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Religion in Legal Discourse: adjudicating the family in Egypt

Monika Lindbekk

This chapter looks at discourse analysis can be used to the study of religion in legal discourse by covering an area little addressed in research on law in action, namely religiously-inspired judicial activism in the field of Muslim family law. The chapter investigates adjudication by Egyptian family courts during the period 2011-2015, a critical juncture in Egyptian history.

Introduction

Egyptians frequently 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 petitioning for divorce and child custody. Thus, there is considerable interaction between these state institutions and the people. Family courts are usually situated in modest buildings and court sessions take place in a private chamber. During the period 2013-2015, I conducted field work in the large court building in Misr al-Jadida which housed five different court circuits. The court house was located next to the criminal court at a busy intersection, and the following words were inscribed on thick concrete walls above noisy traffic: God (Allah), right (haqq), justice (‘adl). Yet, Egyptian courts have been aptly compared to train stations rather than institutions carrying out the work of abstract justice. The social life of the court is characterised by a throng of court personnel, lawyers carrying briefcases brimming with documents under their arms, litigants, and family members, including

children. They wait their turn more or less patiently, often for hours, and occasionally fights erupt outside the courtroom.

This chapter looks at discourse analysis can be used to the study of religion in legal discourse by covering an area little addressed in research on law in action, namely religiously-inspired judicial activism in the field of Muslim family law. The chapter investigates adjudication by Egyptian family courts during the period 2011-2015 based on court rulings. In addition, it seeks to shed light on courts embeddedness in the wider social fabric by investigating the courts' involvement in the cultural politics of gender and family life in Egypt during this period, a critical juncture in Egyptian history. Following the 2011 revolution, Muslim family law emerged an area of public controversy with old and new actors and institutions competing over the right to interpret shari'a in an authoritative way.

The chapter focuses on how Egyptian judges who are not trained in the methodology of traditional Islamic jurisprudence legitimate their decisions by drawing on the combined resources of legislation, custom, and shari'a norms, what Griffiths (1986: 6) termed legal pluralism in the weak sense. What I wish to highlight here is family courts as important sites for promoting certain definitions of family, marriage, and gender. Based on an empirically oriented study, the following research questions are asked: 1) What gender norms do the legislature and judges produce? 2) By which sources are judicial decisions underpinned? 3) What are the implications of contextual factors such as civil law training, time pressure, and policies aimed at legal rationalization for how judges reference Islam? In describing and analyzing how judicial discourse is discursively accomplished, I draw upon theory and methodology of discourse analysis. This approach provides valuable resources for addressing questions in sociology of law. First, this chapter firstly addresses the relation between the upper-left and bottom left side of the figure as outlined by Baier, Svensson and Nafstad (2018: 14) by looking at the relation between formal law and court practice. Second, by looking at how legal discourse is embedded in

wider societal developments, it also sheds light on the relation between second the upper-right and upper-left side of the figure.

The chapter unfolds as follows. I begin by outlining the theoretical and methodological framework of the chapter. Afterwards I clarify some central terms such as “shari‘a” and “fiqh” and provide the basic features of traditional Islamic jurisprudence and an outline of important family law reforms during the course of the 20th and 21st centuries. In the chapter’s second part, I proceed to describe how I use discourse analysis in my research on adjudication by Egyptian family courts. The second part draws upon empirical fieldwork conducted in five Cairenese family courts. The analysis is based on analysis of rulings, observations and interviews with judges and court personnel on five Egyptian family courts during the period 2011-2015.

Studying References to Religion in Legal discourse and Practice

It is well established in socio-legal scholarship that, by interpreting and applying the law, courts play an important role in developing it (Höland, 2011), or ‘law in action’. Recent decades have witnessed a growing literature on Islam not only as a text but also as practice. This has been reflected in scholarly interest on various parts of Africa, Asia, and the Middle East with a need to bringing light to actual implementation of *shari‘a*, or ‘Islamic law’. This trend followed developments in legal studies at large, influenced by feminist sociological and anthropological approaches, where a shift in paradigm took place in changing the focus from law as rules in doctrinal works (of Islamic jurisprudence and modern law codes) to law as process (Moore 2001). Equally important was the debunking of pervasive Orientalist assumptions which posited Islamic law as a monolithic entity instead of exploring its embeddedness in a variety of legal and social contexts (Dahlgren and Lindbekk 2020, forthcoming).

In this chapter, I address how Egyptian judges articulate notions of gender relations in relation to contraction of marriage, rights and obligations during

marriage and divorce. The material used for this chapter consists of recent court decisions, interviews and observations of court sessions in Egyptian family courts during the period 2012-2015, a turbulent period in modern Egyptian history. A central unit of analysis in this connection is a particular genre of legal literature, namely written judicial judgments (*hukm* (sl), *ahkam* (pl)). The judgments are written to achieve a specific purpose, namely issuing a ruling (*hukm*). Judges draw up the judgments according to a particular pattern, aided by the use of computer templates. The court opens by saying,

“in the name of God, the Merciful, the Compassionate”:

Judges’ rulings are written in the name of Allah, but they use numerous references, ranging from legislation, court precedent, contemporary legal doctrine to religious sources. This feature has been reinforced by the fact that judges usually adhere to the same standard format, or computer template referred to by judges as “*dibaja*”. At the end of the document, the court explicitly states the decision by saying “*hakamat al-mahkama*”, or “based on these reasons the court ruled to...”

Some words on the advantages and disadvantages of employing court records are in order. Court records offer many insights into legal practices (Tucker 1998; Abdel-Rahman 1996). Yet, a fundamental methodological problem in analyzing judgments is that they are highly stylized documents formed with a view to resolving legal disputes. It is, therefore, important to expand the focus to ponder what is absent from the text by contextualizing the material in relation to wider societal developments. Nonetheless, judgments hold much potential since they provide insight into the internal structure and premises of judicial argumentation.

Egyptian judges place high value on providing justification in support of their decisions. First, because judgments are rich texts, they permit analysis of the discursive construction of the family, marriage and gender relations,

including the specific mechanisms through which gender hierarchy is either upheld or challenged. As such, they help integrate various social classes into what the courts regard as the essence of marriage in Islam. Secondly, judgments shed light on the sources used by judges to legitimate judicial decisions, such as legislation, court precedent, and local customs. Legal documents from family courts often contain several embellishments, including references to *shari'a*. The use of religious discourse in judgments makes it possible to analyze the interplay between religion and state law in a particular institutional context. Third, judgments also shed light on the contextual factors constraining judicial decision-making, such as judges' legal training and the use of computer technology.

Due to the complexity of legal arguments in contemporary judicial practice, attention to nuances is of utmost importance. This led me to draw upon theory and methodology of discourse analysis. In describing and interpreting how contemporary judicial practice is discursively accomplished, I draw upon Fairclough's (1995, 97) who developed a three-dimensional framework for analysis of discourse. He regards discourse as simultaneously (i) a language text, spoken or written, (ii) discourse practice (text production and text interpretation), and (iii) sociocultural practice. Thus, the method of discourse analysis includes a linguistic description of the language text, interpretation of the relationship between the (productive and interpretive) discursive processes and the text, and the social processes (1995, 97). A special feature of Fairclough's approach is that the link between the micro- and macro-level is mediated by discourse practice; how a text is produced or interpreted. Fairclough's primary interest was investigation of social change. This led him to focus on inter-discursivity, the selection of discourses from one social domain in order to apply them to another one, or even create a new discourse. In the perspective adopted here, I focus on the intersection of texts that takes place within the sphere of Muslim family law on the level of significant legislative reforms and their implementation. The conceptualization of *shari'a* as part of a repertoire in

the field, as a source among others, allows for agency in the formulation of the law.

Inscribing Islamic sharia in judicial discourse

Today, much of Egyptian family law is codified in the form of modern state legislation applied by civil courts. In order to understand the significance of this, it is important to have an understanding of how *shari'a* emerged and developed. In scholarly literature, *shari'a* is frequently referred to as 'Islamic law' or as 'sacred law'. For the purposes of this chapter, it is important to note that *shari'a* was developed by scholars (*fuqaha'*) who, for a long time, were independent of the state and were not government functionaries (Hallaq 2004; Vikør 2005). In developing the law, the classical scholars relied on a methodology called principles of Islamic jurisprudence (*usul al-fiqh*, literally, "the roots of jurisprudence") whereby *shari'a* was derived from specific sources. The sacred sources were two, namely the Quran, which embodies the revelations of the God to the humankind, and the Prophet Muhammad's exemplary practice and utterances, called the Sunna as compiled in hadith collections. The two primary sources of Quran and Sunna were followed by consensus (*'ijma'*) and a form of reasoning characterized by analogical deduction. An important aspect of this methodology was defense of the doctrines developed by the four dominant schools of Sunni jurisprudence, namely the Hanafis, Malikis, Shaf'is, and Hanbalis (Hallaq 2004, 27). The Hanafi school eventually won a special position as the official law school of the Ottoman Empire.

The objective of marriage according to Islamic jurisprudence (*fiqh*) was sexual satisfaction and reproduction (El-Alami 1992). Classical Islamic rules regarding marriage and divorce law are highly gendered in that men and women have different rights and duties. For example, the husband has a

right to dissolve marriage by making a unilateral pronouncement, while the wife has limited rights to initiate divorce. The three most significant types of divorce are: (1) repudiation by the husband (*talaq*), (2) divorce for compensation (khul'), and (3), judicial divorce for specific reasons (*tatliq*). A khul' divorce could take place at the request of the wife against her payment of compensation to the husband, such as the return of her dower.

Muslim family law was gradually transformed over the 19th and 20th centuries. In the 20th century the process of codification extended to the field of family with the adoption of a series of family codes designed to make marriage a more permanent bond than envisioned by traditional Islamic jurisprudence. Among other matters, the laws curbed men's right to repudiation. It was also believed that providing women with more marital rights, including wider rights to petition for judicial divorce, would strengthen the marital bond. These legal developments took place through a selective process in which doctrines from the classical Islamic law schools were combined and fused into new legal rules. A further development took place in 1955 with the state's establishment of a unified legal system. Hence Egyptian family law today is found in legal codes determined by the state and implemented by the modern judicial apparatus of the state whose judges are trained in modern law schools instead of in traditional Islamic jurisprudence (Lindbekk 2013). In the following, I will argue that transformation of Islamic *fiqh* into state law applied by judges without a background in *fiqh*.

Family courts continuously define and redefine what constitutes Muslim family law and what does not by drawing upon the combined sources of legislation, court precedence, custom, and *shari'a*-norms. In the following, I draw attention to some important themes by showing how judges refer to different genres and discourses in order to create a text, what Fairclough (1995, 12) calls 'orders of discourse'. These themes are articulated together depending on the nature of the sociocultural practices of which judicial discourse is a part. As mentioned, Fairclough considers discourse as interacting with institutions, and social structures. In the specific setting of

the family courts, judicial training and the introduction of computer technology are identified as important factors explaining judicial behavior. In addition to sociocultural practices at the level of judicial organization, I argue that judicial discourses are embedded in wider socio-cultural developments.

As testimony to the enduring ability of Islamic idioms in judgments during the period of 2008-2014, Egyptian family court judges frequently had recourse to Quran, *hadiths* and other Islamic discursive traditions. Do the religious sources utilized by contemporary family court judges bear any relation to traditional Islamic jurisprudence? Interviews with contemporary family court judges revealed a very limited understanding of medieval *fiqh*. Even though modern Muslim judges are not trained in traditional *fiqh*, the interviewed judges saw themselves as authoritative interpreters of *shari'a*, however. This can partly be understood in a broader sociocultural context since the 1970s where lay Muslims have assumed the right to interpret Islam for themselves (Eickelman and Salvatore 2004). This complies with findings made by Dupret (2007: 8) who noted that “*Egyptian judges are in an intermediary position, at the cross-road between their professional logic and their common sense regarding Sharia*”. Dupret’s argument ties in well with my findings as this was reflected in the judges’ own perception of their work. In this vein, one family court judge told me: “*In Quran you find everything!*” He continued, “*Egyptians like to talk about religion; so do judges.*” Similarly, another judge told me that this was the “normal” way of speaking (Lindbekk 2016). In addition to wider socio-cultural developments, judicial discourses are embedded in sociocultural practices at the level of judicial organization, since judges refer back to previous judgments as models. After the creation of family courts in 2004, court personnel were provided with computers by USAID during the period of 2005-2011 with the stated aim of making court practice more uniform. This has facilitate the application of law by helping judges manage the case load more efficiently since they may draw up judgments based on previous verdicts in similar cases. The judges interviewed told me that when they

were initially appointed to family courts, they spent a great deal of time reading their colleagues' judicial decisions for guidance on how to do their job correctly. A statement by one such judge casts light on these practices:

When judges refer to Quran or hadiths, they do so because it is the way. It is just the way in Egypt; – al-sabi wa al-ma'allim (student and teacher). In the same way judges copy judgments (ahkam) from more experienced judges and paste them into their own.

A characteristic of judicial reasoning is, hence, that lower court judges “speak to each other” without explicitly referring to each other, but by copying the judgments of other judicial panels into their own (Lindbekk 2016). The previously discussed dynamics were also found to have left their mark on how judges wove religious references into the law. For this reason, it was possible to identify regular patterns of reference to Islam (style, books of reference quoted, legal maxims, etc.).

Sacralizing the nuclear family and conjugal bonds

According to an interviewed family court judge, it fell to family courts to instruct spouses concerning what was permissible (*halal*) and prohibited (*haram*). This is indicative of the fact that adherence to Muslim family law is considered both a legal and a religious duty. Furthermore, he considered it the judges' duty to uphold certain inviolable standards of conduct. Besides determining the outline of the permissible and the prohibited, family courts are, as previously iterated, important sites for the cultivation of moral sensibilities and conduct. In this connection, elements of Islam are appropriated and re-articulated by judges into new articulations of discourses. As previously mentioned, legislative reforms since the beginning of the 21st century have encouraged the creation of nuclear families and marital regimes under male authority. In a similar fashion, one family court idealized the nuclear family held together by emotional bonds consisting of amity and mercy:

Case 863 al-Zaytun family court 27 February 2012

Islamic *shari'a* cares for the family (*al-'usra*) and places emphasis on the principles of mercy and amity (*rahma wa mawadda*) between its members. Quranic verses and Prophetic teachings directed toward it emphasise the importance of protecting the bond between family members (*himayat rabitat afrad al-'usra*).

Above, the family court of al-Zaytun articulated a model of the family which differed significantly from family relationships as formulated in *fiqh* discourse. Here, judicial discourse is in dialogue and interaction with ideas developed by Egyptian nationalist discourse from the mid-19th century, as well as global discourse promoting the conjugal family (Cuno 2015). These views on exemplary marital relations are also propagated by elites of different ideological persuasions, including Islamists (Abu-Lughod 1998). This shows that judicial discourse is developed in close interconnection with the processes of society. These repetitive properties of judgments have been amplified by the use of computer technology which enables judges to copy the same passages into judgments over and over. The widespread use of computer templates has helped bring about a 'technologization' (Fairclough 1995: 110) of judicial discourse, involving a more standardized and context-free discourse. The implication of this is that there was a high degree of uniformity in the practices of the family courts analyzed, despite there still being room for interpretation offered by the law. Thus, the use of templates helps streamline judicial practice.

Dissolution of marriage

Muslim family law is highly gendered in that men and women have different rights to divorce. A husband has the right to dissolve the marriage by making a unilateral pronouncement without the approval of his wife or the intervention of the judiciary. In the following, I am going to focus on repudiation (*talaq*) since this is the most common form of divorce. Since the concept of repudiation is

deeply embedded in traditional Islamic jurisprudence, reform efforts in the early 20th century focused on its modest restriction rather than calling for its prohibition

Talaq

By far, the most common means of marital dissolution is male-initiated repudiation (*talaq*), which comes from the verb '*tallaqa*', literally meaning to release a human being from an obligation. In light of the fact that repudiations make up the vast majority of divorces, it is worth looking at this procedure in more detail. Since none of the Muslim family laws in place regulate repudiation in an extensive way, legal developments in this field have largely been the result, not of legislative activity, but rather of activity within courts. This is how Egyptian family court judges formulate the issue of *talaq*: in line with the classical stance, they continue to construct repudiation as an intrinsic right of the husband, which comes into effect upon pronouncement:

Case 2040 Ayn Shams family court 27 May 2012.

Repudiation (*talaq*) comes into effect as the husband articulates it. This is in accordance with all four schools of Islamic jurisprudence as well as the Prophet's companions. The registration of the repudiation and ways of notifying the wife of its occurrence have no bearing on the right to repudiation which God has solely granted to the husband.

The above excerpt sheds light on how judges integrate different elements in judgments in an area not comprehensively regulated by legislation. According to the above, although family law requires that the repudiation be documented, repudiation has been institutionalized in Egyptian law as an inherent right of the husband that acquires legal effect upon pronouncement of a formula, without the need to notify the wife or have recourse to courts and witnesses. It becomes binding and enforceable if correctly articulated. Since Egyptian law does not define or regulate repudiation in any comprehensive way, the judicial panel quoted above (headed by a female

judge) drew upon traditional Islamic jurisprudence, examples from the Prophet's companions, and the four schools of Islamic thought. The above paragraph was also copied into the judgment rendered by a court panel headed by another female judge. This shows how judicial discourse proceeds intertextually and dialogically by drawing upon different textual fragments. In the process, contemporary family court judges (re)produce gendered relations of power by rendering them 'natural' and commonsensical.

Judicial divorce

I now turn to another central aspect of adjudication, namely judicial dissolution of marriage, where a significant step in the direction of greater standardization is also apparent. According to Islamic *shari'a*, a wife has the right to petition a judge to obtain judicial divorce through the use of a legal fiction whereby the state, represented by the judge, pronounces divorce in place of the husband. Egyptian legislative reform at the beginning of the 20th century concentrated on providing judicial relief to abused wives, who were exposed to intentional harm by their husbands (Sonneveld and Lindbekk 2015).

In 2000, the Egyptian legislature eased women's access to judicial divorce considerably by entitling a wife to divorce her husband based on a unilateral expression of resentment. In these cases, a wife was required to relinquish her outstanding financial rights, return the advanced part of the dower to her husband and attend reconciliation sessions. Rather than the husband, this provision located the source of authority with the wife: in her heart and soul. Furthermore, rulings of judicial divorce by *khul'* were made immune to appeal. This represented a bold departure from traditional Islamic jurisprudence which conceptualized *khul'* as a form of divorce based on the mutual consent of husband and wife. These aspects of the *khul'* process motivated many women to avail themselves of the new procedure

throughout the 2000s, and court records indicate that this provision has become favoured among women from all walks of life pursuing divorce.

During the first years of its implementation, the *khul'* law was met with resistance and suffered from confusion over the exact steps to be followed (Lindbekk 2016). Article 20 in the 2000 law provoked considerable controversy, as its religious legitimacy was twice contested before the High Constitutional Court, on the grounds that it contradicted the principles of *shari'a* as contained in Article 2 of the country's constitution which declares that the principles of Islamic *shari'a* are the principal source for legislation. In later years, judicial practice seemed to become more stabilized. Although several grey areas remain, its implementation has become a more regularized procedure. Again, administration of these cases appears to have been facilitated by the use of computer templates. As the presiding family court judge A.T proudly told me while drawing up verdicts: 'I finish the verdict in three minutes. In three minutes she will have *khul'*!' The judges I observed also resorted to a variety of interpretive texts which they referenced in judgments. There are many variants of templates at work in *khul'* cases. My analysis of court records showed that some judges included passages in their judgments that suggested they entertained doubts over the legitimacy of the law (Lindbekk 2013 and 2016). More often, however, they referenced the Quran, Sunna, and *fiqh* according to the pattern set by the High Constitutional Court in justification of their rulings. They also cited contemporary legal and jurisprudential books. Thus, religious sources play an important role in validating prevailing judicial discourse. A particular template that incorporated the interpretation of *khul'* and was provided by the High Constitutional Court in 2002 was among the templates widely adopted. In this model, the High Constitutional Court asserted that Article 20 of the 2000 law did not contradict the principles of *shari'a*. This interpretation was, for example, adopted and disseminated by the family court of Ayn Shams (headed by a female judge) in the following judgment:

Case 917 Ayn Shams family court 28 March 2010.

This is in application of God's saying: 'It is not lawful for you, (Men), to take back any of your gifts from your wives, except when both parties fear that they would be unable to keep the limits ordained by Allah.' It is also in accordance with the Prophetic *hadith* about Thabit bin Qays' wife who hated her husband with the utmost hate while he loved her with the utmost love. She went to the Prophet (p.b.u.h) and said: 'Separate Thabit and me for I loathe him. I lifted part of the tent to look at him in the company of other people. He was the shortest, ugliest and darkest-skinned amongst them. I would detest to slip back into *kufir* (unbelief and infidelity) after becoming a Muslim.' Thabit then said: 'O Prophet of God, order her to give me back my garden.'

The Prophet asked her: 'What do you say?' She replied: 'Yes, I will return it to him and even give him more.' The Prophet said: 'No, only his garden.' He then told Thabit: 'Take back what you gave her (what is yours) and let her go.' Thabit did just that.'

The judgment goes on:

It is established that at the root of its legitimation, *khul'* is a firmly authenticated provision that is permitted in Islam, for it is mentioned in both the Quran and Sunna. [...]The wife should not be coerced to live with her husband after stating that she hates life with him, that there is no way for their marital life to continue and that she fears herself unable to abide by God's boundaries due to this resentment, all of which compel her to redeem herself and retrieve her freedom by relinquishing all her financial rights and returning the dower. The opinion that a husband's consent to *khul'* is required results in the wife being forced to live with a man she hates. This interpretation is far removed from the essence (*al-asl*) of marriage as a source of amity (*mawadda*), and compassion (*tarahum*). For a wife to waive her financial rights in exchange for *khul'* is also a way to relieve her husband of the financial consequences of divorce. This should, in turn, encourage the husband not

to force his wife to stay in a loveless marriage, for he would otherwise inflict a harm on her. Islamic *shari'a* prohibits such a harm for it upsets the Islamic doctrine that is founded on moral superiority. It also contradicts the Islamic principle of 'no harm and no counter-harm' (case 201 High Constitutional Court 15 December 2002)."

This excerpt highlights the intertextuality of judgments, the fact that they are constituted from previously produced texts, resulting in relatively stabilized configurations of discursive practice. In the above judgment, the judicial panel quoted a citation of the Prophetic *hadith* reported by al-Bukhari about the wife of Thabit bin Qays. This woman reportedly went to the Prophet and told him that she did not hate her husband on account of his religion or morals, but feared being unfaithful to the guidelines of Islam because she loathed her husband and could not live with him. The Prophet ordered Thabit to repudiate his wife after she returned an orchard he had given her as a dower. This was followed by a lengthy quote from the ruling handed down by the High Constitutional Court when it declared the constitutionality of the *khul'* in 2002.⁹² In it, the judges of the High Constitutional Court also described a model of marriage within *shari'a* whose existence was contingent upon the presence of amity (*mawadda*) and compassion (*tarahum*) between the spouses. While defining the sensibilities appropriate to marriage, the court portrayed these emotions as righteous and pertaining to the essence of marriage itself. Consequently, if hatred distanced marital life from love and affection, the institution of marriage would weaken.

The fine detail of the text is thus tied to the social structures and power relations within which the law operates. The power of this discourse is also evident in judgments issued by another judicial panel of this court. By repeating the High Constitutional Court's jurisprudence over and over in its judgments, this particular court thus contributed to sustaining Islam as defined for the Egyptian state by the High Constitutional Court. The prevalence of this and similar templates suggests that several members of

the judiciary have accepted the essential components of *khul'* as provided by the Egyptian legislature and other state institutions. This was highly significant during the post-revolutionary period, which was characterised by contest over the scope and definition of Islamic *shari'a*. Following Mubarak's ousting in 2011, family law emerged as an area of public contention with new and old actors and institutions competing over power to define Islamic *shari'a* in an authoritative way (Sonneveld and Lindbekk 2015). The provision of *khul'* was seen by some as symbolic of the old regime and its deviation from the principles of *shari'a*. While there were instances of judicial activism in the analyzed material, it cannot be denied that the templates played a role in assuring a degree of stability in Muslim family law during a period characterized by social and political upheaval, in this case by providing family law with a certain religious legitimacy.

Summary and conclusion

In this chapter, I investigated judicial practice within a sample of Egyptian family courts using theory and methodology of discourse analysis. I analyzed Muslim family law as a highly-gendered tool to discipline the population as part of top-down state building efforts. In an attempt to promote marriage as a more permanent bond than that envisioned by traditional Islamic jurisprudence, the statutory legislative codes were geared toward curbing male repudiation (*talaq*) and expanding women's access to judicial divorce. Along the same lines, I examined how modern Muslim judges, with no training in classical *fiqh*, articulated marriage and gender, relying on different sources of law to justify their rulings. In adjudicating family law matters, decisions by state courts were found to be guided by court precedence and custom in addition to the substantive and procedural rules found in law codes. They also frequently used religious sources in order to legitimate their rulings.

Using discourse analysis, I argued that judicial practice should best be understood as the product of two closely interlinked developments. First, a move towards increased standardization in the implementation of family law has taken place. In enforcing legislation, the courts normalized the nuclear family and a hierarchical model of marriage characterized by strong emotional ties. Second, I found that judges often integrated religious tropes commonly integrated into judgments for the purpose of legitimizing judicial decisions. Since the judges lacked extensive training in *fiqh*, the courts articulated the law differently from classical Islamic scholars. Based on intertextual analysis, judicial practice was, therefore, regarded as having its own order of discourse where judges draw upon different genres and discourses in order to create a text. Even though modern family court judges lacked training in *fiqh*, they did not hesitate to include copious citations from the Quran and Sunna in support of their rulings. The more general theme here was that courts invoked Quranic verses with moral import. For example, the idea that God's plan for marriage was based on mercy and amity emerged as a recurrent theme in judicial decisions. In upholding these and other (traditionally) moralistic sentiments, judges did not look to the classical Islamic scholars (*fuqaha* ') for guidance. Instead, they asserted that lay Muslims, including the judges themselves, could interpret Islam.

I also highlighted the importance of key contextual factors. Judicial training, coupled with time constraints and the influence of computer technology, were identified as significant explanatory factors behind these developments. In particular, the introduction of computerization, which involved the same paragraphs being reproduced over and over through the medium of templates, served to curb the creativity of discourse and provided a powerful impetus for the streamlining of judicial practice. This feature was also seen as a factor explaining the law's stability during a period of social and political turmoil

List of references

Abdal-Rehim, Abdal-Rehim Abdel-Rahman (1996): "The family and gender laws in Egypt during the ottoman period". In: *Women, the family, and divorce laws in Islamic history*. Amira El Azhary Sonbol (ed.). Syracuse, N.Y. : Syracuse University Press

Abu-Lughod, Lila (1998): 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*. Lila Abu-Lughod (ed.). The American University in Cairo Press

Baier, Matthias, Måns Svensson and Ida Nafstad (2018). *Understanding Sociology of Law*. Lund: Studentlitteratur

Cuno, Kenneth (2015). *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt*, New York: Syracuse University Press

Dahlgren, Susanne and Monika Lindbekk (2020). Gender and Judging in Muslim Courts: Emerging Scholarship and Debate. In *Hawwa*, forthcoming.

Fairclough, Norman (1995). *Critical Discourse Analysis: the Critical Study of Language*, Harlow: Longman

Jørgensen, Marianne and Louise Phillips (1999). *Diskursanalyse Som Teori og Metode*. Roskilde: Universitetsforlag

Dupret, Baudouin (2007). What is Islamic law? A Praxiological Answer and An Egyptian Case. *Theory of culture and society* 24, pp. 79-100

Eickelman, Dale and Armando Salvatore (2004). Muslim publics. In: Armando Salvatore and Dale Eickelman (eds.). *Public Islam and the Common Good*, Leiden, Boston: Brill.

El-Alami, Dawoud (1992). *The Marriage Contract in Islamic law, Arab and Islamic Law series*, vol.6, London: Brill

Griffiths, John (1986). "What is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18 (24): 1-55.

Hallaq, Wael (2004). "Can the Shari'a be Restored?" In Yvonne Haddad and Barbara Stowasser (eds.). *Islamic Law and the Challenges of Modernity*. Lanham: AltaMira Press

- Höland, Amin (2011). Which Effects Do Courts Have?: In Knut Papendorf, Stefan Machura, and Kristian Andenæs (eds). *Understanding Law in Society*. Wien/Berlin: Lit Verlag: Wien/Berlin.
- Lindbekk, Monika (2013). Enforcement of Personal Status Law by Egyptian Courts. In: Elisa Giunchi (ed.). *Adjudicating family law in Muslim courts*, New York: Routledge
- Lindbekk, Monika (2016). Inscribing Islamic Shari‘a in Egyptian Divorce Law. *Oslo Law Review*, 2016 2, pp. 103-135. [<http://dx.doi.org/10.5617/oslaw4081>]
- Moore, Sally Falk (2001). *Law As Process: An Anthropological Approach*. London: Routledge.
- Sonneveld, Nadia and Monika Lindbekk (2015). A Revolution in Muslim Family Law? Egypt’s Pre- and Post-Revolutionary Period (2011-2013) Compared. *New Middle Eastern Studies* 5.
- Tucker, Judith (1998). *In the House of Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Cairo: The American University in Cairo Press
- Vikør, Knut (2005). *Between God and the Sultan: A History of Islamic Law*. London: Hurst