist," in Hebrew.
2 He was referring to the fact that after much effort, the agreements did not work out.
3 Palestinian areas

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Women's Rights Activism in post-January 25 Egypt:

Combating the Shadow of the First Lady Syndrome in the Arab World

Hoda Elsadda

In an important intervention, Hoda Elsadda, a founder of the Women and Memory Forum in Cairo and a professor at both Manchester and Cairo universities, examines the backlash against women's rights activism, and in particular Mubarak-era reforms of Personal Status Law, following the January 2011 popular uprising. Elsadda argues "that one of the key obstacles that women's rights activists will face in the months and years to come is a prevalent public perception that associates women's rights activists and their activities with the ex-First Lady, Suzanne Mubarak, and her entourage—that is, with corrupt regime politics in collusion with imperialist agendas." She argues convincingly that this perception runs contrary to the rich history of women's activism in Egypt, although she acknowledges the complications of state-sponsored women's bodies in recent years. Elsadda's article was first published in Middle East Law and Governance (Volume 3, 2011) and we thank her and the journal for permission to publish in the Review. Elsadda's thoughtful analysis addresses many of the central issues discussed by video link at the 2012 conference in a roundtable with Hala Kamal on Egypt and Nabila Hamza on Tunisia.

On March 8, 2011, Egyptian women took to the streets to celebrate International Women's Day, in response to a call that was sent out on Facebook for a million-person women's march. Since January 25, 2011, Egypt had witnessed a momentous transformation in protest culture and power, wherein millions of people took to the streets to demand their political rights. Million-person marches demonstrated people's power in the face of a ruthless police state, and eventually succeeded in ousting President Husni Mubarak and ending his 30-year dictatorship. On this day, the 8th of March, the call brought to the streets a few hundred women, nothing near ten thousand, let alone a million. This was not unexpected, as it

would have been extremely unrealistic to imagine that the first sparks of a popular revolution would bring about overnight a radical transformation in cultural attitudes towards women's rights demands.

What did come as a surprise and a real shock to all, however, was the marked hostility and violence that was unleashed against women protesters, as they were harassed and shouted at by groups of men who gathered around them. They were accused of following western agendas, and of going against cultural values. These accusations are not new, and hark back to some entrenched perceptions that have roots in the colonial period when feminist activism was associated with western interventionist policies in the region. More significantly, they were insulted for being "the followers of Suzanne", Mubarak's wife, or in other words, accomplices of the decadent and corrupt Mubarak regime that the revolution forced out of power.

The events of the day were a blow to women activists and supporters of women's rights, particularly after the sense of euphoria and empowerment they experienced in Tahrir square—where women worked side by side with men, where sexual harassment was non-existent, and where their gender identity was superseded by their identity as citizens with equal rights and responsibilities.[1]

Women activists struggled to pinpoint the reasons behind the marked hostility they witnessed. Many explanations presented themselves: that the call was premature and politically naïve (i.e., that the time was not right to prioritize women's issues at this particular moment of political transformation); that the organizers of the call did not do a good job mobilizing for the day; that the attacks on women protesters were orchestrated by counter-revolutionary forces with the intention of forcing women out of the streets and destroying the revolutionary spirit; and that it was naïve to imagine that the revolutionary spirit would eradicate misogyny and cultural bias against women over night. The answer is probably all of the above. In addition, I will argue that one of the key obstacles that women's rights activists will face in the months and years to come is a prevalent public perception that associates women's rights activists and their activities with the ex-First Lady, Suzanne Mubarak, and her entourage—that is, with corrupt regime politics in collusion with imperialist agendas. Already, this public perception is being politically manipulated to rescind laws and legislative procedures that were passed in the last ten years to improve the legal position of women, particularly within Personal Status Laws (PSL). These laws are deliberately being discredited as "Suzanne's laws", or more pejoratively as "*qawanin al-hanim*" (*hanim* meaning madam or mistress in Turkish, was used with the definitive article *al* or "the" to refer to Mubarak's wife by her entourage and the ruling elite).

The key questions that arise are these: Were these laws politically motivated by

a corrupt agenda of a corrupt regime, or did they arise out of the agenda and years of work of women's rights activists? Can they rightly be described as "Suzanne's Laws"? And if the answer is in the negative, what are the reasons that led to this conflation between the aspirations and work of rights activists, on the one hand, and the political agenda of an authoritarian regime on the other? In what follows, I will describe recent campaigns against "Suzanne's Laws". I will then shed light on the collusion between state policies and women's rights issues in an attempt to elucidate the reasons behind the association of women's rights with the ex-First Lady and the ruling regime. Lastly, I will give a short historical narrative of the process that led to the legislative changes in order to bring to the fore the complexities of legal reform in the context of undemocratic governance, and the challenges faced by activists therein.

On April 19, 2011, Muntasir al-Zayyat—an Islamist lawyer and columnist—published an article in the popular independent newspaper, *al-Masri al-Yawm*, entitled *qawanin al-hanim* (a sequel followed a week later). He begins by emphasizing the fact that with the fall of Mubarak, we still have to deal with the negative consequences of his corrupt regime. He points out that the first five years of Mubarak's presidency seemed to be going in the right direction, taking action to relieve the tensions that followed Sadat's assassination. However, his reform policies were soon aborted as he fell under the influence of three men, Safwat al-Sharif, Zakariya Azmi and Kamal al-Shazli—senior members of the ruling National Democratic Party, and arguably the three most powerful and hated men in Egypt—who were soon joined by his wife Suzanne, known as *al-hanim*. Al-Zayyat credits Mubarak's transformation into a tyrant to his new entourage, which isolated him and broke off all channels of communication that he had attempted to open with various political groups in Egypt.

Having situated the ex-First Lady right at the centre of the corrupting courtiers, he switches to his main point: namely, the role she played in destroying the values of the Egyptian family, according to his point of view, and particularly her role in endorsing the issuing of Law No. 1 of 2000, which resulted in modifications and procedural changes to the PSL in Egypt. He wonders why it is the habit of *al-hawanim* (plural of *hanim*, and with reference to both Mubarak's and Sadat's wives) to disrupt the "stability of the Muslim family" by going against religious consensus. His contention primarily revolves around three legislative modifications that have been introduced since 2000: the first concerns a law that regulates divorce; the second concerns guardianship of children and visitation rights of the party who is not the guardian; and the third concerns '*urfi* marriage (unregistered marriage). According to al-Zayyat, all of these modifications are

anti-religion and contrary to Muslim family values.

It is noteworthy that the post-25th January campaign against laws passed since 2000 was not exclusive to Islamists, though religious arguments were at its centre. The liberal *Wafd* newspaper published a report on Monday March 28, 2011, condemning the destructive impact of *al-hanim* on the family in her capacity as the head of the National Council for Women (NCW), which pushed the laws through parliament. The *Wafd* reporter pointed out that the NCW was established by presidential decree number 90 in 2000, with the ex-First lady as president. Hence, the NCW became the "spoilt child" of state institutions. The article lists all the laws that were passed or modified since 2000 (i.e., the divorce law, the citizenship law, and the guardianship law), as well as the quota for women that gave women 64 seats in parliament, as evidence of her political manipulation that was destructive on both the private sphere of the family and the public sphere of politics. Sameh Ashour— prominent Nasserist and ex-head of the lawyers syndicate—is quoted in the article in support of its thesis, and says that all the laws that were passed with the backing of Suzanne Mubarak were politically motivated to serve the interests of the ruling elite, especially as regards the succession plans for Gamal, the son of Mubarak. He stresses that the 64 seats for women in parliament were directly in the service of these plans, as all the appointees were loyal to the NDP.[2]

Women, Nation and Modernity

The centrality of women's rights issues in political and ideological struggles in Egypt goes back to the early stages of nation-building in the nineteenth century, when women became icons of the imagined national community and subsequent proof of Egypt's modernity. In 1899, Qasim Amin published a seminal text on the history of Egypt, *Tahrir al-Mar'a* (The Liberation of Women), wherein he put forward the argument that the backward status of women was a key reason and indicator of the backwardness of the country, and that the improvement of the status of women (i.e., making them more modern similar to their western sisters) was a prerequisite for the modernization and progress of the country. The link between women and the backwardness or progress of the country was in the first instance a colonial argument, which propagated the idea that women in colonized countries were victims of their societies, and stood as proof that these societies were incapable of creating a system of fair self-governance. This, in turn, provided a pseudo-legitimacy to the continuation of colonial domination.

Many of the early reformers in Arab countries, as they struggled to gain independence, were influenced by these arguments and adopted the underlying logic—namely, the view that the modernity of the country was proportionate or commensurate with the modernity of its women. Modernity was defined to mean many things: access to modern education; relinquishing traditional customs that were perceived as irrational; an embrace of a way of life that was largely modeled on western values and culture; the reformation of religion; and last but not least, the liberation of women, symbolically performed in the act of unveiling. Women's bodies became the arena for the struggle over the character and image of the nation, leading to the well-known ideological battles over the veiling and unveiling of women.[3] In the 1920s and 30s, these battles were fought between two camps, aptly described as the *muhajjabun* (proponents of veiling) and the *sufuriyyun* (proponents of unveiling). The first claimed that they were protecting cultural authenticity and Muslim family values, while the second advocated reform of obsolete traditions. Both fought over the cultural identity of the nation as projected via the bodies of women.

Reforming Personal Status: Women's Activism and State Feminism

Throughout the twentieth century, women remained on the frontline of the modernist conflict between tradition and modernity. In 1956, following the success of the 1952 revolution of the Free Officers, the new ruling order responded to the demands of women activists campaigning for rights and inclusion in the political sphere. Women were granted economic and political rights, and were encouraged to become active participants in the new welfare state. However, although gaining equal rights in the public sphere, women remained subservient to male authority in the private sphere, as the PSL that regulated their position within the family were left intact. This incongruousness created a bizarre anomaly: while women accessed top government positions and secured their economic independence, they remained under the control of male family members in such matters as the legal guardianship of children, mobility, and access to divorce. In one famous incident, a woman minister who was traveling on official business was denied exit at the airport because her husband secured an injunction to stop her from leaving the country, a right he had as the legal head of the family.

Efforts to improve the position of women in the private sphere and modify

PSL in Egypt have been a defining hallmark of women's rights activism, from the early twentieth century until the present day. Early feminists, such as Malak Hifni Nasif (1886-1918) and Hoda Sha'rawi (1879-1947) spoke up against legal discrimination against women. However, a radical shift in women activists' engagement with politics took place in 1956, as the new modern state consolidated its power. At the same time that women were granted political and economic rights, the Egyptian Feminist Union—an activist forum founded in 1923 by Hoda Sha'rawi— was dissolved, and law 384 was issued, establishing government control over all civil society institutions.

Independent women's organizations and societies were replaced by state-run organizations that monopolized all political activism and minimized the role of independent civil society. The Egyptian Feminist Union was transformed from a political entity into a service-oriented charity, operating under the supervision of the Ministry for Social Affairs, and regulated by Law 32/1964. In effect, the state nationalized civil society, as it moved towards a one-party system of governance. Women continued to lobby for rights that were aligned with existing state policies and under the auspices of the ruling party. In 1963, for example, Hikmat Abu Zayd—Minister of Social Affairs under Nasser—organized a conference to discuss the conditions of women in the labour market, women's integration in the labour market being one of the objectives of Nasser's political project.

In the 1970s, as more and more women consolidated their status in public, the stark discrepancy between women's rights in the public and private spheres led to several initiatives to modify PSL. This bizarre anomaly was brilliantly captured and dramatized in a landmark film, *Urid halan* (I want a solution), released in 1974. Based on a true story, the film exposed the legal injustices codified in the PSL that discriminate against women and render them easy victims of unscrupulous spouses. The film was a resounding success, and foregrounded the issue of women's subordinate legal status as a social priority on the national agenda.

The 70s witnessed a number of initiatives to modify the PSL. Local initiatives coincided with international mobilization for women's rights issues across the globe, marked by the first international women's conference in Mexico in 1975 under the auspices of the UN. The first was led by Aisha Ratib, Professor of Law at Cairo University, and Minister of Social Affairs (1971-1977), and the second by the Family Planning Association in Cairo, headed by Aziza Husayn, prominent activist for women's rights. Both proposals were drafted by committees of experts, but did not find their way to parliament as both were subjected to ferocious campaigns claiming to protect authentic family values from destruction.

In 1979, Law 44 was passed drawing on some of the proposals submitted

earlier. It stipulated that husbands must confirm their social status upon contracting another marriage. The first wife would then have the right to ask for divorce within a year of her being informed of this second marriage, without having to prove harm. The law also gave the wife the right to continue living in the family home upon divorce, so long as she had custody of her children, hence solving (albeit temporarily) a major social problem caused by discriminatory family laws as well as a housing problem. In 1984, Law 44 of 1979 was declared unconstitutional on procedural grounds, as indeed it was passed by presidential decree during the summer recess of parliament, was not of an urgent nature, and hence did not qualify as a matter that warranted recourse to the president's exceptional authority.

In 1985, Law 100 was passed with compromises. To name only one, unlike Law 44 which granted women the right to divorce without having to prove harm if the husband took another wife, Law 100 required the wife to prove that this second marriage caused her harm. Women activists were critical of these compromises and setbacks, but were equally critical of the abuse of executive authority and the flaunting of due process in passing legislative reform in 1979. The 1979 Law has been marked in popular memory as "Jihan's Law", referring to Sadat's wife, a reminder of the political manipulation exercised by the residing First Lady. It became clear that the legal battle could no longer be confined within the circles of experts, but had to be fought on the ground, supported by an awareness-raising campaign for women's rights issues in society.

The 1980s witnessed the establishment of a new generation of women's organizations: the Arab Women's Solidarity Association (1982); The Association for the Development and Enhancement of Women (1987); The Alliance of Arab Women (1987); and the New Woman (1991). In 1988, a group of advocates for women's rights published a short booklet entitled *al-Huquq al-qanuniyya li al-mar'a al-misriyya bayna al-nadhariyya wa al-tatbiq* (Legal rights of Egyptian women in theory and practice). This booklet outlined the legal rights of women guaranteed under the PSL, as well as a number of recommendations for improvement, including a proposal for a new marriage contract that would allow a woman to stipulate conditions in her contract regulating her relationship with her husband, and facilitating litigation should a dispute arise. The marriage contract proposal did not entail a change of the PSL, and was only a procedural matter (i.e., a new certificate to be issued by the Ministry of Justice with a list of possible conditions that a woman may choose to insert). The conditions were not compulsory, and were left as a subject for negotiation between the couple entering into marriage. Conditions varied and included, for example, the right

of a woman to a judicial no-fault divorce known as *khul'*, and the right to travel without obtaining permission from the husband. From the outset, the proposal was conceptualized as a consciousness-raising tool, inviting men and women to consider their rights within marriage, and foregrounding women's rights issues as a matter for public debate. The proposal was met with negative publicity, however, and was put on hold.

In 1993, and in preparation for the NGO forum scheduled to take place in concert with the 1994 UN Conference on Population and Development (ICPD) in Cairo, the government appointed Aziza Husayn as head of the National Preparatory Committee for NGOs.[4] Ms. Husayn seized this opportunity to mobilize women's rights groups and activists to work collectively and lobby for women's rights. The marriage contract proposal was revived and adopted by the Gender and Equality Committee. Legal, social, historical and economic studies were commissioned, and a media campaign was launched. The committee positioned itself within a liberal Islamic frame of reference, and presented evidence from Islamic history to support the idea that women can include conditions in their marriage contracts to guarantee their rights. The marriage contract of Sukayna bint al-Husayn—great grand-daughter of the prophet Muhammad and grand-daughter of Ali ibn Abi Talib—which stated that her husband could not take a second wife and could not bar her participating in literary gatherings, was cited as an example in Islamic history. *Khul'* was also argued for with reference to precedent at the time of the prophet.[5] The rationale of situating the project within an Islamic frame of reference was to counter arguments that positioned women's rights activism as insensitive to cultural and religious traditions, and/or as representative of western-directed agendas.

The advent of the ICPD and the international focus on Egypt also led to the revival of the National Commission for Women in 1993, and the beginnings of Suzanne Mubarak's interest in women's issues. The Commission adopted the project for procedural changes in PSL, including the new marriage contract and the introduction of the *khul'*. In 2000, Law No. 1 was passed: it sought to rectify a backlog of cases by reforming procedures; granted women the right to *khul'* provided they forfeit their financial rights; facilitated access to court in the case of *'urfi* marriages; and introduced the new marriage contract, with a list of conditions in an appendix. Further legal modifications followed in 2004 and 2005, introducing a new family court system, establishing a fund to ensure fair and prompt access to alimony and child maintenance, and giving women custody of their children until the age of 15. However, the point to remember here is that Law No. 1 of 2000 passed through parliament amidst resounding

opposition, and only because members of the ruling National Democratic Party towed the party line as they were instructed to agree. Despite the consciousness-raising campaign enthusiastically embraced by women activists, and despite the work that was put into conceptualizing and formulating projects for legal reform, the outcome was still determined by the endorsement of the First Lady as she exercised her political leverage and power.[6]

Fighting the First Lady Syndrome

Debates on women's rights continue to be caught up in conflicts over representational power struggles involving cultural identity, the role of religion in the modern period, and the image of the modern state. Under Mubarak's rule, as he sought to present himself as the sole guardian of the commitment of Egypt to modern values in the battle against the rising power of Islamists in the Arab region, the role of the ex-First Lady as the foremost champion of women's rights was foregrounded and celebrated. Gradually, what many activists feared when the National Council for Women was established came true: the NCW competed with existing women's organizations, sought to appropriate women's activism and work, and tried to monopolize speaking on behalf of all Egyptian women. NCW members were disproportionately represented in local, regional and international media and forums. Women's rights activism became linked with the projects of the First Lady in popular memory.

I have attempted to show how the majority of these projects were predominantly the work of activists, not necessarily supportive of state policies in general, and not necessarily tied to the interests of the ruling elite. Moreover, although the sum total of the legislative changes that have been passed since 2000 sought to redress serious flaws in PSL that led to immense social problems on the ground, they do not, by any stretch of the imagination, satisfy the demands of women's rights activists for an equitable and just PSL. However, as women's rights issues continue to be conflated with the political project of a corrupt and discredited regime, activists must brace themselves for a long a protracted fight.

Endnotes

1   On March 3, 2011, a renowned historian published an article in which she maintained that the post-revolution period will witness a new feminism, "a feminism embedded in revolution... that to use the term 'feminism' seems redundant or superfluous, even anachronistic." See Margot Badran, "Uprising in Egypt: Egypt's revolution and the new feminism," *The Imminent Frame: Secularism, religion, and the public sphere*, 3 March 2011, http://blogs.ssrc.org/tif/2011/03/03/egypts-revolution-and-the-new-feminism/ (accessed 15 June 2011). However, the euphoria expressed in this article was soon to prove premature wishful thinking after March 8, 2011, and the subsequent events.

2   (Report by Mahamoud Abd al-Rahman, "qawanin al-hanim... faqidat al-shar'iyya" in *al-Wafd*, Monday 28 march 2011

3   Unveiling in the early decades of the twentieth century initially meant the unveiling of the face. Gradually, it has come to mean not wearing a headscarf.

4   The studies conducted as part of the National Preparatory Committee of NGOs' work were published in a special issue of *Hajar*. Hoda Elsadda and Salwa Bakr, eds, *Hajar: Kitab al-Mar'a* (Hajar: On Women's Issues) 3-4 (1996), published in Cairo by Dar Nusus li al-Nashr.

5   For a detailed account of the marriage contract project, see Mona Zulficar and Hoda Elsadda, "About the Project to Modify the Marriage Contract Certificate" *Hajar: Kitab al-Mar'a* [in Arabic] 3-4 (1996): 251-70. It is worth pointing out that the liberal Islamic approach that the Committee adopted in framing women's rights was controversial amongst women activists themselves.

6   For an excellent account and analysis of the marriage contract campaign, see Diane Singerman, "Rewriting Divorce Law in Egypt: Reclaiming Islam, Legal Activism, and Coalition Politics," in *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. Robert W. Hefner (Princeton and Oxford: Princeton University Press, 2005), 161-188.

Fraying at the Edges?

Discordant notes from the margins of India Shining

Kalyani Menon-Sen

In her keynote address at the 2011 conference, Kalyani Menon-Sen, an independent researcher and activist based in Delhi, asks why violence against "women's bodies, rights and freedoms" has increased in India when the dominant narrative of "India Shining" is of relentless economic growth, a flourishing democracy and a successful negotiation of modernity and Indian heritage and culture. Her rooted analysis argues that a neoliberal state in alliance with caste, class and gender hierarchies has produced an "upsurge in patriarchy." She offers a number of detailed dissections of "the violence of development" particularly focusing on the lethal combination of (Hindu) religious fundamentalism and militaristic nationalism in campaigns against the Adavasis, a tribal people. She compellingly demonstrates how a resurgence in feudal patriarchy and organization has led to killings of couples who marry outside caste boundaries, and analyzes the contest within the judiciary and with women's organizations combatting these crimes. The rich examples are complemented by a overview of the operation of "women and national honor" in the construction of "Mother India" and by a call for social movements to united "to build alliances to protect and expand democratic space." In so doing and in her incisive link of the neoliberal state to anti-democratic hierarchies, Menon-Sen offers us a framework for comparison in understanding gender and governance in an age of empire.

The year 2010 drew to a close on a note of hearty good cheer in India, in contrast to the gloom and doom in the financial centres of the global North, where a cold winter was made colder by the economic recession. "Pitch the question of sustained global recovery to a group of experts and cacophony ensues. But talk of India's ride on the road to recovery, and the yeah's ring loud. This is the big Indian story for 2010" crowed The Economic Times[1]. The optimism continued into

2011 with the government's annual Economic Survey confirming the impressive rate of GDP growth in 2009-10. "Whichever way you look — consumers, innovation, spending, globalisation — India is at the centre" said Citigroup CEO Vikram Pandit, while Mukesh Ambani of Reliance Industries, recently crowned as one of the richest men in the world, predicted that India would be a $5-trillion economy by 2022[2].

Around the same time, another official report confirming another set of impressive growth figures was released. The annual report of the National Crime Records Bureau (NCRB) showed an increase in crimes against women (from 7.9 percent in 2005 to 8.2 percent in 2009)[3]. Rape had the highest growth rate among violent crimes, going up from 2487 in 1971 to 21,397 in 2009. More than 27 percent of total crimes against women were reported from the national capital, Delhi, which accounted for 24 percent of rapes, 40 percent of kidnappings and abductions, 15 percent of dowry murders and 14 percent of molestation cases. Delhi also topped the list in terms of crimes against children.

The report generated the predictable outrage among women's groups and human rights activists, and the equally predictable defensive responses from the police. The Police Commissioner expressed the view that the increase in the crime rate was negligible in relation to the increase in population during the same period[4]. He also stated that since, in the majority of cases, the attacker was known to the victim or was a member of the victim's family, the police could do little to prevent rapes.

What the Police Commissioner did not mention was that the NCRB figures reflect only part of the picture. These numbers reflect only the cases that are registered with the police, which many women's groups maintain are less than half of total crimes against women. Moreover, they include only those offences that fall within the definition of "crime against women" - other crimes such as murder, assault, custodial violence, witch hunting, honour killings, sex-selective abortions and many others are left out of the reckoning.

A recent study found that that nearly one in four Indian men have committed an act of sexual violence at least once in their life and one in five have forced their wife or partner to have sex. More than two thirds of the Indian men surveyed for the study said that women should tolerate domestic violence for the sake of the family, and felt that domestic violence was sometimes justified[5].

These statistics do not match the idea of India that has been successfully marketed both globally and nationally – a democracy committed to the ideals of non-violence, peace and respect for diversity; a nation that remains connected to its glorious past while negotiating progress and modernity with unique grace; a

vibrant economy where the energy of growth is breaking traditional barriers of caste and community.

The creation of this vision of India Shining is the result of a conscious project of collaboration and alliance-building between the neoliberal state and the power-holders within traditional caste, class and gender hierarchies from whom the state derives support and validation. The increasing deployment and justification of the use of violence as a tool of economic, political and social control is the most visible manifestation of this alliance. It is not surprising that women are the primary targets of violence, given that women's bodies and women's lives are the sites where hegemonic notions of "development", "growth" and "progress" are both constructed and contested by a range of movements and actors.

The violence of 'development'

During the last few decades, violence has become embedded in the discourse and practice of development in India. The emergence of a political consensus (that now includes the Left) in favour of neo-liberal macro-economic 'reform' has increased the vulnerability of women from already marginalised groups, including Dalits[6], Adivasis[7], landless and migrant workers, informal sector workers and the urban poor. An estimated 60 million people have been displaced in the last decade by development projects of dubious value, often implemented in the face of resistance from communities[8]. In particular, communities that depend on natural resources for their livelihoods are threatened by the provisions of the National Environment Policy (2006), passed despite strenuous opposition from civil society, which provides justification for prioritising economic considerations above environmental sustainability[9].

Changes in the policy framework to allow commercial exploitation of natural resources, particularly metals and minerals, have led to large-scale handover of forest land to corporations, including multinationals. These areas are the traditional homes of Adivasi communities, which are now being subjected to a new wave of internal colonialism. The ideology of caste, reinforced by the civilising mission initiated during the colonial period and continued by the post-colonial state, provides the moral justification for the dispossession of Adivasis from their lands and way of life.

The most horrific example of the deployment of violence for the furtherance of economic interests through the expropriation of the rights of Adivasis is the *Salwa Judum* movement in the state of Chattisgarh in central India. Officially

described as a spontaneous uprising of young men from tribal communities, *Salwa Judum*[10] is in fact a state-sponsored counter-insurgency campaign started in 2005 ostensibly to counter Maoist guerrillas who have established a significant presence in large parts of the state. Tribal youth (many of school-going age) have been mobilised into vigilante gangs, designated as 'special police officers', equipped with motorcycles and arms and given a free hand in "cleaning out" villages as part of a scorched earth policy designed to starve the Maoists of local support. Over 300,000 people from over 600 villages have been displaced and forced into camps by *Salwa Judum*. Reports by human rights organisations, citizens' groups and government-appointed committees have documented extensive violence against women and girls by *Salwa Judum*, including gang rape, sexual mutilation, illegal confinement and disappearances of women who resisted forced relocation[11].

The collaboration between the ostensibly secular Congress-led government at the centre and the BJP, the Hindu right-wing party in power in Chattisgarh in supporting and protecting *Salwa Judum* underscores the political consensus around economic policies. The man widely regarded as being the founder of the movement is a politician from the Congress Party, long the most dominant in Indian politics. The ground-level leadership of the *Salwa Judum* is dominated by traders and forest contractors, traditional exploiters of the Adivasis. Many of these "leaders" were also active in efforts to persuade communities to cede their lands to the corporations who had been granted mining rights.

Although Adivasis consider themselves distinct from and separate from Hindus, and were traditionally acknowledged as being outside the caste system, Hindu right-wing organisations are now recasting them as Hindus. The political project of 'Hindutva', or Hindu nationhood, rests on the idea of Hindus being indigenous to India – a claim that is challenged by the Adivasis self-identification (literally, "original inhabitants"). The movement to bring Adivasis, whom they term "*vanvasis*" or forest dwellers, back to the Hindu fold has proceeded at a fast pace in the BJP-ruled States. Since the sexual freedom and personal autonomy experienced by women in traditional Adivasi societies is a direct challenge to the Hindu patriarchal order, a key element in the reconversion is the imposition of Hindu norms related to marriage and sexual relations. For instance, the BBC recently reported that Adivasi girls who participated in a mass wedding ceremony organised by the government in BJP-ruled Madhya Pradesh were forced to undergo a virginity test to prove that they fulfilled Hindu norms of chastity. The government admitted that 13 girls who were found to be pregnant were excluded from the ceremony[12].

Retribution for those who refuse to return to the Hindu fold is also exacted

on the bodies of women. The mass rape of Adivasi nuns by a Hindu mob in 2003 was justified by the Secretary of the VHP (a militant Hindu organisation) as a patriotic Hindu reaction to the conversion of Adivasis by Christian missionaries – a remark that the Home Minister in the BJP-led government refused to condemn.

Caste and the resurgence of feudal patriarchy

Caste is usually described as a fundamental organising principle of society in India, but it should be noted that caste as we know it today is a modern phenomenon rather than a core civilisational value as often assumed. Dirks (2001)[13] has unpacked the role of colonial state in the production of caste through the bureaucratic effort to categorise and 'freeze' the diverse and fluid social identities, communities and modes of social organisation that the British Raj encountered in India. Caste politics was a significant element in the nationalist struggle for independence and caste assertions by leaders like Ambedkar were seen as threats to the unity of national purpose. The optimistic assumption that caste would disappear with modernity (reflected for instance in the fact that the affirmative actions built into the Constitution were time-limited) was not fulfilled – instead, caste has crystallised into perhaps the most powerful marker of poverty, exclusion, domination and oppression, and is a central focus of social movements for equality.

The rapid economic transformation experienced by some privileged regions and communities threatens entrenched hierarchies of class, caste and gender and has created the conditions for the revival of casteism in new and more powerful forms. The clan councils or *khap panchayats* in rural North India exemplify this phenomenon. These traditional bodies of the landowning Jat community claim control over large clusters of Jat-dominated villages, all the inhabitants of which are deemed to be siblings even if they are not related by blood. *Khaps* are said to have originated in the 14th century, and are composed of 10-15 male village elders, who claim the status of institutions of local self-governance, intervening to resolve familial and property disputes. Although the *khap* is a Jat institution, it enjoys the support of all the dominant caste groups, which are willing to sink social and political differences in the interests of solidarity against assertions by Dalits and other new claimants to political space.

The power and influence of the *khaps* has suffered considerable attrition in recent years, partly because of their supersession by elected *panchayats* under the three-tier system of local governance introduced through the 73rd Amendment to

the Constitution in 1992. Perhaps more significantly, traditional *khap* strongholds like Haryana and Punjab have seen rapid urbanisation and economic growth, creating sharp social and economic contradictions. For instance, Haryana has the highest per capita income in the country, but the lowest child sex ratio (821 girls to 1000 boys in the 0-6 age group). Sex determination followed by sex-selective abortion is widely practised. The tradition of women marrying into families of a higher social class has resulted in a surplus of brides at the top of the social order and a pronounced deficit at the bottom of the social order14.

At the same time, urbanisation, access to education and exposure to a wider world through the media has generated new aspirations in young women who are increasingly reluctant to confine themselves to the traditional female domains of kitchens and cattle-sheds. Given the diminishing pool of marriageable girls in the community, these assertions of independence have generated a high level of anxiety within families and have led to the tightening of patriarchal controls on women's sexuality. The perceived need to control daughters has revalidated the traditional *khap* function of ensuring caste endogamy and clan exogamy.

Marrying outside caste boundaries

The issue became public in June 2010, when a women's group petitioned the Supreme Court of India to intervene and protect young couples who had married outside caste boundaries or married within the clan. The *khaps* were pronouncing judgements on these supposedly incestuous relationships and imposing punishments ranging from heavy fines, social boycotts or permanent exile from the village for entire families. In many cases, especially where the relationship transgressed caste boundaries or where the couple sought legal recourse, the *khaps* were ordering the concerned families to reclaim their honour by killing their offending children. The murders were brutal and were carried out in full public view, with the police turning a blind eye and the village community openly applauding the killers as heroes who had restored honour to the community. According to figures compiled by women's groups, 900 young people were victims of honour killings in a single year in the three northern states of Punjab, Haryana and Uttar Pradesh.

The Supreme Court order blew away the comfortable conviction that honour killings were a reflection of a regressive mindset that India and Indians have moved away from in the era of spectacular growth and emergence as a "global player" on the world stage. The main opposition party, the Hindu rightwing BJP[15] that

has always taken a sly delight in highlighting and condemning reports of honour killings from Pakistan, was forced to issue a statement condemning the *khaps*, while its sister organisations, the RSS and VHP, were vocal in supporting the right of communities to defend their "culture and tradition" To the embarrassment of the government, the Chief Minister of Haryana, himself a Jat, upheld the right of the *khaps* to maintain the "social order" and described the media furore as an over-reaction. Even more shocking was the position taken by a young politician from Haryana, a member of the ruling party's supposedly progressive "youth brigade," who demanded an amendment in the Hindu Marriage Act to expand the definition of consanguinity and to give the *khaps* the status of family courts under the law.

Responding to the Supreme Court, the Home Ministry proposed an amendment to the law in order to include honour killing as a specific form of murder under which families, communities and caste councils could be held collectively guilty. However, the cabinet – which includes several members of the Jat community – failed to reach a consensus on the proposed amendment, which was referred to State governments for their comments and agreement.

The furore reached a crescendo when a woman judge in a lower court in Haryana awarded the death penalty to five members of a family who were convicted – under existing laws - of the kidnapping and murder of Manoj and Babli, a young couple who had been outlawed by the *khap* because they belonged to the same clan and were therefore deemed to be siblings even though they were not blood relatives. The couple had approached the court for police protection, and were in fact kidnapped from a bus despite being accompanied an armed police escort. The head of the *khap,* on whose orders the murder was carried out (and who happened to be the girl's grandfather) was sentenced to life imprisonment. The judgement included a strong condemnation of the *khaps,* holding them to be illegal and unconstitutional[16].

The verdict was hailed by feminists and human rights activists who pointed out that it was a lack of political will that allowed the *khaps* to function, rather than any inadequacy in existing laws. On the other hand, the ruling unleashed a storm of protest from the *khaps,* who vowed to get the ruling overturned. A hastily organised *mahapanchayat* – a meeting of *khaps* across clans – was attended by thousands and a huge amount of money was collected to meet the legal expenses of the appeal. A decision was also taken to demand formal legal status and recognition for the *khaps* as institutions of local self-governance. The *mahapanchayat* was chaired by a former judge of the Rajasthan High Court who now emerged as a champion of Hindu tradition and caste pride. Another eminent

participant at the meeting, a former police chief, warned those who opposed the *khaps* and their diktats that they would also face harsh punishments.

While the media headlined the judgement as a blow against the "killer *khaps",* public responses on blogs and websites in the aftermath of the verdict repeatedly endorsed the notion of community honour as lying in the chastity and virtue of its women, which must be preserved by keeping their bodies away from contact with "unauthorised" men[17].

This view also finds reflection in the judgement pronounced by the Supreme Court while commuting the death sentence in a case where a young Brahmin man killed his sister's husband, a Dalit whom she had married secretly. "It is common experience that when the younger sister commits something unusual and in this case it was an inter-caste, inter-community marriage out of a secret love affair, then in society it is the elder brother who justifiably or otherwise is held responsible for not stopping such an affair....if he became the victim of his wrong but genuine caste considerations, it would not justify the death sentence. The vicious grip of the caste, community, religion, though totally unjustied, is a stark reality."[18]

Why Male Violence?
Unemployment and Attacks on "City Girls"

Choudhury (2010)[19] sees a clear link between violence against women and the high rate of male unemployment in Haryana resulting in forced bachelorhood for large numbers of young men whose lack of a job pushes them out of the marriage market. This is the group that is most vigilant in policing women's relationships and enforcing the diktats of the *khaps.*

The anger and alienation of young men is most visible in the immediate hinterland of Delhi, in villages surrounding the satellite cities of Gurgaon and NOIDA. These villages are the target of private developers who are taking advantage of the Haryana's government's pro-urbanisation policies and buying up huge tracts of agricultural land for conversion into high-end real estate. *Jat* families with large landholdings, battling the negative fallouts of the Green Revolution and diminishing returns in agriculture, have queued up to sell their land. Since most land deals involve tax evasion through a component of cash payment, farming families suddenly found themselves flush with "black" cash. Young men in these families have discarded the *Jat* tradition of frugality for conspicuous consumption – large mansions, flashy cars, branded clothes, imported guns and

high-end drugs. Many of these young men turn to crime, apparently out of boredom and the need to do something – according to the Gurgaon police, rates of violent crimes such as rape, murder, extortion and kidnapping show a sharp spike in areas where real-estate developers have moved in[20].

Alienated from their land and from productive work, increasingly distanced from their children who no longer respect their authority, the older generation is finding itself marginalised and disempowered. While older women sink into depression, the men turn to the *khaps* which they see as a platform that can restore their self-respect and sense of control[21].

A significant number of incidents of violence against women in Delhi are attributed to young men from the villages surrounding the satellite cities[22]. Communities in these villages justify violence against "city girls" as fitting punishment for their immorality. A case that excited a great deal of public debate was the gang rape of a young student at a NOIDA business school who was sitting with her male friend in a parked car outside a busy mall in the early evening. The car was surrounded by a group of ten young men returning from a cricket match, who beat up the man with cricket stumps leaving him unconscious. The young woman was dragged to a nearby field and raped repeatedly. The assailants were arrested within 24 hours of the crime – they were all below 25, college dropouts from wealthy Jat families who made no attempt to hide or escape and readily admitted to what they had done. The *sarpanch* expressed surprise at the shock and outrage in the media."They are blowing things out of proportion – she was just raped, that's not such a big deal" he was quoted as saying. Others said that the couple were "doing something wrong" and the boys only did their duty by acting to stop it. The mother of one of the boys appeared on TV channels to say that the girl was at fault. "She must have done something to anger them. Agreed the boys made a mistake but it is not that big a crime. The girl is at fault here. These big city types come here and corrupt our village" she said.

Mother India: women and national honour

Under patriarchy, the honour of the community and the honour of the nation are both inscribed on the bodies of women. Normally relegated to the margins, at times of nationalist struggle women come to symbolize the honour and virtue of the nation. They become the icons, the mother-figures for whom men are willing to lay down their lives. It is on this notion of womanhood that the cultural identity of the community and the nation is built.

Throughout the freedom movement in India, nationalists portrayed the country in feminine terms. India was "the motherland" – depicted as a mother goddess in conformity with the rules of Hindu iconography. On 14 August, 1947, the day before the country was partitioned and became a 'nation', the front page of a Hindu right-wing weekly, the Organiser, carried a map of India on which lay a woman. Her right arm (representing Pakistan) had been severed and Jawaharlal Nehru, India's first Prime Minister, was shown standing over her with a bloody knife in his hand.

In the large-scale violence that was sparked off by the Partition, thousands of women were actually raped, abducted, sold into slavery and prostitution, both by their own men and by men of the 'other' community. When the time came for them to `go home', many had formed new relationships and did not want to leave their husbands and children. Social workers trying to "reunite" women with their natal families was asked "Who are you to meddle in our lives?" Another woman social worker admitted that at times she sympathized with the abducted women "as a woman" but felt compelled to "act as an Indian" and force them to return. The abducted women themselves were given no choice – once she was located, she had to be brought back to her real "nation"[23].

The idea of Mother India, the nation as mother goddess, continues to exert a powerful influence on the national imagination and is deployed both by the state and the Hindu right-wing to good effect in situations of crisis. The nationalism being constructed by the Hindu right wing casts women as mothers and wives, supporters of men as they struggle for a Hindu *rashtra* or nation. Feminism is explicitly condemned as a western import that subverts women to the service of individual desires and goes against traditional values. Ironically, Indian women who win crowns in international beauty competitions have been congratulated by the BJP, even as the consumerist values and lifestyles they sell are condemned as un-Indian.

In confronting neoliberalism and market capitalism, the Hindu right is faced with the same dilemmas as Indian nationalists who struggled against colonialism. Both are attracted to modernity and capitalist economic and political structures, and are struggling with anxieties about loss of a distinctive Indian identity. Chatterjee (1986)[24] has shown that which Nationalist Indian men handled this anxiety by emphasising the "distinctive spiritual essence" of Indian culture and highlighting Indians' superiority to the colonisers in the "spiritual domain", while simultaneously emphasising the need to acquire the skills, technologies and forms of economic and political organisation that enable material domination. In struggling to establish themselves as "modern but different", Indian nationalist

men have emphasised a sharp demarcation between the "inner" or spiritual realm of the nation (in which nationalists claim superiority to and autonomy from the West) and an outer or material realm (in which the subordination of the nation to the West is acknowledged).

The burden of representing the inner realm of the nation in nationalist discourse falls largely on the figure of the "modern" Indian woman. The discourse of Indian nationalism continues to cast women as the signifiers of an essentialised "Indianness." Oppressive gender relationships within traditional family practices such as arranged marriages and joint families are glamorised and sanctified by the popular media, and "adjustment" is emphasised as women's primary virtue. Mainstream Indian films and TV continue to cash in on stories depicting utopian families, where parents find suitable spouses for their children, brothers lived harmoniously together and women happily accept patriarchal controls on their sexuality and economic autonomy.

Nanda (2009)[25] has analysed the close links between neo-liberal globalisation and Hinduism in India. Middle-class Indians are becoming more actively religious as they are becoming more prosperous. The state, ostensibly secular and socialist, is complicit in this process, as is the corporate sector. From actively promoting religious tourism, to allowing private sector trusts to run the institutions that impart 'value-based' (read Hindu) education, to giving away land at highly subsidised rates to *gurus* and self proclaimed god-men, the actions and policies of the government foster the promotion of Hinduism.

Violence is built into the militant forms of nationalism being promoted primarily, but not exclusively, by the Hindu right-wing in India. The conscious construction of a macho masculinity during the nationalist movement was a response to the British valorisation of Muslim "martial races" and depiction of Hindu subjects as effeminate. Violence by the lumpen stormtroopers of the Hindu right against Muslims and Christians, most recently in Gujarat and Orissa, reflects a conscious effort to demonise these groups.

"Good governance" and women's rights

Apart from the trends discussed above, the neo-liberal model of development as economic growth is threatening and constraining the political space for the achievement of women's rights and gender equality and is widening the gap between policy and practice. This trend is visible in the changing articulation of women's rights in public discourse and public policy in India over the last

decade. Many of the key policy documents of the 1990s reflect the contribution of activists from women's movements in policy dialogue and policy formulation during this period. As a result, feminist analyses and priorities found their way into documents like the National Policy on Education (1988) and the Approach Paper of the Ninth Five Year Plan (1995)[26].

In the last decade however, there has been a steady shift towards identifying gender equality as a means - an essential precondition for development - rather than as a desirable end in itself. While policy documents contain grandiloquent rhetoric on "rights-based development,"resource allocations reflect the neo-liberal maxim that sees 'economic empowerment' as the sole and sufficient requirement for gender equality. Policy-makers apparently see no contradiction between the promotion of schemes for economic empowerment simultaneously with measures such as cuts in social sector spending, the introduction of user fees in health and education, the dismantling of the public distribution system, the phasing out of agricultural subsidies, deregulation of food markets and elimination of protective labour legislation.

Women's groups are finding it increasingly difficult to challenge patriarchal and anti-poor development ideologies through mainstream institutions and processes of governance. Strategies such as participation in expert committees and groups set up to advise on policy reform, are yielding diminishing returns. The adoption by the development community of a diluted and depoliticised version of "gender mainstreaming" and the perception of microcredit as a magic bullet that can cure both poverty and women's subordination, has further constrained the space for promoting women's rights. Today, all the major national schemes for women's empowerment are in essence microcredit schemes, although they are advertised as "microcredit plus".

It would seem that, in their eagerness to promote financially viable and minimalist interventions, the government is glossing over the contradictions emerging in microfinance programmes, and are making unjustified assumptions about their "empowerment outcomes."[27] The Human Rights Commission has ordered an enquiry into the recent suicides of several members of women's microcredit groups in Andhra Pradesh, the southern State that has promoted thousands of self-help groups and claims that they have brought about rural transformation.It has emerged that in many cases, interest on loans is as high as 40 percent and women are trapped in debt, forced to borrow from one institution to pay off the interest on the loan from another. Many clients exist only on paper and proxy agents are operating freely in the absence of financial checks and balances.[28] Some well-known firms such as SKS Microfinance which recently

entered the global market with a successful international public offering, have been revealed to be indulging in dubious financial practices, in effect using the savings of poor women to further their own speculative share market operations.

While the legal framework for women's rights is being augmented with new laws on the right to information, domestic violence, sexual harassment and women's property rights, implementation mechanisms continue to be constrained by patriarchal norms and controlled by powerful caste and class interests that actively promote women's subordination. As described earlier in this paper, judicial institutions are not immune to these tendencies - pronouncements and decisions by the judiciary on issues such as domestic violence, rape, honour killings and child sexual abuse often reinforce and legitimise the patriarchal boundaries that protect the sanctity of the private domain.

Feminist research in diverse sites of contestation of women's rights over the last two decades supports the assertion that the concepts and discourses of citizenship are explicitly androcentric and do not reflect women's experiences, priorities or practices. According to Tanika Sarkar (2001)[29], women will always be incomplete national subjects, because land is central to the territorial concept of the nation and women's right to own and inherit land is still a contested issue.

Women's movements in India have focused on action against violence as a strategy that can expand the political space for the exercise of democracy not only for women, but for all other struggling subordinated and oppressed groups. From a feminist perspective, political space can be conceptualised as a series of interconnected and expanding domains within which discourses and relations of production and reproduction are constructed. Starting with the self, political space expands outwards through the sphere of direct interactions to larger institutional and structural spheres. Action against violence can create opportunities for women to assert their agency and identities as rights-bearers, thus expanding the boundaries of political action and reconfiguring relationships and discourses in each of these spheres.

Conclusions

This paper presents evidence from India to support the contention that the joint operation of neo-liberal macroeconomic policies, religious fundamentalism and militaristic nationalisms has created the conditions for a renewed upsurge of patriarchy and has revitalised existing hierarchies of caste and race. The sharp increase in violence against women's bodies, rights and freedoms in the decades

after liberalisation, is the most visible face of the collusion between these three global forces.

While the trends described in this paper are global, the case of India is important because of its current push for global power status. Out of the four BRIC countries that are projected to emerge as global economic powers by the middle of this century - Brazil, Russia, India and China - India is most aggressive about projecting its civilizational virtues. In this narrative, India with its Hindu civilization is presented as the bright, forward-looking side of globalisation, while Pakistan - and indeed, Islam itself - is made to stand for its dark, demonic and regressive underbelly.

The challenge for Indian social movements is build alliances to protect and expand democratic space in the face of powerful forces that are polarising and alienating social movements from each other. There are many struggles on the ground, but the lack of a cohesive political platform that can carry the aspirations of these struggles into the larger political system undermines their aspirations.

The feminist focus on violence against women has been criticised as a divisive and polarising issue that weakens social movements and makes them vulnerable. This paper supports the opposite view – that violence against women is important precisely because it can politicise seemingly neutral spaces and discourses by exposing their hidden gender, class and caste biases. Action against violence can therefore forge solidarity and alliances across these same gender, class and caste divides, and brings together movements for survival, against fundamentalism and for democracy onto a unified political platform.

Endnotes

1   Editorial in The Economic Times, 3 January 2010.

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5   International Centre for Research on Women. 2011. Evolving Men. Initial results from the International Men and Gender Equality Survey (IMAGES). ICRW Washington DC. <http://www.icrw.org/pdf_download/1369/download/0edf9f0390af7bf2ef7f685620b0419a>

6   Groups at the bottom of the Hindu caste system ('outcastes'), traditionally forced into 'unclean' professions, and oppressed and discriminated against both socially and economically. Officially termed 'Scheduled Castes'.

7   The indigenous tribal people of India, officially termed 'Scheduled Tribes'.

8   India Social Development Report 2008. "Development and Displacement"

9   See for instance documents archived on the website of the Campaign for Environmental Justice in India <http://www.esgindia.org/campaigns/envt.decision.making/index.html> (accessed 12 March 2011)

10   Literally translated as "purification hunt".

11   See for instance reports by the People's Union for Civil Liberties, the People's Union for Democratic Rights, the Independent Citizens' Initiative, the Planning Commission, the International Association of People's Lawyers and the National Human Rights Commission archived on <http://www.otherindia.org/>

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16   *The death sentence awarded by the trial court in the Manoj and Babli murder case has recently been commuted by the High Court, which also dismissed the case against the khap chief on the grounds of insufficient evidence. This has been hailed as a victory by the khaps.*

17   See for instance archived footage of the panel discussion on honour killings on Zee News, aired on 12 May 2010.

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In Search of the Social:

Prisoners and the Poor in an Emerging Palestinian Social Contract

Penny Johnson

What does the desperate plea of a Palestinian ex-prisoner to the Palestinian Authority and a new structure of Palestinian social assistance proposed by the World Bank have in common, Penny Johnson asked in her 2011 conference presentation. The link she explores is a "re-configuration of the Palestinian social contract" in the troubled post-Oslo terrain. After proposing a typology of existing Palestinian social contracts, she traces the emergence of "the poor" as a category after Oslo, and the movement of Palestinian political prisoners to the margins of a unsovereign "state." Penny Johnson is an associate researcher at the Institute and the co-editor of the Review of Women's Studies.

In this presentation, I want to follow the thread of two seemingly unrelated recent events – one dramatic and one bureaucratic – and investigate how they might connect in what I call "a search for the social." At stake, I believe, is a re-configuration of the Palestinian social contract, that imaginary but powerful concept where the population consents to the political order in exchange for the state's protection and services.

Event 1: On 18 January 2011, a resident of Bethlehem telephoned Ma'an radio threatening to set himself on fire in front of the Palestinian Authority's cabinet building. Imprisoned for six years by Israel and his home demolished, he also lost a hand in the 2001 Israeli incursion into Bethlehem. Since his release, he says, the Palestinian Authority has not responded to his appeals for help. Unlike the then on-going Tunisian intifada sparked by a self-immolation, he said he did not want to start a revolution, but "felt torching himself was the only way to draw attention to the plight of ex-detainees." (Maan News Agency 18 January 2011). How can we understand this man's situation?

Event 2: A month earlier, on 18 December 2010, the Palestinian Authority and the European Union paid a quarterly cash allowance to 56,400 vulnerable Palestinian households, for a total of just under 11.5 million Euros. (Relief Web,

18 December 2010) Why is this news? Because these payments, launched in 2010 and termed the Palestinian National Cash Transfer Program (PNCTP), are hailed by the World Bank as "one of the PA's main reform achievements in 2010," (Relief Web, 27 September 2010). And the Bank, a main strategist of this Program and a persistent advocate of Palestinian social safety net reform, clearly aims for this Program to supercede the special hardship categories that have governed Palestinian social assistance, both in governmental and UNRWA provisions, for as long as most of us can remember. These categories, if you recall, were highly gendered – the absence of a male breadwinner was a fundamental requirement and the main categories included widows, divorcees, orphans, the chronically ill and disabled, the elderly, and, somewhat bemusedly in this age, single women. Abandoning these categories, the PNCTP, according to the World Bank, has one category: the extreme poor. As we shall see, the Ministry of Social Affairs is a partner to this program but has a somewhat different story and vision. How can we understand these changes?

I argue here that the "plight of ex-detainees" that propelled a man to contemplate suicide and the "rationalization" of the Palestinian social safety net have an odd but important affinity. In both instances, Palestinian government – in close but unequal partnership with international donors – is moving away from extending assistance and support to its citizens (or subjects) on the basis of status categories, such as widows, to what *appears t*o be a more universal and fair allocation. In the case of general social assistance, this is based on measurable economic need – the beneficiary household must be under the extreme poverty line, according to a quite complicated survey instrument called the PMDF or Proxy Means Testing Formula with 33 variables, called by the Bank "the most advanced cash assistance program in the region." (Relief Web 27 September 2010)

In the case of prisoners, the Authority, through the Ministry of Prisoners Affairs, has recently proposed and at least partially implemented a new "salary" scale for prisoners in Israeli jails based on numbers of years in prison and allocations for children under eighteen. These regulations were presented to the Cabinet in June 2010, significantly the year of the reform of social assistance as well. While there has been a "salary" for prisoners since December 2004, these detailed regulations clearly represent an initiative to further standardize and reform assistance to prisoners on the basis of a universally applicable scale. Universal allocations or "salaries" for both the extreme poor and political prisoners seems to echo a signal movement – from status to contract – that is enshrined in Western political theory as the basis of democracy (and significantly private property). Does this have any relevance to Palestine in its peculiar situation: a government that is more

an extended bureaucracy than a state and is certainly not the only contractor to its subjects. And if there is an emerging social contract, what is being exchanged between our state and citizens-in-the-making? And most significantly, what is absent?

Before addressing this question, let us note previous – and still operative-models of a social contract in Palestine. These include the contract of dependency between UNRWA and Palestinian refugees, the corporatist contract between the PLO and its institutions and factions, and, following Carole Pateman's Australian example, what we could call the "settler contract" of Israel where settlers found a society on "empty land" and a state of nature.

One, Many or None: Social Contracts in Palestine

The non-sovereign status of the Palestinian National Authority means that a social contract has multiple parties, including the international community and local non-governmental organizations and one spoiler: the Israeli occupation. And there are models of social contracts already operating that need to be taken into account. do not have time to examine the oldest and most-established of contract-like relationships: the contract of dependency between UNRWA and Palestinian refugees. The dependency embedded in this relationship has been often criticized but is reinforced by serial crisis where UNRWA becomes the main dependable source of basic needs – as witnessed by the high trust shown by residents of Gaza camps in a 2008 poll, as well as UNRWA's key role in supporting the Gaza civilian population during Israel's assault. and its aftermath. Most recently, UNRWA, the PLO and the Authority received the same rating – 6 out of 10 - Arguably, this model of a social contract is powerful enough to influence other forms of "state"-society relations in Palestine – and the dependency embedded in its relationship can be an obstacle to active, rather than passive, citizenship.

Corporatist Contract

A continuing influential model of a social contract comes from the political culture of the Palestine Liberation Organization where political parties, military wings, NGOs, trade unions, women and students organizations, research centers and commercial enterprises were all part of the proto-state. In this model, as George Giacaman has observed, nothing stood outside of the PLO as an autonomous

sphere of civil society, essentially conflating political and civil society (Giacaman 1998, 6). It is both a corporatist model of a social contract and a model dominated by the ideal of national liberation where the nation is one. As Hammami and Johnson have pointed out, this model is also deeply inflected by "familialism," (Hammami and Johnson 1999, 324), where the nation is conceived as a family. While this model is still operating, I would argue that the fissures in the Palestinian national project, the appearance of political actors outside the PLO framework, deepening social inequalities, new economic and the post-Arafat initiatives of the Authority for state building and reform, are acting to produce a new model or models of the relation between governance and the governed.

And the social contract itself as Carole Pateman reminds us in her discussion of the the social contract in the West, emerged as a "fraternal contract," a contract among males or brothers. An older contract which she names the "sexual contract" is a hidden parallel. Pateman in her later work developed a relevant notion of a "settler contract." Indeed, the Israeli occupying power's approach is quite close to the "settler contract" Pateman examined in the Australian case where settlers found a society on a presumed "state of nature" or *terra nullius* (empty land), which erases the native population. (Pateman and Mills 2007, 40) We thus have a deliberately absent social contract between the occupying power and the occupied to add to our models.

From the Margins: Reflections on Prisoners and the Poor

It is the emerging social contract – as well as this absent contract – that concerns us the most as we r reflect on the situation of Palestinian prisoners in Israeli jails and their families, as well as that of poor or vulnerable families and individuals, as a lens into understanding the current configuration of the Palestinian "social contract" If one had imagined a Palestinian social contract in the 1980s, prisoners (and martyrs) would perhaps have been at its center – those who had sacrificed much for the nation and to whom much was owed. In the two decades afterwards – of the Oslo peace process and its companion the past decade of intifada, repression, and fragmentation, we can trace a movement of prisoners from the center to " the margins of the state," to use Veena Das's useful term even if "state" is also, we must admit, also an imaginary construct in the Palestinian colonial present. This movement to the margins reflects both the spatial and political contours of this colonial present, almost as if Israel's removal of most of its prisons from the West Bank and Gaza (with the important exception of Ofer, created during the second

intifada) and the sealing of its borders has made political prisoners invisible. And at these margins, what do we see? What do prisoners then tell us about this present and the political order and social contract underpinning Palestinian state-building? Das argues for a view from the margins precisely in order to understand the "state" and its formation:

> *"An anthropology of the margins offers a unique perspective to the understanding of the state, not because it captures exotic practices, but because it suggests that such margins are a necessary entailment of the state, much as the exception is a necessary component of the rule." (Das and Poole 2004,4)*

In this light, it is also quite interesting to reflect how "the poor" as a category emerged on the margins of the Oslo state-building process at its very inception. Before Oslo, as Jamil Hilal and I once suggested Palestinian society in the West Bank and Gaza rarely deployed the discourse or concept of "the poor" (*fu'ara*) or indeed of poverty – even though poverty and vulnerability clearly marked the lives of many Palestinians, In the period of direct Israeli military occupation , the dominant PLO discourse addressed the suffering of Palestinians under occupation through the lens of injustice, denial of rights and inequality to a whole people. The developmental vision embodied in local grassroots movements of the 1980s in the West Bank and Gaza tended to address deprived collectivities – such as "remote rural communities" or "refugee camps" – without differentiating "the poor" from the community as a whole. When such differentiation occurred it was usually in the name of "social justice," rather than "poverty." Poverty as a concept is largely a "post-Oslo subject" (Hilal and Johnson 2003, 60), emerging from Palestinian state-building and governance in a highly globalized framework where addressing poverty was and is as a critical element of encouraging and stabilizing the peace process. Poverty was a subject for expert administration and bureaucracy, for poverty lines, poverty policies and poverty experts, rather than an issue for the public sphere.

Can we suggest that political prisoners have also become a category to be administered rather than a question of justice to be addressed? Certainly, the positioning of prisoners since the Oslo agreements has undergone a series of shifts, some quite paradoxical. With the coming of the Palestinian Authority – marked by a fairly large-scale release of Palestinian prisoners – assistance to political prisoners could at last be publicly acknowledged where previously all aid to prisoners and prisoners' families was clandestine. Indeed one of the first

actions of the new Palestinian Ministry of Social Affairs was to include them as a "category" for assistance. The incorporation of ex-prisoners into the new security services in the Arafat period of the PA – a policy that became a subject of reform in the post-Arafat era and is addressed in a series of regulations – was highly visible, if problematic. But the issue of political prisoners nonetheless seemed to move inexorably to the margins of the enterprise of Palestinian governance. Of special interest, the proposed 2010 regulations are presented as "amending" the 2004 Law on Prisoners and Liberated Prisoners. That law did not include a scale of assistance but notably contained at least two promises to prisoners: that the PA was committed to their liberation and that the PA would not sign any peace agreement without the release of all prisoners. These commitments have not been reiterated or addressed in the proposed amendments, although the latter was recently were affirmed orally by President Mahmoud Abbas.

The incorporation of prisoners as subjects for assistance, whether in the Ministry of Social Affairs or the Ministry of Prisoners Affairs currently, seems then to be accompanied by the decline of political prisoners as political subjects and actors, Let us look back at our the "event" that opened our presentation.

Perhaps the Bethlehem man who after all did *not* set himself on fire could be considered a non-event. We also do not know if he really received no assistance at all or simply not the assistance he needed. But a better starting point in to consider his desperation. Again, we could attribute it to him alone – except in focus groups begun this January with prisoners' families and ex-prisoners by Birzeit's Institute of Community and Public Health in cooperation with the Institute of Women's Studies, we hear the same desperation and isolation, albeit at a lower register. I should stress that this project is in its initial exploratory stage and here I am listening to the voices, rather than presenting findings.

Even though almost all of the families, most with long-term prisoners, received some form of the "salary" from the Ministry – if not in the amounts cited in the new scale – the common refrain to the question "who helps?"" was that there is "no one who helps." How can we explain this absent universal? "It's not just the money," said one prisoner's mother in Jenin refugee camp, "no one even asks us a question." A widow in the same discussion, whose oldest son is a long-term prisoner, added "No one helps. No one. No institution. No shekel, nothing. In the world, no one asks about us." These remarks, echoed time and time again in the discussions, alert us not only to the material needs of families – which we will discuss further – but to the need for social concern and public action , to be brought out of the margins and into the center of Palestinian sociality and public life. That is where, many of the families say, prisoners were situated in the 1980s

and the first intifada – but now, prisoners have lost their "value," a subject the collective project will be exploring in more depth as the research continues.

And the problems most often cited by prisoners and their families – the immense difficulties and constraints of prison visits – are problems of a different order that literally occur not just on the margins but outside the Palestinian state in the making.

Almost the only form of support acknowledged by these families then is the "salary" from the Ministry – I should add here that there is a more irregular PLO payment that comes through factions in the PLO, a reminder that the corporatist social contract still operates. Thus, an important question is what forms of social support a the "salary" for prisoners replacing? The language of a "salary" for prisoners might implicitly recognize that such a "salary" is in exchange for the prisoners work or contribution to the nation, but more explicitly places the prisoner as a bureaucratic employment of the government.

And salaries are assumed to be for the support of the prisoner, rather than the prisoners' families. Practically speaking, this is at least partly the case – one of the main complaints of prisoners families are the high costs of items in the Israeli prison canteen so much so that they say "all the money goes to Israel." And even though the new scale allows for "equality between male and female prisoners" , there is a gendered dimension as most political prisoners are males and it is the mothers and wives of prisoners who must make do with the remaining portion of their prisoners "salary" for family survival. And the fact that there is a salary works against the generation of other forms of social support. In a particularly outspoken session with prisoners wives and mothers from Kalandia camp, Ramllah/Bireh and surrounding villages,one wife complained:

> The children need money but everyone says "well you have the allowance, organize yourself (*dabri halek*).

Another woman even added that she had been insulted by remarks like "Well I wish my husband was in prison so we would have a salary." And of course the salary is often claimed by more than one party, including the imprisoned husband but also the husband's parents or other relatives. One strong-minded wife of a long-term prisoner, who struggle for many years to open a salon in her house to have her own income, commented:

> As wives of prisoners, you have children to raise by yourself. But you have to give to your mother-in-law as well. In front of them you

must be strong. And you suffer through the checkpoints and the searching and then your husband is angry "you didn't pay enough for the canteen. If you forgot one time his shirt, he forgets your twenty years of work."

A former woman political prisoner in this group tried, with very mixed success, to stop the wave of complaints by evoking the sacred status of political prisoners. But this evocation can be a hollow formula if wives and mothers are not supported by an active public value given to their husbands and sons sacrifice. While the salary is not a deliberate negation of this political and social value – and no one would deny prisoners and their families regular financial support given to prisoners – it nonetheless stands as a bureaucratic exchange that does not actively recognize political prisoners as central to the national project.

A New Social Contract?

Let us turn briefly to our second event, the new PNCTP or Palestinian National Cash Transfer Program. I would like confess a bias: I came to the subject after interviewing the World Bank official in charge of this initiative two years ago convinced (and critical) that the World Bank had a model for " social safety net reform" targeting only the ultra-poor that it was determined to implement since at least 2004 and despite a few twists and turns, this model would eventually be implemented without the ability to change it by its very junior partner, the Ministry of Social Affairs. I wondered then would it mean for a renewed social contract if this initiative is successful and the old "status-based" program is replaced by a "poverty-based" program targeting only the ultra-poor? The social safety net framework seemed inadequate to address poverty and vulnerability in the Palestinian context and the Bank official was clear that a unified system of social protection for all Palestinians was "too huge". Taking away entitlements from "status" categories – such as the disabled, elderly and widows – without other forms of social protection for these categories, may not only harm their welfare, but be seen as negative by the Palestinian public. While it is true that the previous system or systems was plagued with fragmentation and inadequate provisions and failures to address many forms of poverty, the special hardship categories of assistance – also found in zakat committees – represented a social consensus of sorts on where society has a duty to provide (such as to widows and orphans). These also reflect Islamic charitable obligations and so have deep

historical roots. And a safety net is no substitute for a unified system of social protection for all Palestinians – but such a system was described by the World Bank official I interviewed as "too huge."

I must thank the Minister of Social Affairs and the head of the PNCTP in the Ministry for a very open and informative interview last month that allowed me to see that the Ministry, while adopting and implementing the Program, has been able, to some limited extent, to push back at the World Bank and make some modifications in the light of the Ministry's experience and perception of Palestinian realities and needs. Most important among these changes are an increase in the monthly allocation over the World Bank's initial proposal and a transitional year now underway where special hardship cases are not abandoned even if they do not qualify as ultra-poor. Also crucial, the Ministry relies on social workers and community advice to target poor households that may be "errors of exclusion," particularly small elderly households where "common sense" says they need support but the survey instrument – which has a bias towards large households – excludes them. This is quite important given the great fluctuations in the fortunes of Palestinian households produced by serial crises and Occupation policies. It is interesting to note that the instrument used to measure extreme poverty, proxy means testing, was described by a Bank economist in another context as most suitable for "chronic poverty" but is "insensitive to quick changes in household welfare." (World Bank 2011) – surely a weakness in our highly insecure context.

But most important is the Ministry's vision, at least under the current Minister, that this limited program for the ultra-poor is part of a larger strategy of social security and protection –a lynchpin in the social contract. In this, the Minister, perhaps with conscious intent, is going beyond the framework of the Palestinian Authority, to envision a universal social security system "from the cradle to the grave." Citing the social security law drafted by a Palestinian NGO (Muwatin), she nonetheless acknowledges that such legislation requires not just a united political system and a working parliament but also public and political will.

This vision is much more comprehensive than that of the Palestinian Reform and Development Plan (PNA 2007)– dominated by security concerns – and most recently, that of Prime Minister Fayyad's "Homestretch to Freedom" document of August 2010. That document notes an increase the proportion of "the national budget that has been allocated to the provision of education, health and social protection services" – and indeed 2010 was the first year since 2000 that the PA co-financed with donors *any* proportion of social assistance, a quite remarkable indicator of donor dependence. The document goes on to say that "the social safety

net has been rationalized to ensure that it addresses the needs of the poor and vulnerable." (PNA 2010,3) But it does not venture beyond the social safety net framework, while promising additional allocations such as free school education and health insurance to 70,000 ultra poor households.

For political prisoners, "Homestretch to Freedom" also proposes bureaucratic improvements and reform– such as an upgraded database – with some advances in welfare and opportunities, particularly for released prisoners, although the intent here may be to provide criteria for recruiting into the civil service. from loans to 200 ex prisoners for small enterprises to recruiting released prisoners into the civil service. There is no mention in any government document of assistance to prisoners in the Authority's own prisons, although the Ministry of Social Affairs does provide aid in the form of health kits to Palestinian women prisoners in the Authority's custody. For political prisoners these rather small-scale measures, if implemented, can hardly address the strong sentiment among ex-prisoners and their families, that prisoners have spent "the best years of their lives" in prison and have lost opportunities for education, work and even marriage. The language of bureaucratic reform is, as Rema Hammami pointed out in her keynote conference presentation, the language of earning sovereignty – it is also a language haunted by Oslo, devoid of both the instruments of international law and justice – where Israel holding Palestinians inside Israel is in fact illegal and where political prisoners should be recognized as such – and of Palestinian national mobilization for prisoner's rights.

The Palestinian National Authority does not seem to have the ability to intercede with Israel on behalf of Palestinian prisoners on the issues most pressing to them, whether visits, medical treatment, torture and maltreatment or as one mother simply said "Freedom." The institutions that should be responsible for prisoners and their families, whether as a "protected" persons under occupation (the international community, most immediately the ICRC), as colonial subject whose occupier should be bound by international law (Israel), as refugee (UNRWA, international community) and as citizens (Palestinian Authority) are either unresponsive or unable to respond.

A Palestinian social contract that does not address this reality will not suffice to bind the people to the emerging state or the emerging state to its obligations. As one prisoner's mother in Jenin refugee camp said:

> *"Our children did nothing wrong. What they did was not for them, but for the people. This gives us strength."*

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