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Implementing the law of khul‘ in Egypt: Tensions and ambiguities in Muslim Family Law

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Abstract

This article aims to contribute to the growing scholarly literature on the implementation of shari‘a-based family codes by describing and analyzing gender implications of religiously inspired judicial activism in relation to judicial divorce through khul‘. The article highlights two functions played by family court judges and other legal professionals. Firstly, I argue that Egyptian family court judges and other legal professionals enjoy considerable discretionary powers in interpreting and implementing the personal status codes. Secondly, the article argues that legal professionals sometimes use the court and other legal spaces as a platform to articulate alternative visions of family and marriage, as well as to voice anxieties over a perceived increase in female-initiated divorce. The article situates these contradictory practices against a background of contestation of early 21st century reforms that challenged male authority in the family, in particular the 2000 law of judicial khul‘.

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Key words: Egypt, khul‘, shari‘a, gender, family law, marriage, divorce, family courts

Introduction

At the beginning of the 21st century, Egypt witnessed several legislative reforms in the area of Muslim personal status law. Arguably the most significant of these was article 20 of law no. 1 from 2000, widely known as the khul‘ law, which provided women with the right to judicial divorce in exchange for renouncing their outstanding financial rights, restoring the prompt dower to her husband, and going through court-ordered reconciliation. In post-2011 Egypt, the khul’ law became a point of contestation, with opponents arguing that this and other provisions deviated from shari‘a and were a Western invention introduced to the country by the wife of the ex-president, Suzan Mubarak. They concluded that the family laws were “Suzan Mubarak laws” and in need of a “revolution” in order to purge Egypt of any remnants of the authoritarian regime.[2] In this article, I look at a quieter but nonetheless significant development by examining how Egyptian family court judges and other legal personnel articulate notions of family, marriage, and gender in cases of judicial divorce through khul’.

This article aims to contribute to the growing scholarly literature on the implementation of shari‘a-based family codes[3] by describing and analyzing gender implications of court practices in relation to judicial divorce through khul‘. As part of the khul‘ procedure, the court

[2] See also Nadia Sonneveld and Monika Lindbekk. “A Revolution in Muslim Family Law? Egypt’s Pre- and Post-Revolutionary Period (2011-2013) Compared”. *New Middle Eastern Studies* 5 (2015); Monika Lindbekk, “Judicial Activism in the Context of the 2011 Egyptian Revolution: Emerging Conceptions of Femininity and Masculinity”. *Religion and Gender* 7 (2017): 245-260.

[3] Mulki Al-Sharmani, “Egyptian Family Courts: A Pathway of Women's Empowerment?” *Hawwa* 7 (2009): 89-110; Mulki al-Sharmani, *Gender Justice and legal Reform in Egypt: Negotiating Muslim Family Law*, AUC Press 2017; Nathalie Bernard-Maugiron and Baudouin Dupret, “Breaking Up the Family: Divorce in Egyptian Law and Practice”. *Hawwa* 6 (2008): 52-74; Nathalie Bernard-Maugiron, “Courts and the Reform of Personal Status Law in Egypt: Judicial Divorce for Injury and Polygamy”. In *Adjudicating Family Law in Muslim Courts*, edited by Elisa Giunchi, 106-121. New York: Routledge, 2013; Baudouin Dupret, “What is Islamic Law? A Praxiological Answer and an Egyptian Case”. *Theory, Culture & Society* 24 (2007): 79-100; Immanuel Naveh, “The tort of injury and dissolution of marriage at the wife's initiative in Egyptian mahkamat al-Naqd rulings”. *Islamic Law and Society* 9 (2001): 16-41; Nadia Sonneveld, *Khul` Divorce in Egypt: Public Debates, Judicial Practices and Everyday Life*. Cairo: The American University in Cairo Press, 2012; Monika Lindbekk, “Enforcement of Personal Status Law by Egyptian Courts”. In *Adjudicating family law in Muslim courts*, ed. Elisa Giunchi, 87-106. New York: Routledge, 2013; Monika Lindbekk, “Inscribing Islamic Shari‘a in Egyptian Divorce Law”. *Oslo Law Review* 2 (2016): 103-135; Monika Lindbekk, “Judicial Activism in the Context of the 2011 Egyptian Revolution”.

may only issue divorce after the parties have gone through an elaborate process involving the courts, court experts, and court-appointed arbitrators. As such, judicial khul' provides a vantage point on how litigants are drawn into different legal spaces, promoting definitions of family, marriage, and gender in accordance with the trajectory of their expertise and their common-sense perception regarding shari'a. The following two questions are asked: how do legal professionals articulate family and marital roles? And how do different types of legal professionals, with different training and social background, make use of religious and social concepts embedded in an idealized past to legitimize their views? Focusing on judicial divorce through khul', the article argues that courtrooms and other legal spaces are important sites for the cultivation of religious subjectivities by promoting definitions of family, marriage, and gender. This article makes no claim to present an exhaustive coverage of the subject matter. Instead, its aim is to draw attention to some important interconnected themes surrounding the nuclear family versus the extended family, conjugal bonds characterized by moral emotions, and gendered divorce rights.

There is a growing body of literature on the implementation of shari'a-derived family codes in courts. Yet, so far little attention has been devoted to religious discourses of contemporary judges and legal professionals, especially on civil courts.[4]This appears to reflect the view that the integration of Islamic normativity into modern personal status codes implemented by centralized courts fundamentally altered its nature. For example, Baber Johansen has argued that the integration of Islamic normativity into modern codes implemented by civil courts has *deprived shari'a of its ethical and ritual dimensions and transforms it into a state law from which the norms concerned with the individual's ethical responsibility and religious conscience are absent*.[5] In the same vein, Hussein Agrama has argued that Egyptian shari'a courts *"retained a measure of it [authority], even up to the mid-20th century, until they were absorbed into the National Court system and became known as the Personal Status courts*".[6] Relying on intertextual analysis, the article examines how judges on the family courts and other legal professionals articulate notions of family, marriage, and gender by drawing on the combined resources of legislation, local custom, and shari'a norms. I focus on three legal spaces: the Judges' Chamber, the Experts' Office, and the Office of the Arbitrators at al-Azhar. Focusing on khul', the article advances two inter-related arguments. Firstly, I argue

[4] See also Elisa Giunchi, "From Jurists Ijtihad to Judicial Neo-Ijtihad". In *Adjudicating Family Law in Muslim Courts*, edited by Elisa Giunchi, 1-31. Routledge, 2013.
[5] Johansen, *Contingency in a Sacred Law*, 81.
[6] Hussein Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa". American Ethnologist 37, no. 1 (2010), pp. 2–18, 6.

that Egyptian family court judges and other legal professionals enjoy considerable discretionary powers in interpreting and implementing the personal status codes. Practices in these spaces are contextually variable depending on the social background and professional logic of different legal practitioners. Looking at their religious discourses, judges and other legal actors seem to echo a set of themes which seem to have become commonplace. Here, judges and experts echo ideas developed by 19th century Muslim reformists like Muhammad Abduh and Qasim Amin. Secondly, I argue that legal professionals sometimes use the court and other legal spaces as platforms to articulate alternative visions of family and marriage, as well as to voice anxieties over a perceived increase in female-initiated divorce. Contradictions and tensions are practiced widely across legal cultures,[7] and it would be misleading to suggest that there is something specific to the Egyptian context. Contradictions and ambiguities are often viewed as a sign of duplicity and falsehood. I posit that it is more productive to see them as a method of dealing with the complexity of a social reality. The article situates these internal debates against a background of early 21st century legislation that marginalized male authority in the family, especially the provision on judicial khul‘.

The article unfolds in two main parts. In the first part I trace the historically contingent genealogies of contemporary legal discourses and practices back to the 19th century. Afterwards, I provide a short history of family law reform in Egypt with a special focus on men’s and women’s divorce rights. The second part of the article highlights two functions played by family court judges, social experts, and arbitrators from al-Azhar. With a view to investigate how contemporary legal professionals integrate various classes into what they regard as the essence of Islam, the second part begins by analyzing the practices of judges. Afterwards, I take into consideration sociologists, psychologists at the Office of Experts, and religious scholars from the Office of Reconciliation at al-Azhar. Instead of viewing the state and state law as an internally consistent entity, I here take into account heterogeneity by looking at a network of institutions tasked with implementing Muslim personal status law. The article draws upon a sample of 2,000 cases from five family courts in Cairo during the period 2008–15, a random sample of rulings by the Cairo appeal court, as well as interviews with judges and other legal professionals. During 2013–15, I attended court sessions in five Cairenese family courts. During 2013, I also at-tended arbitration sessions at al-Azhar, and in 2014 mediation sessions at the Experts’ Office.

[7] Reza Banakar, “Double-Thinking and Contradictory Arrangements in Iranian Law and Society”. *Digest of Middle East Studies* 27 (2018): 6-33; Michael Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*. Princeton, N.J.: Princeton University Press, 2003.

Historical background

The history of Egyptian personal status law dates back to the emergence of a centralizing state in the 19th century. Following the formation of the Egyptian state in the 19th century, a centralized and hierarchical legal system was developed with the parallel promulgation of law codes inspired by the French *Code Napoleon*. By the end of the century, Egypt had "transplanted" European civil, commercial, and penal law codes.[8] The processes of legal rationalization entailed the jurisdiction of shari'a courts becoming restricted to the domain of family law. In 1875, Muḥammad Qadri (d. 1888) published *al-Aḥkam* al-Shar'iyya fī al-Aḥwal al-Shakhṣiyya, which, although never promulgated, was the first full-fledged codification of Hanafi provisions regarding the family.[9] Shari'a became 'personal status law' (Qānūn al-Aḥwal al-Shakhsiyya), a distinct sphere of civil law covering marriage, divorce, affiliation, and inheritance (see Introduction).[10] In this way, the ruling and legal elite facilitated the emergence of a new legal distinction between the public and private sphere of intimate relations, one that the state was now responsible for defining.[11]

Legal rationalization and codification involved a rethinking and reconfiguring of key Islamic symbols and meanings by Islamic reformers to better accommodate the needs of modern state-building. Muhammad Abduh (d. 1905) and Qasim Amin (d. 1908) figured prominently among these reformers. Within this universe of ideas, the nuclear family gradually acquired tremendous importance, defined as the unit of society.[12] For prominent reformers such as Abduh and Amin, the goal behind reforming Muslim family law was to strengthen family life. In their view, the corpus of fiqh had failed to value the moral duties between spouses, and criticized how Islamic jurisprudence defined marriage with reference to

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[8] Brown, *The Rule of Law in the Arab World*, 10; Baudouin Dupret, Adil Bouhia, Monika Lindbekk and Ayang Yakin. "Filling Gaps in Legislation: The Use of Fiqh by Contemporary Courts in Morocco, Egypt, and Indonesia". *Islamic law and Society 26* (2019): 405–436.

[9] Muhammad Qadrī, *al-Aḥkām al-Shar'iyya fī al-Aḥwāl al-Shakhṣiyya wa Sharḥ li-Muḥammad Zayd al-Abyānī,* ed. Muḥammad Aḥmad Sirāj and 'Alī Jum'a Muḥammad, 4 vols. Cairo: Dār al-Salām, 2006.

[10] Cuno, *Modernizing Marriage*, 78; Vikor, *Between God and the Sultan*, 236; Dupret, Bouhya, Lindbekk; Yakin, "Filling Gaps in legislation".

[11] Hussein Agrama, "Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular state?" *Comparative studies in history and society* 52 (2010): 495-523, 518. Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity.* Stanford: Stanford University Press, 2003; Saba Mahmood. "Sectarian conflict and family law in Egypt". *American Ethnologist* 39, no. 2 (2012): 54-62.

[12] Heba Abugideiri, "On Gender and Family". In *Islamic Thought in the Twentieth Century*, edited by Suha Taji-Farouki and Basheer M. Nafi, 223-260. London: I. B. Tauris, 2004; Cuno, *Modernizing Marriage*; Ellen McClarney, *Soft Force: Women in Egypt's Islamic Awakening*. Princeton: Princeton University press, 2015,

sexual satisfaction and the marital contract as a contract by means of which the husband *"owns the private parts of his wife".*[13] In this connection, Abduh and Amin drew attention to passages in the Quran that referred to marriage and which they believed could assist in defining it:

> And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put amity and mercy (mawadda wa rahma) between your (hearts): verily in that are Signs for those who reflect. – (sura 30, verse 21)

Muhammad Abduh[14] and Qasim Amin used the above verse to express a normative ideal of marital relations in terms of amity and mercy. They attributed these verses to an instinctual order structured by male authority. This order became, in turn, the basis of a sacred covenant (mithaq ghaliz) based on verse 4: 21 in the Quran.[15] In his discourses, Abduh held that the courts were tasked with restoring harmony to the family; in 1900, he sent a list of proposed reforms to the Ministry of Justice. In it, he called for restricting the male right of repudiation by making it compulsory to document it in front of a judge or official who would remind him that divorce is hated by Islam. Abduh also thought it was necessary to expand women's access to divorce by adopting Maliki doctrine which authorized the judge to divorce a wife from her husband on the grounds of "absence, beating (al-darb), and slander without legitimate reason (sabab shar'i)".[16] It is also noteworthy that he devised a system of court-appointed arbitration by drawing upon the following Quranic verse: *"If you fear discord between spouses, then appoint an arbitrator from his family and one from hers."* If there were no available relatives to reconcile within the couple's own family, then the court should appoint a non-family member of good reputation. In Abduh's view, this mode of judicial

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[13] Muhamma ʿImārah, *Al-'islām wa-l-mar'ah: fī ra'y al-'imām Muhammad 'Abduh*. Cairo: Cairo for Arabic culture, 1975, 72; Qasim Amin *The Liberation of Women and The New Woman: Two Documents in the History of Egyptian Feminism*, Cairo: American University in Cairo Press, 2000.
[14] ʿImārah, *Al-'islām wa-l-mar'ah*.
[15] 'Imara, *Al-'islām wa-l-mar'ah,* 67-75; McLarney, *Soft Force*, 248.
[16] Abduh quoted inʿImārah, Muhammad. *Al-'A'māl al-kāmela lil-'imām Muhammad 'Abdu.* Al-ketāb Al-thānī, Dār Al-shurūq, 1994; see also Badawī, Muhammad, ʿAbdel Rahmān. *Al-'imam Muhammad 'Abdo Wa-l-Kadāyā Al-'islāmiyā*. Cairo: Maktabet 'al-'usrah, 2005.

divorce and court-mandated arbitration corresponded with the intent of shari‘a and would strengthen marriage and, by extension, the family. This reconfiguration of Islamic tradition under the aegis of state power had lasting influence as these methods of interpretation provided versatile tools for legislation. The ideas on marriage and divorce developed by the Muslim reformists were not primarily responsible for the construction of gender in the resulting personal status codes. Yet, variations on these gender themes recur in 20th and 21st century legislative and judicial discourse with regard to marriage and divorce.

20th Century Personal Status Codes

During the 20th century, the domain of the family, arguably the last bastion of fiqh, was deeply transformed and reorganized under the influence of positive legislation and state-controlled adjudication. In Egypt, the process of codification extended to the field of family law with the adoption of a series of legislative enactments, starting in the 1920s. These enactments adopted doctrines from different schools, using the techniques of takhayyur and talfīq, developed by the 19th century. Substantive personal status law reforms were issued again in 1985 and 2000.[17] The personal status codes put in place by the Egyptian state in the early 20th century aimed at safeguarding “a purified sharia” (himaya al-shari‘a al-mutahira)[18] by disciplining citizens into forming modern nuclear families, conceived of as the fundamental social unit, rather than extended families.[19] Furthermore, the explanatory memorandum which accompanied law no. 100 from the 1985 code drew upon the Quranic verse found in sura 4 verse 21, which describes marriage as a sacred covenant (mithaq ghaliz) held together by the bonds of mercy and amity (rahma wa mawadda) in line with the “noble shari‘a”. Here, legislative discourse is in dialogue and interaction with ideas developed by Muslim reformers such as Muhammad Abdu in the late 19th century, where the family was construed as the basis of society, and notions of a purified shari‘a as the vehicle for social

[17] With regard to the substantive law applied in Egypt, the legislative rules currently governing marriage and divorce are found in Law no. 25 from 1929, Law no. 25 from 1929, Law no. 100 from 1985, and Law no. 1 from 2000.
[18] Explanatory memorandum of Law no. 25 from 1920.
[19] See also Talal Asad, “Conscripts of Western Civilization”. In *Dialectical Anthropology: Essays In Honor of Stanley Diamond, vol. 1, Civilization in Crisis,* edited by Christine Gailey, 333-351. Gainesvile: University Press of Florida, 1992; Hasso, Consuming Desires, 27; Hanan Kholoussy, *For Better, For Worse: the Marriage Crisis that Made Modern Egypt*. California: Stanford University Press, 2010.

reformation. The centrality of the nuclear family in the social structure was also the focus of article 10 in the Egypt's 2014 Constitution,[20] which stipulates the following: *"The family is the basis of society, founded on religion, morality, and patriotism, and the state and society are intent on ensuring the authentic character of the Egyptian family, its coherence and stability, and the protection of its traditions and moral values*." As part the state intervention in family relations, 20th century law codes subjected the male right of repudiation to several restrictions, while women's access to judicial dissolution was expanded.[21] A wife can petition the court for divorce based on the following reasons: prolonged absence of the husband without legitimate cause for a period exceeding one year;[22] imprisonment of the husband for a period exceeding three years;[23] mental or grave and incurable sickness of the husband of which the wife had no knowledge at the time of contracting the marriage;[24] a husband's failure to provide maintenance; or a husband's harming of his wife.[25]

Being informed by a notion of the nuclear family as the cornerstone of society, and marriage as a bond between two individuals, the law codes represent a departure from notions of family and gender in classical Islamic jurisprudence. Nevertheless, personal status codes, even in their format of European-style codification, remains highly hierarchical. By way of example, Muslim family law faithfully adheres to traditional constructs of masculinity and femininity by obliging the husband to provide for his wife in exchange for her obedience (ta'a).[26] Further, women do not have an equal right to divorce as this is defined as a husband's prerogative. When there are gaps in legislation, personal status law refers judges to the predominant opinion of the Hanafi school.[27]

Beyond the systematization of legal rules, judicial institutions were reformed, legal professions were reorganized, and legal education was reinstituted under the monopoly of a new figure: the state. During the 20th century, the scope of state interference in the domain of the family increased exponentially with the development of a centralized and hierarchical

[20] Egypt's 1971 Constitution, which was immediately abolished after the 2011 revolution, also stipulates state support for the family (Article 9) and the protection of motherhood and childhood (Article 10).
[21] Lombardi, *State Law as Islamic Law in Modern Egypt*; Hasso, Consuming Desires; Jacob Skovgaard, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dar al-Ifta*. Brill: Leiden, New York, Köln, 1997.
[22] Article 12 of Personal Status Law no. 25 of 1929.
[23] Article 14 of Personal Status Law no. 25 of 1929.
[24] Article 9 of Law no. 25 of 1929.
[25] Article 6 of Personal Status Law no. 25 of 1929; amended by Personal Status Law no. 100 of 1985.
[26] See also Al-Sharmani, *Gender Justice and legal Reform in Egypt*; Cuno, *Modernizing Marriage*; Kholoussy, *For Better, For Worse*; Sonneveld and Lindbekk, "A Revolution in Muslim Family Law?"
[27] Article 3 of Law no. 1 of 2000.

judicial system.[28] An important development took place in 1955 with the state's establishment of a unified judicial system. Then, in 2004, specialized family courts were established (see below). Hence, Egyptian personal status law is currently implemented by judges who are trained in positive, codified law, and not in traditional fiqh.

21st century legislative amendments

At the beginning of the 21st century, Egypt witnessed several significant legal reform initiatives. While the early 20th century codes of personal status were mostly imposed from above, an outstanding feature of the public sphere during the 1980s was the proliferation of non-governmental organizations, including women NGOs with varying degree of independence from the regime. The impetus behind much of this civil society activity was the UN Convention on the Elimination of Discrimination Against Women (CEDAW), which Egypt ratified in 1981. Although the women's rights activists had campaigned for personal status law reform since the 1980s, the president's wife, Suzan Mubarak, has been alternatively credited with or blamed for the promulgation of significant 21st century legislative reforms due to the pivotal role she played in having them passed, despite intense discussions in parliament.[29]

Among the most important of these early 21st century legislative reforms was article 20 of law no. 1, widely known as the khul' law. An important rationale behind law no. 1 from 2000 was to provide women with an expeditious mechanism by granting the wife the right to separate from her husband based on her unilateral expression of resentment (al-bughd). She should also renounce her outstanding financial rights, restore the prompt dower to her husband, and go through court-ordered reconciliation. Furthermore, rulings of judicial divorce by khul' were made immune to appeal. This represented a bold departure from traditional Islamic jurisprudence which conceptualized khul' a form of divorce that came about through

[28] Maurits Berger and Nadia Sonneveld, "Sharia and National Law in Egypt". In *Sharia Incorporated. A comparative overview of the legal systems of twelve countries in past and present*, edited by Jan Míchiel Otto, 51-89. Leiden: Leiden University Press, 2010.

[29] Nathalie Bernard-Maugiron and Baudouin Dupret, "From Jihan to Susanne: Twenty Years of Personal Status Law in Egypt". In *Recht van de Islam* (2002), 17; Hoda Elsadda, "Women's Rights Activism in Post-Jan 25 Egypt: Combating the Shadow of the First Lady Syndrome in the Arab World". Middle Eastern Law and Governance 84 (2011): 87.

the mutual consent of husband and wife.[30] Rather than the husband, article 20 located the source of authority located in the wife's interior. Together, the last two aspects of article 20 provoked considerable controversy, and its religious legitimacy has been contested before the High Constitutional Court[31] no less than 37 times on the basis of alleged contradiction with article 2 in the constitution, which stipulates that the principles of shari'a are the principal source of legislation. The 2000 law set in motion other legal reforms that challenged fundamental aspects of male authority in the family.[32] In 2005, a law provided that in the event of divorce (and death) children would stay with their mother until the age of 15 (art. 1 of law no. 4 of 2005) while a 2008 amendment gave the mother educational guardianship over children.[33] After the 2000 law on khul' went into effect, a brief rise in judicial divorce reflecting a pent-up demand was predictable before it stabilized in 2002.[34] During the period from 2008 to 2017 the number of female-initiated judicial divorce rose from 1494 to 9364, roughly 77% of which consist of judicial divorce by way of khul'[35]. I am inclined to attribute this significant increase in petitions for judicial divorce to important legislative reforms which followed in the wake of the law on khul', as well as more expedite handling of divorce cases by Egypt's family courts.

Another important, but less studied, aspect of the 2000 provision is that by its terms the judge may only impose judicial divorce by way of khul' after offering reconciliation. Article 20 also stipulated a period of 90 days court-ordered arbitration. Interestingly, article 19 of the same law adopted Muhammad Abduh's proposal from 1900 that the court should also refer

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[30] Judith Tucker, *Women, Family and Gender in Islamic Law*. Cambridge: Cambridge University Press, 2008.

[31] See constitutional case no. 331, year 23, 1 October 2007; case no. 329, year 24 4 April 2004 309, year 24, 6 June 2004; case 298, year 24, 8 February 2004; case 285, year 23, 14 December 2003; case 283, case 24, 9 April 2006; case 275, year 24, 9 January 2005; case 249, year 24, 9 May 2004; case no. 226, year 28, 4 jan 2009; case no. 219, year 24, 9 May 2004; case no. 210, year 24, 4 April 2004; case no. 206, year 36, 30 July 2016; case no. 202, year 35, 10 December 2014; case no. 201, year 23, 15 December 2002; case no. 198, year 22, 7 March 2004; case no. 176, year 24, 9 May 2004; case no. 170, year 34, 8 November 2014; case no. 169, year 22, 4 April 2004; case no. 163, year 31, 30 November 2011; case no. 159, year 33, 5 November 2016; case no. 153, year 24, 9 May 2004; case no. 152, year 24, 9 May 2004; case no. 142, year 34, 1 December 2013; case no. 134, year 24, 3 March 2008; case no. 127, year 33, 3 June 2012; case no. 113, year 38, 6 May 2017; case no. 103, year 24, 9 January 2005; case no. 102, year 23, 19 December 2004; case no. 98, year 23, 8 May 2005; case no. 97, year 23, 12 February 2006; case no. 92, year 24, 15 April 2007; case no. 71, year 34, 1 December 2013; case no. 63, year 34, 1 December 2013; case no. 34, year 30, 5 June 2011; case no. 29, year 35, 20 October 2014; case no. 3, year 35, 20 October 2014; case no. 2, year 37, 4 June 2016.

[33] For more, see Sonneveld and Lindbekk, "A Revolution in Muslim Family Law?"

[34] Kenneth Cuno, "Divorce and the Fate of the Family in Modern Egypt". In *Family in the Middle East: Ideational Change in Egypt, Iran, and Tunisia*, edited by Kathryn Yount and Hode Rashad, 198.

[35] Agency for Public Mobilization and Statistics (2002-2017).

the case for arbitration by arbiters (hakam), one for each side. In keeping with Abdu's proposal, the arbitrators should preferably be from the families of the spouses. In this way, contemporary legislation continues to place emphasis on the traditional concept of mediation between husband and wife as a necessary step before the dissolution of a marriage is affected.[36] However, in contemporary legal practice it is a formalized procedure undertaken by judges and religious scholars from al-Azhar as will become apparent in the following. Following the creation of family courts in 2004, arbitration by Azhar scholars was supplemented by mediation at the hands of court experts who are trained in sociology and psychology. By significantly expanding court-mandated mediation and arbitration, these reforms can be read as increasing state control and surveillance over family life by decreasing the power of extended families and other actors as parallel arbiters of marital disputes.[37]

The establishment of specialized family courts in 2004 was influenced by a global trend in specialized mediation-based family courts.[38] As part of the so-called 'Family Justice Project' administered by the Ministry of Justice in cooperation with USAID, the family courts were provided with computers in order to streamline justice. Besides providing finance and equipping the courts with computer technology, an important component of the USAID-sponsored project was offering training to judges and mediation experts, sensitizing them to the social and psychological contexts surrounding specific cases.[39] The training that targeted judges and experts nationwide lasted six months. Similar to the personal status codes, the courses offered to judges and social experts, following the creation of family courts, stressed that the nuclear family (al-'usra) is the foundation stone of society and that it functions

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[36] See also Hallaq, An Introduction to Islamic Law, 133; Sonneveld, *Khul` Divorce in Egypt*. Court-mandated arbitration was not completely new to Egyptian personal status law. Based on Maliki doctrine, law no. 25 of 1929 provided that if the wife's request for divorce on the basis of harm (darar) was refused and she later repeated her complaint but failed to establish injury, the courts were empowered to appoint arbitrators and rule for divorce if they failed to resolve discord (shiqaq). However, the 1929 law departed from Maliki-doctrine by not allowing courts to dissolve a marriage if they found that the blame for the discord chiefly lay with the wife. In law no. 100 of 1985, the legislature adopted the rules of the Maliki school and authorized the judge, following arbitration, to impose repudiation even if it determined that the wife was at fault in return for her payment of compensation according to article 10 paragraph 2 and forfeiture of some or all her financial rights (article 11)

[37] See also Nathalie Bernard-Maugiron, "Dissolution du marriage et persistance non juridictionnelle des conflits conjugaux en Égypte". In *Le shaykh et le procurer*, edited by Baudouin Dupret and Francois Burgat. Cedej: Egypte/Monde Arabe 1-3 (2005): 73-100, 2005; Lynn Welchman, *Women and Muslim Family Laws in Arab States: a Comparative Overview of Textual Development and Ddvocacy*. Amsterdam: Amsterdam University Press, 2007, 51.

[38] Al-Sharmani, *Gender Justice and Legal Reform in Egypt*.

[39] Hegel-Cantarella, "Waiting to Win"; Sonneveld, *Khul` Divorce in Egypt*; Lindbekk, "Inscribing Islamic Shari'a in Egyptian Divorce Law".

optimally when bound together by feelings of mercy, amity, and tenderness under leadership of the family father (rab al-'usra).[40]

Law no. 1 of 2000 and no 10 from 2004 aimed to facilitate the handling of personal status law disputes and help to resolve disputes amicably. Notwithstanding this, it should be borne in mind that bringing a case before family courts is often laborious and time-consuming due to complex bureaucratic procedures and substantive requirements.[41] As Hegel-Cantarella points out *"delay constitutes inconvenience, distress, and even suffering, yet it also constitutes legal subjects as they accrue legal knowledge and agency, and provides potentially therapeutic interactions through which relationality can be reworked"*.[42] During my field work I noticed that these reconciliation attempts usually failed. That said, many cases brought before family courts end in reconciliation. However, this appeared to be the result of reconciliation attempts at the hands of family members, lawyers and other actors – which run in parallel with court proceedings – rather than the work of the court.[43] What interests me here is how litigants are drawn into different legal spaces where legal professionals promote definitions of family, marriage, and gender in accordance with the trajectory of their expertise and their common-sense perception regarding shari'a. As insightfully pointed out by al-Sharmani and Sonneveld,[44] Egypt's family courts are a site for competing and often contradictory discourses about gender. This article builds on these perspectives in order to address recent developments in discourses and practices by contemporary Egyptian legal professionals. I begin by addressing the techniques used by judges in orchestrating reconciliation and the underlying values and beliefs that guide the techniques. Afterwards, I take into consideration sociologists and psychologists at the Office of Experts, and religious scholars from the Office of Arbitrators at al-Azhar.

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[40] Muhammad Qāsem, Muhammad, Al-'Awāmel al-Musabbiba li-Mushkilāt al-'Usra. *Gumhuriyat Misr al Arabia wizārat al'Adl*. Markaz al-Dirasāt al-kadā'iya: al-Qāhera, 2004.
[41] See Al-Sharmani, *Gender Justice and legal Reform in Egypt*; al-Sharmani; "Egyptian Family Courts", Bernard-Maugiron and Bauduin Dupret, "Breaking Up the Family"; Sonneveld, *Khul Divorce in Egypt*.
[42] Hegel-Cantarella, "Waiting to Win", 113.
[43] Analysis of court records as well as interviews with judges and lawyers indicate that a large percenatage of cases filed before the family courts are resolved through out-of court mediation. Contracts of agreements are often registered at the family court for notary purposes.
[44] See Al-Sharmani, *Gender Justice and legal Reform in Egypt*; Sonneveld, *Khul Divorce in Egypt*.

Legal space I: The Judges' Chamber

"The judge's conscience (damir) is the heart of the legal system. His role is to render expedite and fair judgments." [45]

"A wife who requests divorce without a good reason should be deprived of smelling the scent of paradise."

Having traced the development of Egyptian personal status codes and judicial institutions, I now turn to the practices of family court judges and other legal personnel. Until 2004, decisions from the family chamber could be appealed before the Court of Appeal, with the final remedy lying with the Court of Cassation, in accordance with the civil law court system. From 2004 onwards, however, family court decisions could no longer be appealed before the Court of Cassation. Family courts are usually situated in modest buildings where court sessions take place in a private chamber. Entry is forbidden to the public, with the exception of the parties to the case and persons with the consent of the judge.[46] Litigants from all class backgrounds resort to the courts to claim their rights as regards personal status matters, ranging from the establishment of marriage and paternity, to claiming alimony and child support, and child custody.[47] Hence, courts and other legal professionals play an important role in defining religious sensibilities proper to the family. Many of the female litigants who filled the halls of the family courts during the period of my fieldwork were women who had filed for judicial divorce through khul'. At the time of writing this article, the majority of divorce cases dealt with were through khul'.

If you make your way into the judges' chamber, you find that hearings are usually held in small rooms with worn rugs and curtains, broken windows, and malfunctioning air-conditioning systems, reflecting the family courts' low-ranking position within Egypt's judicial system. At the heart of the legal system you find the judges. Similarly, at the centre of the court room is an office desk at which sits the judicial panel comprising three judges and a member of the prosecution. The family courts are usually presided over by male judges.

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[45] Interview with judge, 14 April 2014.
[46] See also Hussein Agrama, "Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular state?" *Comparative studies in history and society* 52 (2010): 495-523; Lindbekk, Inscribing Islamic Shari'a in Egyptian Divorce Law".
[47] Lindbekk, "Inscribing Islamic Shari'a in Egyptian Divorce Law"; Jasmine Moussa, *Competing Fundamentalisms and Egyptian Women's Family Rights*, Leiden: Brill, 2011.

However, Egypt has a small minority of female judges.[48] The scribe is seated by a smaller desk in front of them, while two social experts (one of them a woman) are seated on two leather chairs placed alongside the wall. Although the appointment process is formally merit-based, members of the Egyptian judiciary are usually drawn from the upper-middle or upper stratum of society.[49] Further, positions are frequently handed to the relatives of sitting or former judges and government officials.[50] In keeping with their elevated social background, the male judges preferred to be addressed as “bik", an honorary title inherited from the Ottoman epoch and still used as a social title for men, and usually wore grey or black business suits while at work.

As mentioned, the family court system was intended to look into the social realities of families in distress and to attempt to solve their problems in an amicable way through mediation. Yet, while analysis of records reveal that a significant number of cases ended in reconciliation, the bulk of the court’s activities was geared toward writing up verdicts and maintaining order. This was in keeping with judges’ perception of their principal role as that of rendering swift and fair judgments, as indicated by the quote at the beginning of this section. This reflected the increased reliance on documents over witnesses (the primary form of evidence in medieval shari‘a jurisprudence) due to the expansion of legal-rational state authority as well as time constraints.[51] A context in which this pattern is strikingly apparent was hearings of judicial khul‘. I will now consider a case that is representative of the actions performed by judges in such cases. The case had been initiated by a wife in her early thirties who appeared before the family court, whereupon the judge asked her the following:

Judge: Do you swear that you relinquish all your financial rights?

Litigant mumbling: Yes. (’aywa)

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[48] Monika Lindbekk, “Women Judges in Egypt: Discourse and Pracice”. In *Women Judges in the Muslim World*, edited by Nadia Sonneveld and Monika Lindbekk, 284-317. Leiden: Brill, 2017.
[49] Mahmoud Hamad, “The Politics of Judicial Selection in Egypt”. In *Appointing Judges in an Age of Judicial Power*, edited by Kate Malleson and Peter Russell, 260–279. Toronto, Buffalo, London: University of Toronto Press, 2006, 263.
[50] Nathalie Bernard-Maugiron, “Introduction”. In *Judges and Political Reform in Egypt*, edited by Nathalie Bernard Maugiron, 1–18. Cairo: American University in Cairo Press 2009, 8; Hamad, “The Politics of Judicial Selection in Egypt”, 276.
[51] See also Brown, Rule of law in the Arab World; Lindbekk, “Inscribing Islamic Shari‘a in Egyptian Divorce Law”; Michael Peletz, “A Tale of Two Courts: Judicial Transformation and the Rise of a Corporate Islamic Governmentality in Malaysia”. *American Ethnologist* 42 (2015): 144-160; Sonneveld, *Khul Divorce in Egypt*.

Judge: Are there children? (Fih awlad?)

Litigant: Yes. (’aywa)

Judge with hands outstretched: Well, is there another chance?? (ṭayyib, fih furṣa tanya??)

Litigant: shakes her head.

According to article 20 of law no. 1 from 2000, the wife has to be present in front of the court and state that she resents married life and fears not to uphold the boundaries of God. Yet, the judge in the excerpt refrained from asking the wife state this and only asked her if she relinquished all her financial rights out of expedience. After inquiring whether the couple in question had children, the judge offered reconciliation by asking “Well, is there another chance?” However, the atmosphere in the judges’ chamber did not seem conducive to strengthening communication between family members. I was also under the impression that judges struggled to maintain spatial autonomy and order in the chamber, as lawyers and litigants sometimes touched or leaned over the table of the judges in order to argue a point or ensure that the court’s scribe recorded it correctly. A sense of futility therefore permeated these attempts as the judges struggled to retain authority and had recourse to formulas, which gave little room for any individual variation. These formulas combined elements taken directly from the common language, with technical language focused on impersonal terms such as ‘plaintiff’ and statements of what happened using the third person (‘the plaintiff relinquished her rights’). Consistent with this rhetoric of impersonality and of neutrality, the judge usually did not inquire into the plaintiffs’ individual circumstances. For pragmatic reasons they also attempted to separate litigants from their extended families. For example, when the father of a young woman in pursuit of khul‘ attempted to speak with the judge, the presiding judge tersely told him to leave the court room.[52] Moreover, the majority of interviewed judges believed that court-offered reconciliation was to no avail, since many couples have been through a long period of attempted reconciliation by relatives, lawyers, and

[52] An exception occurs in cases where the mother loses custody over her child. According to Article 20 of Law No. 25 of 1929 as amended by Law No. 100 of 1985, in cases where the mother is deceased, or loses custody over the child, the maternal grandmother is awarded custody, followed in line by the paternal grandmother, then full sisters, then half-sisters, and so on. See Jasmine Moussa, Moussa, “Egypt”. In *Parental Care and the Best Interests of the Child in Muslim Countries*, edited by Nadjma Yassari, Lena-Maria Möller and Imen Gallala-Arndt, 1-29. Springer, 2017, 12. Relatives also play an important role as witnesses. See Lindbekk, “Inscribing Islamic Shari‘a in Egyptian Divorce Law”.

local religious authorities.[53] Further, some judges believed that in many cases the presence of multiple legal disputes and harms inflicted by either side rendered reconciliation impossible.[54]

The above discussion has focused on the technical and procedural details, but it is also important to look at the underlying values and beliefs that guide the techniques. Egyptian judges are constrained by their position in the judicial hierarchy where they are functionaries and are governed by a professional ethos whereby they distinguish sharply between the legislative and judicial branches of government.[55] That said, in practice the distinction between judicial law making and discretion is blurred. A characteristic of judicial reasoning is the pre-eminence of legislation. Yet, despite being formally constrained by the norms of legislation, courts retain a degree of flexibility.[56] Here I will highlight two functions played by family courts.

First, through the continuous process of normative interpretation, family court judges play an important role in law development. In developing the law, judicial discourse draws on a specialized register of language consisting of rules, rulings, maxims, precedent and the like. Recent decades have witnessed a rapid increase in legal-anthropological studies dealing with the implementation of shari‘a-based legislation in courts. Together, they indicate that, although there is some merit to arguments that codification altered the nature of Muslim family law, judges continue to enjoy a great deal of interpretive creativity in applying the law and constructing facts. In spite of this, to date this field of study has paid little attention to the religious discourses of contemporary judges and other legal actors tasked with implementing Muslim family law. My material indicates that contemporary family court judges often seek to enhance the richness and sophistication of judgments by weaving moral and religious themes into them for the purpose of legitimizing judicial decisions. While Egyptian judicial practice is multi-layered, some discourses are more dominant than others. As argued elsewhere,[57] several regularities stemmed from a conceptualization of the nuclear family and

[53] For similar findings, see also Sonneveld, *Khul Divorce in Egypt*.
[54] Interview by author with judge, 5 August 2015.
[55] Lama Abu-Odeh, “Egypt’s New Constitution: The Islamist Difference”. In *Constitutional Secularism in an Age of Religious Revival*, edited by Susanna Mancini and Michel Rosenfeld, 160-174 Oxford: Oxford University Press, 2014; Mustapha Al-Sayyid, “Rule of Law, Ideology, and Human Rights in Egyptian Courts”. In *Rule of Law, Islam, and Constitutional Politics in Egypt and Iran*, edited by Said Amir Arjomand and Nathan Brown, 211-232. *The* New York: State University of New York Press, 2013.
[56] See also Dupret, “What is Islamic Law?”
[57] Lindbekk, Inscribing Islamic Shari‘a in Egyptian Divorce Law”.

marriage as held together by Quranic emotion-based virtues such as amity (mawadda) and mercy (rahma). Contemporary judges' notions of family and marriage may thus be situated within the context of 19th and 20th century discourses where the nuclear family was reconfigured as the cornerstone of the nation, and marriage as the foundation of the family.[58] This emphasis on the conjugal family was also apparent elsewhere: we have seen that while many litigants were accompanied by family members, the judges discouraged this.[59]

Second, besides issuing decisions in individual cases, some judges used the court as a source for highly value-laden debates on divisive issues. Although it has become a more regularized procedure since its inception, debates concerning the religious legitimacy of judicial divorce through khul' continue to reverberate within judicial discourse. As mentioned, 37 challenges have been lodged by judges since 2000 before the High Constitutional Court based on purported contradiction with article 2 in the constitution, which stipulates that the principles of Islamic shari'a are the main source of legislation. There are also other less extreme examples of these dynamics. It is noteworthy that there appears to be confusion among judges concerning similarities and dissimilarities between the traditional version of khul' and article 20 of law no. 1 from 2000. Some judges routinely cited preponderant Hanafi doctrine that described khul' as a transactional contract between the spouses comparable to a sale. This created the illusion that khul' is contingent on the husband's consent. Meanwhile, the 2000 law enables the wife to obtain divorce without the husband's consent. Some judges also appear to harbour doubts about the legitimacy of khul' in cases brought before them, and reiterate a warning issued by the Prophet Muhammad to women who opt for khul' without good reason: 'a wife who requests divorce without legitimate reason shall be deprived of smelling the scent of paradise.'

In addition to specialized language, judges deployed idealized versions of the past. For example, in a 2008 ruling, Cairo Appeal Court lamented that in the past, families were intact and *"divorce was a hated thing".* But now, the court continued, it had *"become part of*

[58] These views on exemplary marital relations are also propagated by elites of different ideological persuasions, including Islamists. Lila Abu-Lughod, Lila. "The Marriage of Feminism and Islamism in Egypt: Selective Repudiation as a Dynamic of Postcolonial Cultural Politics". In *Remaking Women: Feminism and Modernity in the Middle East*, edited by Lila Abu-Lughod, 243-270 The American University in Cairo Press, 1998.

[59] Along similar lines, Peletz argues shari'a courts in Malaysia are *"key players in the revalorization and narrowing of kinship, de-emphasizing the relevance of extended kinship relations as well as those filial ties and sibling bonds"*. Michael Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*. Princeton, N.J.: Princeton University Press, 2003.

culture and its sentiments, something which no girl fears and no woman flinches from".[60] Similarly, another ruling reveals a hankering for the values of an imagined ordered past, when Egyptian society was authentic and 'women used to respect their husbands even if they were a bag of bones, as the popular proverb says'.[61] The invocation of an idealized past was contrasted with the present, where authentic values and mores have come under threat from external influences. Furthermore, the previously discussed standardized approach toward judicial khul' was occasionally interrupted by hostile outbursts from judges toward female litigants. For example, a judge who had told me that four words ('Iqrarr bi-al-bughd') suffice in order for the wife to be granted judicial khul', sternly told a female litigant that this was not sufficient. These morality discourses echo debates about article 20 of law no. 1 from 2000 in the press, where female-initiated divorce has been blamed for threatening the well-being of the family, and by extension the nation-state.[62] However, regardless of the attitude to certain controversial provisions, it is important to bear in mind that the judges' approach is largely guided by orientation to procedural correctness and legal relevance, reflecting their bureaucratic resistance to the possibility of being overruled.[63]

Legal space II: The Office of the Experts

"The experts are the eyes of the court."[64]

"In the past, Egyptian women respected their husbands and loved their mothers-in-law more than their own mothers."

A remarkable feature of the new family courts is the establishment of settlement bureaus manned by experts trained in sociology and psychology. They perform a dual function: they meet the disputants and attempt to solve their problems in an amicable manner and, in case of failure do so do, prepare the case for litigation. In their role as the "eyes of the court", the

[60] Cairo Appeal Court, personal status circuit, case no. 1997, judicial year no. 124, 21 July 2008.
[61] Cairo Appeal Court, case no. 8180 and 8210, judicial year 124, 27 July 2008. See also Lindbekk, "Enforcement of Personal Status Law by Egyptian Courts"; Lindbekk, "Judicial Activism in the Context of the 2011 Egyptian Revolution".
[62] Kenneth Cuno, "Divorce and the Fate of the Family in Modern Egypt". New York: Routledge, 2008; Hasso, *Consuming Desires*; Lindbekk, "Judicial Activism in the Context of the 2011 Egyptian Revolution"; Sonneveld, *Khul Divorce in Egypt*; Sonneveld and Lindbekk, "A Revolution in Egyptian Family Law?"
[63] See also Dupret, "What is Islamic Law?"
[64] Interview with social expert on 24 May 2014.

experts write a report (taqrīr) reflecting their assessment of the nature of the dispute in accordance with their fields of expertise; the social expert on the social aspects and the psychologist on the psychological aspects of the dispute. While the original intent behind the creation of family courts was to reduce appeals to the judiciary, the inclusion of social experts in the legal process can thus be seen to increase state involvement in the intimate lives of citizens.

The Experts' Office is situated on the floor above the busy waiting halls of the court and the judges' chambers. Upon entering, litigants were invited to sit down at small tables in one large communal room, where a number of meetings were held at the same time. This process could last for a few minutes or hours, depending on the time at disposal and the parties' willingness to talk. The same atmosphere of futility that pervaded the reconciliation attempts in the judges' chamber was found here. Studies point to a set of issues that prevent the Experts' Office from providing litigants with therapeutic problem-solving justice. The studies point out that the experts are often poorly trained, that there are inadequate facilities to ensure privacy and to prevent problems implementing mediation agreements, and that judges are resistant to making use of the experts' reports. [65]What concerns me here is how mediation sessions draw litigants into spaces where different notions of family and marriage are invoked. While the courtroom continues to be dominated by male judges belonging to the elite, the majority of experts encountered were women who shared the same class background as most litigants. This point was highlighted by the informal attire of the staff; for example, the main expert, who originally came from the countryside, wore the face-veil (niqab). Although it was impossible to see her face, her eyes were very expressive, radiating warmth and sometimes a strong sense of humour.

Reflective of how traditional notions of mediation have become influenced by global notions of therapeutic justice, the head of the Experts' Office handed me a manual designed by USAID on my first visit. The manual was called 'How to Protect Your Family'. She continued to describe mediation as a form of conflict management in which the experts would assist the disputing parties to find a final solution without resorting to force. In the same vein, she continued by saying that the success of the therapeutic model depended on the experts' ability to coax information about the nature of the dispute based on the experts' awareness of

[65] Al-Sharmani, *Gender Justice and Legal Reform in Egypt*, 50-52; Hegel-Cantarella, "Waiting to Win"; Hind Ahmed Zaki, Hind, "Law as a Tool for Empowering Women Within Marital Relations: A Case Study of Paternity Lawsuits in Egypt". Cairo, Cairo Papers in Social Science Series 31(2): The American University in Cairo Press, 2012.

local customs (‘urf) and their knowledge of psychology and sociology. In this model, success depended on restoring mercy and amity (al-rahma wa al-mawadda) between family members by providing a space for dialogue (hiwār). The head of the Experts’ Office also advocated the idea that couples should remain involved in each other’s lives after divorce in their capacity as co-parents.[66] On account of their more diverse social background and specialization, the sociological and psychological experts drew on a wider array of symbols and tactics than the judges, including religious and social concepts embedded in the past as a means to encourage resolution of the conflict.

One case that I observed on 24 February 2014 was particularly revealing in this regard. The case involved a middle-class couple from a middle-income area. The wife was born in 1986 and worked as a teacher while the husband, born in 1978, was a lawyer. Although judicial divorce through khul‘ has become less controversial than it was following its promulgation in 2000, there is still stigma associated with being a man judicially divorced from their wives through this procedure. Reflective of the social stigma attached to being a ‘yanked man’ (al-rajul al-makhlu‘), the husband in this particular case appeared very anxious and addressed me nervously before the reconciliation procedures commenced: “Who invented khul‘?” I shrugged my shoulders as if to say, ‘I don’t know’. The two lawyers of the litigants were also sitting in the room. The language used by the experts and litigants was more informal and personal than what transpired in the judges’ chamber. The husband told the expert that the wife’s family wanted them to live in an apartment in a house owned by them, but this was far away from the area where he lived and worked. He continued: “We used to be on good terms, but this suddenly changed. Her mother would call often on the phone and ask her to visit her.” The female expert interjected by saying that this could not be the real problem. “Tell me the real problem.” To this the husband lamented that “her family wants to control my life and intervene in everything. Among other things, they told me to leave the apartment and come live with them although they are very far away. I have always dealt with them in a good way.”

Expert: Didn’t you insult her and try to beat her?

Husband: We have been married three years and I never beat her once.

Expert: Did you try to prevent her from working?

Husband: I never did that. She did not stop working even one day. I don’t even know her salary.

[66] Interview with social expert on 24 May 2014.

Lawyer of husband intervenes: I heard the judge say that she is spoilt (di bitidallaʿ).

At this point, a male litigant who is waiting his turn also intervened, saying that the husband should beat his wife five times in the face and tell her that her behaviour was wrong. To this the husband replied that he had never mistreated his wife and did not wish to harm her in any way.

Expert: So the family of the plaintiff is the origin of the problems?

Husband: The last time I went to get her from her father's house, he told me to get a new flat.

Expert: What are your circumstances anyway?

Husband: She claims I don't provide for her. Why should I provide for her while she is staying in her father's house?

The expert asked the wife to enter with her lawyer. She sat down by the expert's desk while her lawyer sat down on a sofa by the wall. She had very intimidating body-language, something which seemingly made her husband even more nervous, although he tried to smile in an effort to hide this.

Expert: So he spends. So what is the solution? Your husband still holds you (huwa mutamasik biki). All he wants is to continue married life.

Wife: I don't want to live with him. I hate him. (Mish 'ayiza a'ish ma'ah bakrahu.)

Expert: Why?

Wife: He knows what he did. Nobody changes.

Expert: Tell me. He told me from his point of view.

Wife: I don't want to live with him. (Mish 'ayiza a'ish ma'ah.)

Expert: He denied that he beat or insulted you. I want to hear the reasons from you. ('ayiz ʾasma' minnik ʾil-ʾasbāb.)

Wife: He insulted and beat me.

Husband: No, I swear to God I didn't.

Wife: He also wakes up in the middle of the night screaming.

(Speaking in each other's mouths)

Husband objecting: You will be blamed in front of God because of the child.

Wife: He is two-faced and continuously insults me.

Husband: When the child grows up, he is going to read this and know who to blame for what happened.

Wife: I came here to finish the procedures. I relinquished my rights.

At this point the expert appeared to have acknowledged that there was no more hope in saving this marriage and began to write her report: 'The plaintiff resents life with the defendant. The path is closed for you – it's finished.' She expressed her decision. You should agree on everything for the sake of the child (Al sikka ma'fūla biynkum khalas. Heya 'allit qararha. Lazim titafiqu fī kul haga ashan al tifl.)

Husband: I am aware that judicial divorce due to khul' is a guaranteed pathway.

The expert then lectured the litigant by saying: "Hell is mainly populated by women in pursuit of khul'. Khul' should be the final resort. However, there are also other types of divorce such as divorce for harm."

Husband: I came here although I know it is useless. I came mainly to put my opinion on record for the sake of the child since we may not meet again.

At this point a male expert seated by the neighbouring desk intervened in the conversation.

Male expert (to the husband): If you seek reconciliation (sulh), you should ask her what she wants.

Wife: I don't want anything from him. It is over.

At this point in the session, the wife exited the room after slamming the door. After the couple in question left, the main expert sighed, saying: "Do you see? It is impossible for me to determine who is right when both provide opposing viewpoints." The above case illustrates the strategies used by the experts. In coming to a solution, the expert waited for the disputants themselves to define their conflict and assist in creating a solution. During this particular session, the leading expert did her best to discover the source of the marital problems but encountered difficulties in reaching informed conclusions when faced with a wife adamant in her pursuit of judicial divorce through khul'.

Turning to the values that shape the practices, the interviewed experts joined the judges in valorizing the conjugal family but differed from them with regard to the techniques used. In keeping with a broader framework of legislation and courses given by USAID, the head of the Experts' Office told me that the aim of settlement is to keep the nuclear family (al-'usra) intact and remove the causes of difference. Her acceptance of the conjugal family ideal was manifest in her focus on marriage as a conjugal rather than extended family matter. This is noteworthy in light of the fact that despite the increasing dominance of the couple-centred nuclear family, the extended family continues to exert influence in many areas of Egypt, including urban areas.[67] As pointed out by Cuno,[68] the urban upper and middle classes no longer live in joint family households, but the extended families prefer to live in adjacent or nearby apartments, often within the same building which they own. At the Office of the Experts, the centring of the couple gave rise to concern over a couple's ability to have privacy in cases where they lived in a house occupied by other family members. In keeping with this, the crucial question was whether the wife was in possession of a key to the door, and the ability to enclose the nuclear family's life took on considerable importance.[69] The issue of influence exerted by extended family members was also an issue raised in the previously discussed case. The experts' support for the conjugal family ideal was also noticeable in their opinion that a person's choice of spouse should be based on compatibility in terms of mentality, character, and values. In an attempt to find the reasons behind the dispute in this particular case, the social expert speculated that perhaps the wife had a stronger personality than the man. Although they came from roughly the same social and educational level, the wife seemed to look down on him, perhaps because her family had more money than his. This difference in character and social background, in turn, had sowed potential seeds of future marital conflict.

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[67] Diane Singerman and Barbara Ibrahim. "The Cost of Marriage in Egypt: A Hidden Variable in the New Arab Demography". In *The New Arab Family Cairo Papers in Social Science* 24, edited by Nicolas Hopkins, 80–116. Cairo: American University in Cairo Press, 2001,103; Cuno, Kenneth. "Divorce and the Fate of the Family in Modern Egypt". In *Family in the Middle East: Ideational Change in Egypt, Iran, and Tunisia*, edited by Kathryn Yount and Hode Rashad, 196-216. New York: Routledge, 2008, 208; *Modernizing Marriage*; Sahar Tawila, Barbara Ibrahim, and Hind Wassef. "Social Change and Parent–Adolescent Dynamics in Egypt". In *Family in the Middle East: Ideational Change in Egypt, Iran, and Tunisia*, edited by Kathryn Yount and Hoda Rashad, 151-179. New York: Routledge, 2008, 152.

[68] Cuno, Modernizing Marriage, 208.

[69] See also Farha Ghannam, *Remaking the Modern Space, Relocation, and the Politics of Identity in a Global Cairo*. University of California Press, 2002, 96-99.

On account of their social background and professional logic, the experts brought into play a wider array of symbols and tactics than the judges. While a dominant discourse served to consolidate the nuclear family and marriage as a bond between two individuals, this model intersected with another vision of marriage as a bond between two extended families. While the re-consolidation of the extended family in the face of unemployment and housing crises was often singled out as a problem, I sensed a certain wistfulness when one expert stated that the traditional marriage unifying two extended families had partly given way to a modern type, bonding two individuals. While the former was sometimes represented as something present in the countryside, at other times this was equated with a utopic past when *"Egyptian women did not mind staying with their in-laws and respected their husbands and loved their mother-in-law more than their own mothers*".[70] With this, the main expert made a distinction between life in the countryside and cities, where life in the countryside was portrayed as a symbol of authenticity: while wives in the countryside would take care of their families and could bear extreme suffering in order for their families to remain intact, urban women were prone to divorce at the first sight of problems due to the temptations of urban life and the pernicious influence of Turkish soap operas.[71] Another often repeated theme during the moral discourse during mediation sessions was that of women who were "muftariya" or headstrong. Furthermore, we saw in the above excerpt that the main expert cited a hadith to the effect that a woman who divorces without good reason should be deprived of smelling the scent of paradise. These discourses were also used by litigants and lawyers. For example, we saw that during mediation attempts, the nervous husband referred to khul' as something "invented", indicating that it was a novelty imposed on Egyptian society. Furthermore, a lawyer speculated that the wife was "spoilt", and another litigant suggested the wife should be given a good beating.

However, such ambiguities and tensions did not preclude the experts from exercising their functions. Although the social and psychological experts interviewed mainly blamed women for the maladies plaguing the Egyptian family, they did not pose other than mild opposition to women in pursuit of khul'. Having exhausted her function as mediator, the main expert began to write her report. Underscoring the bureaucratic rationality characterizing their work, she and the other experts wrote account of their affairs, which usually did not exceed one page and was geared toward procedural correctness and legal relevance. The previously mentioned

[70] Observation of mediation session, 10 April 2014.
[71] Observation of mediation session, 14 March 2014.

shifts and contradictions concerning notions of family, marriage, and gender became more visible at the Office of Shaykhs from al-Azhar, to which I turn in the following section.

Legal space III: The Office of the Shaykhs

"There is nothing worse than destroying houses (byut) (…) I may do like the employees at the experts' office (maktab taswiya) and write down two words from you and your husband and close the file. However, here at al-Azhar we genuinely care about the family" (al-'usra).

"Urban women harm their husbands when they go out to see their sister or work instead of cooking and looking after the children. All they do is take-away."[72]

As mentioned, Article 20 of Law No. 1 from 2000 stipulates that the wife should participate in court-ordered reconciliation, as well as arbitration that should not exceed three months. According to Article 19 of the same law, the court should also appoint one arbiter from the man's kin and another from that of the woman. After attempting reconciliation, the arbiters should appear before the court and present a report to the judge if they fail to reconcile the couple. The court may adopt their reports or decide to do otherwise, based on the documents of the case. If the spouses are reluctant to assign an arbiter from their families, the court appoints arbiters from al-Azhar. Analysis of court records and interviews with judges revealed that most disputants did not put forward an arbiter. Furthermore, interviewed judges preferred shaykhs over family members on account of their ability to write clear and succinct reports.

Arbitration attempts are undertaken by religious scholars at al-Azhar inside a bulky concrete building. Inside an office carrying the sign "Maktab al-sulh", you encounter two religious scholars, or shiyokh, in their fifties, with a mandate to ascertain whether it is possible to reconcile couples in cases of judicial khul'. Unlike the experts, the arbitrators were all men. The arbitration sessions took place inside a large office with broken windows furnished with several office chairs and reclining sofas on which litigants, their lawyers, and members of the extended families were seated. During the arbitration sessions, some female litigants were joking with their lawyers, while other women sat with their head buried in their hands weeping. The shaykhs were Azhari scholars who had earned degrees in Islamic jurisprudence

[72] Observation of arbitration session, 10 April 2013.

from al-Azhar University and who hailed from rural areas or lower-income areas in Cairo. While at work they wear the traditional garb characteristic of religious scholars affiliated with al-Azhar.

In contrast to the judges, who considered themselves the heart of the legal system, and the experts, who defined themselves 'the eyes of the court', the shaykhs sought to distance themselves from personal status law, saying, "I have no relation with the law". ("Ana malish dawʿa bil- qanūn"). While practices in the judges' chamber and Experts' Office testify to the increasingly bureaucratic and therapeutic inflection of sulh, the arbitrators claimed to rely more on religious rituals and time-honoured traditions, and defined these as quintessential to the work of al-Azhar of saving households (buyut). Their use of the word 'buyut' is significant here as it indicates those living together in one house, including parents, children and relatives. Thus, in contrast to the experts who sought to discover the root causes in order to restore emotional bonds of amity and mercy, the shaykhs focused heavily on restoring harmony within the framework of the extended family. Besides their knowledge of Islamic jurisprudence, the shaykhs told me that they read sociology and psychology widely, and that these disciplines brought them to understand that *"conflicts in marriage are virtually inevitable"*. Sometimes they would also include me in the discussions by saying: *"People come all the way from Europe to study our problems. Europeans are like Muslims without Islam."*

The following case that came before the scholars in 2013 illustrates some of the techniques and values adopted by the Azharites. It became clear that the couple and their families had reached entrenched positions by the time they came to the office of the shaykhs. The wife, wearing a face-veil (niqab), came accompanied by her lawyer, mother and father. Her husband, a bearded man of lower-middle class, carrying the Quran and accompanied by his lawyer, was accused of having stolen the wife's furniture and betrothal gift (shabka). The wife also claimed the husband was stingy and did not provide for her and the children. The marital house was also unsatisfactory. "It is over", she said (Khalas begad). On the other hand, the husband claimed the wife had left the house several times without his permission. He also accused the wife's family of breaking into the couple's apartment and stealing the conjugal furniture. In assessing the conflict, the main shayhk proceeded to enquire in depth about the apartment; whether it was rented, who lived there, and how it was furnished. He also enquired with the husband's lawyer about other financial aspects of the marriage such as the dower and the wedding jewellery. The husband responded by claiming that the wife had not allowed him

to see their two-year-old daughter for over 18 months. He also accused her of having been previously married, without telling him, before their marriage was contracted. The wife responded to this charge by calling the husband a liar since they had merely signed the marriage contact (katb al-kitāb) without enjoying privacy, and repeated that the husband had not provided her with alimony (nafaqa) for a year. Seeking to direct attention away from the status of the wife's previous marriage to more pecuniary issues, the main shaykh responded by reciting a hadith according to which the Prophet said, *"Spend money on yourself first, and then on those whom you have to look after"*. The atmosphere later grew tense as the wife again accused her husband of being a liar. One time when she sought to tell the main shaykh something, he interrupted her tersely and told her to shut up, "Ikhrasī!" Another shaykh then addressed the husband in an emphatic tone: "You have been wrong, wrong, wrong. When a wife is at fault this is due to her weakness. […] God instructs men to be nice to their wives and to treat them well to the best of their ability even when they are at fault. However, we are not going to discuss your wife, but your mother-in-law. You must be good to her." (Pointing to the wife's mother): "This is your mother. You have been ill-treating your mother." The shaykh urged the husband to apologize to his mother-in-law and give her a hug. In response to this, the husband went over to the mother of the wife who was gently sobbing and kissed her hand. Speaking in an inaudible voice, he attempted to comfort her. Meanwhile, the wife pleaded with the shaykhs.

Wife: Please don't force me to live with someone I don't want. Please let this end. He also insulted my father.

Shaykh I: If the wife finds good treatment from her husband she will forget her family and be completely obedient to her husband. For myself, I sometimes bring my wife presents when we are not on good terms. When wives like yours curse and insult, they are white-hearted. She releases her bad feelings instead of carrying them in her heart.

Shaykh II: Please take some time to consider. According to a common saying you can't love someone unless there is hate. He then walked over to the husband who was immersed in deep conversation with his mother-in-law. The shaykh gave him several hard pushes which made the husband keel over while the shaykh repeated emphatically: "Your mother, your mother, your mother! (ʾUmmak ʾummak ʾummak!)"

The above excerpt shows that the assumptions, beliefs and values that governed interactions within the Arbitrators' Office differed from those obtaining in the court room, reflective of the

shaykhs' different expertise and social background. By contrast to the judges and experts who viewed extended families as a primary source of marital problems and relegated them to the background, the shaykhs attempted to create a space for dialogue between the spouses and their extended families, even in the face of staunch opposition from the wife, who thought that this did not adequately address the conflict. Their focus on extended families and marriage as a result of family strategies and material interests can be understood in light of their background in traditional Islamic jurisprudence (fiqh) as well as coming from more rural areas and places where couples relied on their extended families for their upkeep. Additionally, the shaykhs professed that economic problems were easier to solve than emotional ones.[73] This became particularly apparent during another arbitration session involving a wife whose husband provided for her, yet continuously mistreated her through beating and abandonment. Pleased with the fact that the husband was spending on his wife, the Azharites believed that reconciliation was within reach, something which prompted the female litigant to interject:

"But what about mercy and amity??" (mawadda wa rahma??)[74]

At this point the shaykhs fell silent, signalling that the arbitration attempts had reached a dead end. Despite the increasingly dominant discourse about the conjugal family and marriage as a bond between two individuals, the presence of such discrepant visions highlights that Muslim family law is not a monolith. Like the judges and experts, the shaykhs also sometimes use this legal space as a platform for debate about divisive issues. Similar to the morality discourses overheard at the Experts' Office, the message delivered was that women's proper place was in the home and was elaborated by saying that her position was one of being a servant to her in-laws (khadima). Although the main shaykh induced husbands to treat their wives kindly, and conceived of his pastoral duties as looking after the interests of women, he spoke of urban women in very disparaging terms: *"All they do is take-away*." During arbitration sessions it also became clear that the shaykhs viewed the incursion of state power in the realm of personal status law with some acrimony and were not content with their circumscribed role in the judicial process. Such resistance toward the rationalized personal status codes became visible when the observed two shaykhs referred to the personal status laws as passed in a top-

[73] Interview with shaykh, 4 March 2013.
[74] Observation of arbitration session, 4 May 2013.

down fashion by ‘mama Suzan’ and other political actors ignorant of Islamic law. As with the judges and court experts, however, the hostility of the shaykhs to the power of state law did not preclude them from exercising their function. Thus, when all hopes of reconciliation were lost, the shaykhs approached, with some trepidation, the cupboard where legal forms were stored before beginning the work of formulating their reports, which were keyed to the hegemony of state law.

Summary and conclusion

This article looked at how family court judges and other legal personnel articulate notions of family, marriage, and gender in cases of judicial khul‘. I began the article by tracing the genealogies of contemporary legislative and other legal discourses back to the 19th century, when a fundamental shift took place in Islamic discursive traditions in the context of state formation. Substantive personal status law reforms enacted during the 20th and 21st centuries aimed to promote a norm of the conjugal family (the monogamous couple and their children), conceived of as the fundamental social unit. This has been reinforced by a transnational discourse of therapeutic justice in which family courts have become entangled.

In the article’s second part, I analyzed practices surrounding judicial khul‘ by using multiple entry points. Corroborating and extending previous research findings presented in this article, I suggest that codified Muslim family law as interpreted by family court judges and other legal professionals is not monolithic but instead multi-layered. I first addressed how judges articulated notions of family, marriage, and gender in relation to judicial divorce trough khul‘. I then took into consideration sociologists and psychologists at the Office of Experts, and religious scholars from the Department of Preaching and Guidance. As a function of division of labour, judges, court specialists, and arbitrators described the goal of their work in varied ways. The judges were primarily concerned with maintaining order and the production of verdicts. Meanwhile, the social experts and arbitrators provided two main functions: providing a space for dialogue (hiwar) and preparing the case for litigation.

In the article, I argued that the family courts are important platforms for defining religious sensibilities and conduct appropriate to the family, while buttressing state authority. First of all, I argued that Egyptian family court judges and other legal professionals enjoy

considerable discretionary powers in interpreting and implementing the personal status codes. The practices in these spaces were contextually variable depending on the social background and professional logic of legal practitioners. While Egyptian judicial practice is multi-layered, some discourses are more dominant than others. In enforcing legislation, the courts and interviewed experts tended to converge by reinforcing a hegemonic discourse on the nuclear family held together by strong emotional ties as the fundamental unit of the state. Using intertextual analysis, I found that the discourses of judges and experts bore the imprint of ideas promulgated by Muslim reformers in the second part of the 19th century when the conjugal family became regarded as the fundamental unit of society. This stands in contrast to traditional Islamic jurisprudence that privileged the patrilineal family over the conjugal, and permitted polygamy and facilitated male divorce. Second, I argued that legal professionals sometimes use the court and other legal spaces as a platform for articulating alternative notions of family and marriage, and debate about divisive issues. Some of the ambiguities and tensions arose from competing visions of marriage and gender. Among other things, analysis of practice revealed tensions between the increasingly dominant state-sponsored model of the nuclear family and marriage as a bond between two individuals, and a competing vision of marriage as a bond between two extended families. Some of the legal professionals in question also voiced anxiety over the increase in female-initiated divorce. Such tensions and resistance were especially noticeable in the way legal actors made use of religious and social concepts embedded in the past with a view to ensuring the "authentic" character of the Muslim family. The complex and variable configurations operating in these legal spaces highlight that sharia' derived state law is not a monolith. The article situated these contradictory practices against a background of early 21st century reforms, which challenged male authority in the family, in particular the 2000 law of judicial khul' However, the antagonism and resistance among legal professionals with different professional backgrounds and worldviews did not prevent them from exercising their overlapping and supplementary functions.

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