

**ENGENDERING UNIFICATION: FAMILY LAW AND WOMEN'S LEGAL
SUBJECTIVITY IN SOUTHERN YEMEN**

by

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Abstract

This thesis examines the shifts in Family Law and the production of ‘women’ as legal subjects in the context of the unification of North and South Yemen in the 1990s. Two legal codes form the core of this research, the People’s Democratic Republic of Yemen’s (PDRY, ‘South Yemen’) pre-unification Family Law of 1974, and the unified Republic of Yemen’s (ROY) Personal Status Law of 1992. The shift from the PDRY Family Law to the ROY Personal Status Law redefined women’s place in the family and Yemeni society writ large through the deployment of Family Law as a key mechanism for social intervention in order to produce and regulate legible legal subjects.

This study interrogates the production of women as legal subjects through analysis of the institutions of marriage and divorce, viewing them as mechanisms to delineate boundaries of action that define the Yemeni woman’s place and role in the nation-state. In the PDRY’s case, this was undertaken through the construction of the woman as a “mother” and “worker” that is assigned reproductive and productive duties, and the establishment of the nuclear family as a self-contained entity that operates as the “cornerstone” of society. Determinations of the woman’s ‘place’ in the PDRY nation-state revolved around discourses of modernity and secularism that nevertheless utilized the Islamic legal tradition in reformative and innovative ways that claimed to foreground gender equality while maintaining patriarchal power relations. I argue that this locked women into an altered state of gender inequity that was marked by a post-colonial and Marxist driven nationalism.

On the other hand, the Personal Status Law of the unified ROY, which rooted itself in Shari’a and the Islamic legal tradition, defined and restricted the ‘woman’ as a legal subject through the institution of guardianship and the discourse of *al’eshra al-ḥesna* (good

companionship) that established a marital relationship and familial structure that was inherently inequitable. Thus, “the woman” as subject becomes a critical symbol onto which the two nation-states cast visions of themselves, and the manner through which they laid claim to the Islamic legal tradition.

Lay Summary

This thesis is an examination of the shifts in Family Law in the context of the unification of North and South Yemen in the 1990s. By comparing the Family Laws of South Yemen and the unified Yemeni state, I argue that each nation-state used family law as a mechanism of intervention to regulate gender relations, the structure of the family, and society writ large. To this end, the “woman” becomes a central symbol onto which the two nations cast a vision of themselves and the way they laid claim to the Islamic legal tradition as a key force in the structuring of the nation-state. This study analyzes the institutions of marriage and divorce to ask: How are women defined and regulated in the law, and what ramifications does this hold for women’s place and role in the unified Yemeni nation-state?

Preface

This thesis is the original, independent intellectual work of the author, I. Baobeid.

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List of Abbreviations

FLOS	Front for Liberation of the Occupied South Yemen
NLF	National Liberation Front
PDRY	People's Democratic Republic of Yemen
ROY	Republic of Yemen
YAR	Yemen Arab Republic

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To my grandmother, 'Olia, who taught us resilience,
and whose infinite love remains my strength.

Chapter 1: Introduction

This study emerged from the need to understand the shifts in gender relations upon the unification of North and South Yemen in the early 1990s. South Yemen, or the People's Democratic Republic of Yemen (PDRY), was a post-colonial Marxist Leninist state until its unification with North Yemen, or the Yemen Arab Republic (YAR), a one-party Republican state. The two nation-states entered a tumultuous unification to form the Republic of Yemen (ROY) in 1990, undergoing a transitional period that climaxed in the 1994 civil war between the Northern and Southern political factions. I was born almost a year before the 1994 civil war, and the only Yemen that I know is a unified one. My family members often shared stories of their lives before Yemen entered this tenuous state of unity, which most of them were and still are vehemently opposed to. These stories would often derail into arguments about the immense "rights" that women were accorded on paper, which were profoundly juxtaposed to the oppressive reality of living under an authoritarian Leninist-Marxist regime that in the eyes of many remained patriarchal. The ways in which the Southern regime addressed the issue of women's rights and their emancipation was a point of pride for many in my community. At the same time, some in my family voiced their discontent at the oppressive manner the Southern regime dealt with Islam, and used it to support social interventionist policies. This brought to the fore questions about the radical shifts that South Yemen had experienced upon unification, where gender relations were radically altered in a matter of four years due to the significant changes in the political, economic, and legal systems. Familial relations shifted in crucial ways as laws that were once restricted in the South, such as polygyny and *ṭalāq* (unilateral repudiation), became permissible.

Concurrently, as I was conducting my research the war in Yemen was intensifying. Systems of governance were crumbling, and the narrative that a unified Yemeni nation-state was inevitable was increasingly being questioned. This study is largely a historical analysis but it is also an interrogation of the present moment, as the 1992 Personal Status Code is still in force. Two main texts form the core of this study, the People's Democratic Republic of Yemen's (PDRY) Family Law and the Republic of Yemen's (ROY) Personal Status Law. At the onset, I imagined that attaining the two central legal codes would be an easy task and easily found online. The reality was much more harrowing and exhausting.

While a copy of the Republic of Yemen's (ROY) Personal Status Law is indeed available online, there was no trace of the PDRY's Family Law. Unable to go to Yemen to locate the PDRY text due to the ongoing war, I solicited my family's help. My mother personally visited Aden's National Library to examine their archives and gather whatever documents related to Family Law she could find. To our dismay, the area in which the library was located was exposed to intense street battles, and an explosion blew the library to its mere bone structure. While many of the documents and archives in the library were burnt to a crisp, the rest were termite infested and falling apart. We reached out to historians, lawyers and judges with the hope that one of them would have a copy of the law, but that was to no avail. Many were baffled as to why someone was interested in examining the PDRY's family law in the first place. I was losing all hope of locating the relevant texts, and trying to figure out how I would continue this project. In a sense, I read this as an erasure of history undertaken by different political and social forces in the unified Yemen and an especially pertinent issue. On a hot sunny day, my mother set out to hunt for the text in bookstores in Aden's central market. My aunt, adamant to help, told her she knew of a small grocer hidden away in the market that had a small collection of rare books for

sale. To our intense shock, the grocers had a tattered copy of the PDRY's Family Law, and a manuscript of a symposium in the 1970s detailing the drafting process of the law! It was remarkable that a small grocer was now a keeper of history, salvaging documents he knew little of but that seemed so incredibly valuable.

To write about family law in a nation-state that is largely crumbling under the weight of war and conflict is an especially complicated and painful process, given that the legal system is facing collapse. The transitional period following the Yemeni Revolution of 2011 saw a spark in debates regarding family law, with questions of child marriage and the rights of women in marital relations being staunchly contested. Thus, even as we witness past systems of governance disintegrate, these issues remain key for Yemenis and will be central to our future attempts at establishing a gender egalitarian society. Despite the historical nature of this thesis, I was forced to continually adjust my reflections of the process of state-formation in Yemen as current events unfolded. The growing strength and presence of past political factions, and the increasing demands in the South for secession highlight the precarious state of Yemeni unity. While I had the benefit of hindsight in my analysis of the 1990-1994 transitional period, recent political developments demonstrate that the unity of North and South Yemen was an entirely contingent process and not an inevitability, as some have argued.

1.1 Aims of Thesis

This thesis uses Family Law as a lens to examine the legal shifts that affected gender relations in South Yemen. Family law in the unified Republic of Yemen became a critical site of conflict and disagreement between the Northern and Southern political factions, and highlighted

the stark differences between the two nation-states. The South's pre-unification family code was grounded in the socialist objective of "women's emancipation" and was utilized as a key mechanism for social intervention by the state (Molyneux, 1995). While the PDRY's legal system was established as largely secular, the Family Law of 1974 was argued by the regime to be rooted in Islamic law. Despite these assertions, the law utilized Shari'a in reformative and innovative ways that claimed to foreground gender equality while maintaining patriarchal oversight and regulation.

I examine how the legal regulation of the family defines women as legal subjects, and the ways in which the nation-state views women as social actors within the confines of the family. How does the production of legal subjectivity intersect with processes of nation-state formation? What ramifications does this hold for women's place and role in the unified Yemeni nation-state? These questions entail an interrogation of the legal categories of "woman" and "man" as mutually constitutive juridical and discursive productions. Thus, I remain critical of the ways in which gender difference is produced and written in the law, and examine how these discursive positions structure gendered power relations in Yemeni society.

I argue that the shift from the PDRY Family Law to the ROY Personal Status Law redefined women's place in the family and society writ large. In the PDRY's case, this was undertaken by limiting women's legal subjectivity to that of producers and reproducers within the confines of the nuclear family as the "cornerstone" of society. On the other hand, in the unified ROY the woman as legal subject is defined and restricted by the institution of guardianship and the discourse of *al'eshra al-ḥesna* (good companionship) that establish a marital relationship and familial structure that is inherently inequitable.

My analysis is dual pronged. First, I analyze the frameworks and contexts that undergird both family laws. I examine the interactions between the different actors in the formulations of the family law, and the reasoning behind particular approaches in order to interrogate the state's goals in structuring family law as they did. These negotiations are embroiled in the politics of nationalism, nation-state formation, and the establishment of a narrative of a unified Yemeni state of which women are central subjects. Second, I interrogate the production of women as legal subjects within the institutions of marriage and divorce. This is a useful lens through which to compare the two legal codes, PDRY and ROY, because PDRY Family Law only addresses the issues of marriage, divorce, and custody, while the ROY Personal Status Law includes issues of inheritance. This places a limit on the possible comparison that can be made between both family laws, and in order to effectively and extensively read them against each other I limit my analysis to the two issues of marriage and divorce. This is not to say that inheritance does not formulate a key arena of patriarchal concerns. Indeed, the inheritance provisions in the ROY Personal Status Law disclosed immense gendered differences that place women in a subordinate status to men. However, this requires a more extensive analysis that is beyond the scope of this thesis.

According to Susanne Dahlgren, the transitional period saw a noticeable shift in the factors and narratives that were deployed to determine a woman's 'place' in Yemeni society. In the PDRY, these debates revolved around discourses of "tradition" and "modernity," (Dahlgren, 2010) often positioning the new PDRY nation-state against the traditionalism of 'feudal' and 'tribal' relations, and the British colonial rule. Within the unified Republic of Yemen, however, these discourses were engulfed by the Islamic legal tradition as the determining factor in defining women's roles and place in the unified nation-state. These shifts are most noticeable in the family laws of the PDRY and the ROY, where they are triggered to highlight the state's attempts

to regulating gender relations to fulfill its particular aspirations and goals for itself. The manner through which the state legislated family law became a measure of its own self, whether that be through its secularity, adherence to the Islamic legal tradition, or claims to modernity.

As Lisa Wedeen strongly argues, the “Republic of Yemen is not an instance of reunification but a new experiment in nation-state formation” (2008:2). The two nation-states had drastically distinct structures of governance, state institutions, economies, and differing histories of colonialism and foreign intervention that shaped their nationalist narratives. Joseph Kostiner further highlights that the unification of the two Yemen’s presents a “test case of nationalism” which puts to question the success of unity and its nationalist rhetoric in truly bringing together two distinct societies and states as a singular bounded nation (Kostiner, 1996).

While the PDRY Family Law of 1974 is often heralded by scholars as a radically transformative iteration of Islamic family laws, upon closer look the story is much more complex. The law did make substantive changes in some issues such as guardianship and legal capacity. However, as Chibli Mallat tells us, “the details of the ‘socialist’ South Yemeni family law [...] made the application of the principle of equality harder to achieve than the ‘backward’ north” (2007:383). Moreover, the use of the family law to transform the family into an arm of the nation-state, and thereby precisely define women’s subjectivity and place in South Yemeni society, locks women in an altered state of gender inequity and a nationalist driven patriarchy.

While this study is an interrogation of the shifts in family law and the type of subjects they produce, at heart it is an examination of the gendered process of nation-state formation. It asks what role “women” were accorded in a Marxist postcolonial nation-state that claimed socialist transformation as central to its identity, and how this shifted in a newly imagined

nation-state that attempted to unify two radically different societies. The state produced laws that defined and constrained gender relations, and more explicitly articulated gender difference in a way that was central to how the nation state imagined and constituted itself. Thus, “the woman” as subject becomes a critical symbol onto which the nation-state casts a vision of itself.

However, the state does not exist as a sovereign all-knowing and all-producing entity. Rather, various social institutions, actors, and groups are in constant conversation through and with the state. Utilizing Foucauldian notions of governmentality and subject formation, I investigate the ways in which the state attempts to manage populations through systems of governance that produce biopolitical subjects that advance its project of modernity. This is undertaken by using the law as ‘tactic’ in order to regulate their most intimate kinship relations.

I place law at the center to examine how women are written into the nation-state, and argue that this process is not one sided but is relational to other institutions of power in the unified Yemeni nation state. Moreover, it must be emphasized that law does not simply produce subjects discursively in its codified texts, but that these subjects also come into being and are performed in lived experiences and social practices in courts, spaces where issues of marriage and divorce are negotiated, and parliamentary discussions over legal reform, amongst others. Nevertheless, the legal code offers a substantial articulation of the nation-state’s aims to frame subjects in a particular light, exerting control over their bodies in gendered, sexualized, classed and raced ways.

1.2 Islamic Law and Shari'a

In a discussion of the gender differentiation of witnessing in the contracting of a marriage - namely, that the requirement for two female witnesses in equivalence to one male witness highlighted a severe gender inequity - a family member took issue with my critique. She exclaimed, "but Iman! This is from the Qur'an. You're questioning the authority of the Qur'an." The Qur'an does not actually discuss required testimony for the marriage contract, but instead only discusses testimony as it relates to financial transaction. Still, it struck me that by claiming to ground itself in Shari'a, the Personal Status law, amongst other codes, used the Islamic legal tradition to appear authoritative and to silence opposition. Thus, by questioning the gendered nature of the Personal Status Law, critics would be accused of disputing the authority of Islam in full force. This is demonstrated clearly in the debates surrounding the establishment of a minimum age of marriage in Yemen, whereby members of the Islah party argued that the establishment of a marriage age was incompatible with Shari'a and therefore in violation with the Shari'a source law stipulated in the 1992 constitution. As Vanja Hamzic argues, these narratives anthropomorphise Islam in attempt to erase the role of human interpreters (2016).

Both the PDRY Family Law of 1974 and the Personal Status Law of 1992 lay claim to Shari'a, grounding their authority in the Islamic legal tradition. However, their stark differences highlight the pluralistic and diverse articulations of Shari'a. Within this process, acknowledging the role of human interpreters is key. When nation-states trigger what we can view as the 'Shari'a defense' to justify patriarchal interpretations of Islamic law, they work to silence the very citizens they supposedly represent. In this regard, we must view Shari'a and Islamic law as grounded in a "living religious tradition" (Chaudhry, 2016:25) that is discursively performed by

Muslims in complex and diverse ways. Scholars have highlighted that there has never been a unitary or monolithic “Islamic law” or “Shari’a” (Ali, 2006). Thus, in my analysis and critique of the two family laws, I am not critiquing Islamic law or Shari’a, but rather the articulation of Shar’ia that the nation-state has developed to fulfill its particular goals and aspirations.

Lynn Welchman has argued that we must be context-specific in our analyses of the productions of codifications of Islamic law (2007:35). Yet, interrogating these political and social processes requires an elucidation on how Islamic law, Shari’a and *fiqh* are defined and understood in the specific contexts we analyze. In examining the relationship between Islamic law and nation-state formation in turbulent cases such as Yemen, we must remain attentive to the plurality of understandings across different institutions and amongst the various actors that are heavily invested in defining the place and role of Islamic law in the modern nation-state.

Anver Emon posits that Shari’a is not a simply a “catalog of legal rules” but tightly links law and politics to be “both constitutive of and constituted by a view of the enterprise of governance” (2012:62). Scholars have argued that Shari’a and Islamic law are not interchangeable terms (Chaudhry, 2016; Mir-Hosseini, 2015). To this end, Islamic law can be understood as Islamic jurisprudence, which encompasses centuries of human interpretations and juristic analysis compromised in *fiqh*. Borrowing from Rumeen Ahmed, I refer to *fiqh* as the “injunctions enumerated in legal manuals that provide rulings for believers on myriad aspects of daily and ritual life on the personal, interpersonal, and state level” (2015:2).

1.3 Methodologies

Two main legal codes form the core of this study, the PDRY's Family Law of 1974 and the Republic of Yemen's Personal Status Law of 1992. I critically engage both codes as texts that reveal the limits of the process of nation-state formation and the inclusion/exclusion of women in the process. I read them alongside the constitutions of both states, and state produced transcripts of symposiums and public dialogues held to discuss the laws during and after their promulgation.

Unraveling the multiple ways women are constructed as legal subjects in a nation-state undergoing immense transformation requires a methodology that works beyond simple comparatives of rights and duties accorded to various subjects. This is especially pertinent when considering the tenuous history and structure of rights based discourse that assumes a universality in the application of legally determined rights, and the identities of those they are accorded to. This thesis teases apart the ways in which codified law produces and regulates the woman as a legal subject, and works outward to locate her within the institution of the family and the nation-state at large.

As such, I rely on a critical discourse analysis methodology that utilizes three central analytical tools: translation, transliteration, and hermeneutics. While several scholars have translated a limited number of articles from the 1974 Family Law and the 1992 Personal Status Law (Ghanem, 1976; Wurth, 2003; Welchman, 2007; Molyneux, 1995; Mallat, 2007), both codes have never been entirely translated from Arabic to English. The discrepancies in past translations of both family laws reveals textual breakages that require deeper examination. Scholars who have analyzed the shifts in family law in Yemen have used subtly varied

translations of the laws, which highlights inconsistencies in meaning making and hermeneutical interpretation.

Legal translation lies at the intersection between translation theory and language theory (El-Farahaty, 2015). It is a process of rewriting, and thus interpreting a text (Venuti, 1992). As Venuti emphasizes, both the original text and the translation do not hold an “original semantic unity; both are derivative, and heterogeneous, consisting of diverse linguistic and cultural materials which destabilize the work of signification, making meaning plural and differential” (1992:7). These assemblages are especially prominent in legal translation, which discloses the multiple and sometimes contradictory meanings the original text deploys. Legal translatability thus operates in a rhizomatic manner that allows for a multiplicity of meanings to be contained in the text. This may result in competing meanings and terms when moving from the source language to the translation language.

Therefore, translating a legal text is not merely its reproduction into new language, rather, it is to deliberately select and assemble elements of the text that aim to reveal the meanings and aims of the original text. Translation theory highlights that this process denotes a rewriting and reinterpretation of the original text, and the assemblages reveal the contestations and contradictions that the original text is embroiled in. As De Man argues, “translation canonizes, freezes, an original and shows in the original a mobility, an instability, which at first we did not notice” (cited in Venuti, 1992:7).

Moreover, legal translation requires the translator to have a close understanding of the subject material prior to translation and the ability to critically interpret the text. This requires engagements with the hermeneutics of the legal language, which in turn involves considerations

of the linguistic genealogies of particular legal concepts. This aspect of the methodology engages a critical discourse analysis that delves into the underlying meanings and implications of various terms and concepts.

Legal interpretation is a central element of Islamic law. Premodern Muslim jurists grappled with the interpretive elements of legal practice, particularly in issues wherein the source-texts, or Qur'an and *Hadith*, were unclear (Emon, 2016). Moreover, the codification of Islamic law under the auspices of British and French colonial powers was underlined by an intensive process of translation of *fiqh* texts from Arabic to English. The effects of these translation efforts ripple into the postcolonial context, making contemporary family codes a product of this process. This “transmutation” of Islamic law as Talal Asad terms it (2003), highlights that while family laws in Yemen might be considered ‘original’ texts, they themselves exist as translations.

With that in mind, attempting to translate in a manner that privileges equivalences from the source language to the target language will ultimately fail. According to Bassanett “full equivalence...is impossible” (2000). This is especially cogent in legal translation, as some Islamic legal concepts have no direct translation in English. With these tensions in mind, I chose to use a “method of borrowing” (Alwazna, 2013:899) that leaves certain words in their Arabic transliteration. Some words carry a multiplicity of meanings that would be irrevocably lost in the English translation, while the translation of others would rupture the process of meaning making in Islamic law whereby particular legal concepts shift in meaning across time and space.

This loss carries substantial ramifications because these words disclose power relations and subject formations that form the core of this project. By using translation as a central

methodological tool in a discourse analysis, I risk losing the identity the Arabic language discloses. Brinkley Messick highlights that transliteration allows us to maintain an aspect of that identity and argues that the Arabic language maintains “its identity as a fragment of another language” (Messick, 2003:180).

Therefore, by discursively analyzing legal codes through translation and hermeneutics, I engage with the text differently than a lawyer or a translator might. This methodology seeks to identify how family law constructs a specific view of society by grappling with the underlying assumptions and histories that its writers were deploying. I conceptualize ‘discourse’ following Foucauldian suggestions that it is central to our understandings of ‘truth’, the constitution of subjects, determination of limits to action, and the entrenchment of language in institutional practices that structure our social world. Discourse constructs a specific social world that produces certain identities and shapes power relations between individuals in society.

By reading the formation of a gendered subject in legal texts, it follows that one must be attune not only to how a text constitutes a subject, the terms it uses to define the subject and the limits imposed on them, but also what it does *not* state about a subject. Therefore, the establishment of authority in a legal code and the boundaries that are put in place over individuals are articulated through silence as much as they are articulated through what is explicitly stated. Following Weiss’ contentions, texts are not “self-sufficient as bearers of meaning” and the silences that they leave must be filled by interpretations undertaken by various agents.

In addition, following feminist critical discourse analysis methodology, I engage an ‘interdiscursive analysis’ that examines the interaction between multiple discourses in a legal

text that at times may appear conflicting, mutually reinforcing, or displaying a “double-voicedness” (Lazar, 2007:152). This approach highlights the emergence of competing discourses of “modernity” and “traditionalism” in attempts to establish authority and regulate gender relations within Yemeni family laws.

More importantly, legal codes cannot be read as entirely reflective of a present moment. As this is a historical study, it goes without say that these arguments reflect the aspirations of the Yemeni nation-state immediately upon unification. The law expresses past aspirations that are enduring in the present moment and projected into the future. Temporally this requires questioning the historical social and political contexts at which these laws were conceptualized and drafted, the present moment at which they operate, and the future that the nation-state aspires towards.

1.4 Overview of Chapters

Chapter 2 provides a short overview of Yemeni history, beginning from British colonialism to the politics of unification in the 1990s. I outline the tenuous histories of both North and South Yemen, examining them as contingent entities and critiquing the historical boundaries that established each nation-state. Chapter 3 provides a review of literature by theorizing the nation-state and the role of the law in determining gender relations. Moreover, I examine the relationship between Islamic law and the modern nation-state, putting to question the impacts of colonialism and codification processes in defining that relationship. I trace the theoretical cores of this project, governmentality and subject formation, as key elements in producing legal subjects. Moving from there, chapters 4 and 5 center on the PDRY Family Law

of 1974 and the Republic of Yemen's Personal Status Law of 1992, respectively. I outline the contexts of the drafting and promulgation of each law, and the gendered politics that played out in these processes. I critically examine the production of women as legal subjects within both family laws. The analysis is divided into three sections: marriage, divorce, and legal capacity. Lastly, I conclude by reflecting on the future of family law in a nation-state riddled by war and a crumbling system of governance.

Chapter 2: Historical Context

The historical period under study ranges from 1986-1999, with the transitional years between 1990-1994 located at its core. This fragment in South Yemen's history witnessed dramatic social, political and economic transformations. While many studies have analyzed the transitional period from 1990-1994, it is critical to understand the transformations leading up to unification and the changes imposed on the South following the Southern regime's loss in the 1994 civil war. This section will trace critical periods in both North and South Yemen's political and legal history in order to contextualize the later analysis, and further argue that the formation of North and South Yemen and their later unification as nation-states and political entities was an entirely contingent process dependent on the intersections of colonialism, Ottoman control, and the rise of nationalist rhetoric. As such, the unification of both nation-states was not an inevitable outcome, but, as John Willis argues, was only one possibility amongst many (2012).

2.1 North Yemen: From Ottoman Rule to Zaydi Imamate

Northern Yemen was occupied by the Ottomans from 1872 to 1918 (Messick, 1993). Its incorporation into the Ottoman Empire brought substantial legal and social reform focused on processes of "state centralization" (Willis, 2012:7). In order to do so, it heavily restricted the power of the Zaydi Imams, whose claim to authority threatened the sovereign power of the Ottomans in the northern highlands (Messick, 1993:50). The fall of the Ottoman empire in 1918 allowed the Zaydi Imam Yahya Hamid al-Din to rise to power. As both an Islamic scholar and a sovereign leader, Imam Yahya focused on mobilizing Zaydism and transforming North Yemen into a nation-state that could counter British control in the south (Willis, 2012:12). His anti-

imperialism and reformist ideals redefined the role and place of the Imamate in the larger trans-local sphere. The Zaydi Imams maintained control until the Revolution of 1962 which saw the formation of the Yemen Arab Republic (YAR). Unlike many areas of the Middle East, North Yemen remained free of direct colonial intervention, but despite arguments that it was virtually isolated, it continually countered the colonial power in the south and foreign interventions by the Ottomans, and later Egypt and Saudi Arabia.

2.2 British Colonial Rule in South Yemen

In contrast to North Yemen, South Yemen experienced British colonization, which led to dramatically different political and social conditions in North and South Yemen in the 20th century. The British centralized their control in the port city of Aden, occupying it from 1839 till 1967. Aden and its outskirts were part of British India and governed by the Bombay Presidency until its separation and establishment as the Colony of Aden in 1937 (Willis, 2012). The court system under the British emulated the Indian model, relying entirely on Anglo-Muhammadan law (Dahlgren, 2008). As scholars have argued, Anglo-Muhammadan law amalgamated British legal principles and concepts and a small number of translated Islamic juridical manuals (Kugle, 2001). The British perceived that Anglo-Muhammadan law was more administratively controllable than customary law (*'urf*) prevalent outside of Aden (Dahlgren, 2008). John Willis argues that the British colonization of South Yemen “cannot be reduced to an administrative relationship or the strategic needs of a commercial empire,” but was rather “characterized by the production, institutionalization, and dissemination of a body of knowledge” generated from British control in India. This movement of knowledge across the Indian ocean guided their

practices in Aden and highlights its embeddedness in Britain's global matrices of imperial power.

By the 1960s, the anti-colonial struggle in the south had gained immense traction, and saw the emergence of two main anti-colonial liberation organizations: National Liberation Front (NLF) and the Front for the Liberation of the Occupied South Yemen (FLOSY). The ideological and political leanings of both organizations would come to impact the structure and policies of South Yemen upon its independence. The NLF saw the most substantial following as it managed to gain strong support outside of Aden due to its Pan-Arab Nationalist leanings and egalitarian ideologies that specifically targeted the working class (Caraprico, 1998:100). The struggle against the British climaxed from 1963 to 1967 with a declaration of a four-year state of emergency, and led to the expulsion of British forces from South Yemen in 1967 (Molyneux, 1982).

2.3 Boundary Making: Mapping the Borders of North and South Yemen

Lisa Wedeen argues that the borders between North and South Yemen are a “political construct of the colonial era” (2008). These territorial constructs would make possible the emergence of North and South Yemeni nation-states in their later arrangements. However, these were artificial boundaries that were not pre-determined, but rather created to serve the interests of the British colonial administration and the Ottoman empire. In 1905 the British negotiated with the Ottomans, in a mutual commission, to draw a clearly demarcated border line that would determine the territorial jurisdiction and limits of each empire (Wedeen, 2008). These efforts were undertaken in order to ensure the protection and British control over the port of Aden. An

agreement on the border was only reached after extensive deliberations and military conflict. In 1934, this border agreement was formalized through an establishment of an “administrative frontier” along the North and South border. It was, however, a contentious political demarcation that resulted in several conflicts in order to determine the jurisdictional sovereignty of the later established North and Southern nation-states. As Wedeen convincingly posits, the existence of ‘Yemen,’ be it North or South, as a political entity tied to notions of nationhood defined by these established borders was not in place before the interwar period (2008). Despite later state-led assertions that “Yemen” as a political unified entity and nation-state was inevitable, its existence as such is a “product of a contingent and multi-layered history of interaction and possibility of which the nation was only one possible outcome” (Willis, 2012:6). With the formation of North and South Yemen as the Yemen Arab Republic and People’s Democratic Republic of Yemen, the border now became a contentious and tenuous space that revealed the anxieties each state had in exerting its sovereignty over the territory that it identified as part of its nation-state.

2.4 Transformations in the People’s Democratic Republic of Yemen

Following independence in 1967, South Yemen was declared as the People’s Republic of South Yemen, but the NLF encountered severe intra-party conflict and fragmentation due to disagreement on what socialist framework should inform the new nation-state (Stookey, 1982:69). Many members took issue with regional calls for Arab Nationalism that they perceived as having substantial implications for the socialist future of the country. They viewed the Arab Nationalist Movement as one that emphasized a detrimental alliance between all socioeconomic classes that legitimized the power of the Arab bourgeoisie (Stookey, 1982:60). The bourgeoisie

in this context were perceived as supporters of imperialism and neocolonialism, and at odds with the existence of a socialist state under the leadership of the working class. By 1969, the radical Marxist-Leninist faction of the NLF gained power, was renamed the Yemeni Socialist Party (YSP) and restructured the state to become the People's Democratic Republic of Yemen (PDRY). The YSP disconnected itself with the Arab Nationalist Movement and undergoing a violent purging of leadership and membership opposed to their radical leftist ideologies (Stookey, 1982:66). The PDRY was ordered along a one party vanguardist Marxist Leninist framework, and held power until its unification with the Yemen Arab Republic in 1990.

The post-independence period was marked by radical economic, political and social transformations. These shifts were driven forward by attempts at restructuring state policy and institutions. This began with the development of a new Constitution, which was drafted with the help of Egyptian and East German political and legal experts (Brehony, 2011:55). Following Marxist rhetoric, the Constitution located political power in the newly formed nation-state in the "working people" (Brehony, 2011:55). It further identified Islam as the official religion, but limited its reach by not stipulating a Shari'a source law.

Despite claiming Islam as the official religion of the state, the leaders of the PDRY constructed the south as a secular nation, and cracked down on religious scholars, preachers, and imams in the early 70s (Brehony, 2011:70). In an attempt to position itself as secular, the regime could not situate themselves as anti-Islam as that would lead to the loss of people's support, yet the dominant Islamic narrative was viewed to be in contention with the regime's socialist goals. They were adamant that Islam play a limited role in the political and legal spheres of the nation-state (Brehony, 2011:70). As the state gained a stronger foothold in the 1970s, it lessened its

repression of Islamic scholars and worked to fold them into state institutions to mobilize the Islamic tradition for state interests (Cigar, 1990). Religious trust organizations that funded clerics were nationalized so that the burden of cleric salaries and mosque finances fell on the state, but also brought them under its direct control (Cigar, 1990:185). In effort to counter accusations of being an “atheist” state, the PDRY undertook a “cautious” approach towards Islam; foregrounding its socialist characteristics, such as egalitarianism and commitments to social justice, and arguing that the conflict between Islam and socialism lay in past feudalist reformations of the religion by the elite (Ismael & Ismael,1986:165). Accordingly, the PDRY leaders promoted the rhetoric of “liberation theology” that constituted scholarly Islamic texts that aligned with YSP ideology (Cigar, 1990:186).

State policy heavily focused on the redistribution of wealth, which resulted in a development of social services related to health, education, and the advancement of employment opportunities (Brehony, 2014:129). Chief amongst these initiatives was the enshrinement of the rhetoric of “women’s emancipation” in the Constitution (Al-Ashtal, 2012:215). Gender inequality was often attributed to oppression under the colonial state and ‘traditionalist’ tribal and familial control (Molyneux, 1982:19). Therefore, in framing the post-colonial nation-state’s shift into ‘modernity,’ interventions into gender relations in the society were marked as crucial. For example, the establishment of the General Union of Yemeni Women (GUYW) consolidated women’s organizing and resistance efforts into a single state controlled organization, which also folded women into the state apparatus. The GUYW actively worked to influence policy, and was often consulted in drafting and deliberation processes for new laws that were perceived to hold implications for women (Al-Ashtal, 2012). The most notable was the Family Law, which is critically examined in this thesis.

2.5 The Yemen Arab Republic

The revolution of 1962 in North Yemen led to the end of the Imamate and the formation of the Yemen Arab Republic (YAR). The new nation-state witnessed intensive civil war in the following years, with those loyal to the imamate being supported by Jordan and Saudi Arabia, and the republican revolutionaries being strongly backed by the Egyptian military. Following several years of failed presidencies, assassinations, and two wars with South Yemen in the 1970s, Ali Abdulla Saleh rose to power in 1978 (Wedeen, 2008). Saleh remained in power of YAR until unification in 1990, and remained president of the unified Republic of Yemen until his deposition in 2011. Under his rule, the YAR was structured as a free-market economy with severely limited social and legal reforms.

2.6 The Politics of Unification

The narrative of Yemeni unity was dominant within public and state discourse in both the PDRY and YAR. However, due to clear differences in state structures and political aims, the form this unity would take and the nature of the unification were points of deep contention (Brehony, 2012:130). Overwrought with intra-party conflict and economic instability, the loss of support from the Soviet Union in the late 1980s severely weakened the PDRY regime. Both states were slowly declining and unable to maintain order and power in their own territories. Thus, delegates of the two states had several meetings from 1987 onwards and engaged in considerable discussions of an eventual unification. By December 1989, Ali Salem al-Beedh, the secretary general of the YSP, and Ali Abdullah Saleh, the President of the Yemeni Arab Republic (North Yemen), announced the union of both nations, to be established after a one-year

transitory period (Brehony, 2012). The deal ensured a power sharing formula until elections in 1992, and the former YAR would be tasked with maintaining the PDRY's economy. Thus, North and South Yemen formally unified on May 22, 1990 to form the Republic of Yemen.

Given that South Yemen's population formed only 20% of the entirety of the newly formed state, YSP leaders were doubtful that the unification process would succeed. However, they perceived that their system of governance and commitment to social reforms was superior enough to compel the Yemeni population to vote for the YSP in the elections. They severely miscalculated both Ali Abdullah Saleh's cunningness in mobilizing the political and military sphere to his benefit, and the rise of the Islah party that would come to counter the YSP (Brehony, 2012).

The transitory period from 1990 to 1994 was tumultuous. Three key parties emerged: The Yemeni Socialist Party, the General People's Congress, headed by Ali Abdullah Saleh, and the newly formed Islah party (Molyneux, 1995:426). Given prior agreements, the YSP were under the impression that there would be an ongoing equal partnership with the GPC as they worked to consolidate the drastically different political and economic structures. The GPC was intensely resistant to the socialist leanings of policies and reforms that the YSP proposed, and despite the narrative of equal sharing, final decisions on laws and issues of governance were ultimately made by the GPC.

The negotiations took an increasingly aggressive nature with patterns of violence and assassinations targeting YSP officials and their families. Any references by the YSP to increased government decentralization, grievances regarding the assassinations and corruption amongst those in Saleh's inner circle were viewed as encouragements for Southern separatism. GPC

officials, however, countered by arguing that they were tasked with the economic development of the South, which they argued had been left impoverished due to state socialism. The GPC further contended that the YSP's malcontent was not merely due to policy differences, but also to their wish to depose of Saleh from power. These differences and discontents seeped into all aspects of the transitional process, and had severe effects on the structuring of the legal system and social policy. Despite that, by 1991, a unified constitution was drafted that made commitments to social equality and freedoms, but the former PDRY's socialist aims were largely displaced. Shari'a was framed as the "main source of legislation" and Islam became the state religion, which heavily influenced later policy changes (Hudson, 1995).

Chapter 3: Review of Literature

3.1 Theorizing the Nation-State

The unification of the two distinct Yemeni nation-states requires an elucidation on how we understand the nation-state and the place of the law in formulating this new entity. In the next section, I engage with three central questions. How does the state constitute the nation? What is the place of the law in processes of nation-state formation? How are gendered juridical subjects produced and written in the nation-state?

Timothy Mitchell contends that the state “appears to exist simultaneously as material force and as ideological construct” (2006, 169). Mitchell is largely drawing from Phillip Abrams who distinguishes between the state-system and the state-idea, which Mitchell identifies as the material and ideological respectively. Mitchell frames the state-system as a “system of institutionalized practice” while the state-idea is the “reification of this system that takes on an overt symbolic identity” (Mitchell, 2006:169). He reviews Abrams theorization and argues that in order to understand processes of state-building, we should historicize the material and ideological forms of the state as mutually constitutive and inseparable processes (170). Thus, the distinction between what the state imagines itself to be and how the state is actually structured are situated as “ongoing projects” (Hasso, 2014:27).

While the nation and the state are interlinked and mutually constitutive of each other, they are conceptualized and operate in distinct ways. Cole and Kandiyoti note this distinction and posit that the nation has a state that extends its power over a delimited territory and establishes a common identity amongst those it recognizes as citizens (2002). In this regard, “the state accomplishes the task of creating a nation” (Cole & Kandiyoti, 2002:195), and as Judith

Butler argues, it ‘binds’ and ‘unbinds’ subjects “in the name of the nation” (2007, 4). Echoing Benedict Anderson’s claim that the nation envisions and constructs an “imagined community,” Lisa Wedeen frames the nation as a “contingent category” that structures “political imaginings...tied to notions, if not the actual fact, of territorial sovereignty” (2008:55). The nation brings together a particular imagination of a linked community, space, and subjectivity. These are grounded upon notions of collective identities that are constantly being reiterated by the state, but are nevertheless grounded in the material contexts of a given territory, such as established ethnic groups and socio-economic circumstance.

With this in mind, how might we understand the *nation-state*? Jean and John Comaroff contend that the nation-state can be thought of as a “polity held together by the rule of law, by the claim of government to exercise a monopoly over legitimate force, by a sense of horizontal connection, and by universal citizenship which transcends difference” (Comaroff & Comaroff, 1998:iii). Legal protection brought about through citizenship can be issued and suspended by the state at will, and thus while the state assumedly constructs a sense of “universal citizenship,” it determines who is included and excluded (Comaroff & Comaroff, 1998:iii). Moreover, this articulation of citizenship is not applied with categorical universality, and is differentiated by gender, race, sexuality, class, ethnicity, and so on.

3.1.1 Gender, Law and the Nation-State

In tracing the shifts in family law in Yemen at a critical point of political, economic, and social transformation, it is important to consider the relationship between gender and the nation-state. Yemen in the 1990s offers us a key point at which a nation-state is in a very literal sense on

the drafting table, with competing actors vying for particular articulations of the future nation-state and its subjects. As such, how do women factor into these processes?

In thinking through the relationship between state power and the law, Judith Butler argues that the state “signifies legal and institutional structures that delimit a certain territory... it is that which forms the conditions under which we are juridically bound” (2007:3). Charrad further highlights that to establish state power, state formation necessitates that the state extends its “administrative reach over territory” and authority within a bounded national entity (2001:18). This administrative authority is exercised on those it identifies as subjects, whose identities are tempered by different matrices of gender, class, race, sexuality, ethnicity, and so on.

Viewing nationalism as a discursive project, McClintock argues that ideals of womanhood and gender difference are crucial elements to processes of nation-state formation (McClintock, 1993). To this end, nationalism is established as a gendered discourse and articulates a particular form of gender power relations that service the vision of the nation (McClintock, 1993). This gendered discourse entails outlining particular understandings of “manhood” and “womanhood” that are then related back to state produced narratives of “nationhood” (Yuval-Davis, 1997; Abu-Lughod, 1998). In this regard, the state not only produces certain laws and regulations that define and constrain gender relations, but the very articulations of gender difference “shape the ways in which states are imagined, constituted and legitimated” (Gal and Kligman, 2000:4). Thus, the ‘woman’ becomes a critical subject that acts as a symbol onto which the nation-state develops particular notions of itself (Joseph, 2000).

As scholars argue, rooted in this constructive process are patriarchal power structures that are exercised in implicit and explicit ways (Joseph, 2000; Kandiyoti, 1991; Charrad, 2001). In

this regard, the law emerges as only one site of the constitution and contestation of gendered power relations (Tucker, 2008). Various social actors and groups are in constant conversation with the state in a “process of legal gendering” (Tucker, 2008:9). Therefore, social actors involved in the legal system and its processes are constantly interpreting the law in selective ways and in reflection of their lived experiences and worldviews. This opens up the interpretive potential of the law, and reveals how the law plays out beyond formal codes. In recognizing this, we open up the analysis to examine how various actors are “continually gendering the law” (Tucker, 2008:9).

As Judith Tucker argues, the legal system produces “rigid definitions of male and female” that operate in a relational manner that normalizes the male experience (Tucker, 2008:11). Moreover, it establishes boundaries on women, how women may think of and understand themselves. Yet, at the same time, women exercise agency in the legal system, working around and through “different legal discourse and practices,” and constantly reinterpreting the law and its sources in innovative ways (Tucker, 2008:11). I would further add that while the definitions of “women” and “men” as legal subjects are indeed rigid in some manners, these definitions are in constant tension and, at times, act in contradictory ways. In this regard, any analyses of the production of legal subjects must be contextualized to account for the various iterations of the social, political, and economic aims of the nation-state in defining subjects in the manner that they do.

3.2 Islamic Law and Family Law in the Modern Nation-State

A central process for incorporating Islamic law and Shari'a in the modern nation-state is codification. Prior to the codification processes in the 19th century, Islamic law was characterized by its intense plurality in doctrinal schools, jurisprudence, and the multiple interpretive opinions, theories, and institutions (such as those of the *qadi*, *mujtahid*, etc) (Emon, 2012). As some scholars argue, this diversity was hampered by codification, undertaken both by the Ottoman empire and colonial powers in distinct ways (Hallaq, 2013). Under British colonialism, the codification process was coupled with translations of juridical texts. Wael Hallaq has strongly asserted that the translation processes “uprooted Islamic law from its interpretive-linguistic soil” and from the social and legal structures that upheld it (Hallaq, 2009). Scholars agree that the resulting system that transpired out of these processes in the British colonial sphere was Anglo-Muhammadan law, which was in effect in South Yemen under colonial rule.

The uncodified nature of Islamic law allowed for its interpretations and applications to maintain a sense of fluidity (Tucker, 2008). Brinkley Messick highlights that Shari'a manuals operated as “open texts” that allowed for the human interpretive potential. He further contends that in the “older forms of human embodiment of Shari'a,” the principles were developed from within legal cases themselves. As such, “form followed content” (Messick, 1993:250). The codified Shari'a emphasizes a process of “content following form” whereby principles or rules are developed prior to the case. This shifts the space where legal authority is vested and how power is exerted over subjects by fundamentally changing the nature of government (Messick, 1993:253).

In examining the impact of Islamic family law on gender power relations, scholars have argued that its relationship with the Islamic legal system requires tracing the intersections of colonialism, nation-state formation, and nationalist processes and their roles in defining and regulating gender relations within a given territory. Writing from the Egyptian context, Talal Asad posits that the rise of the nation-state brings with it the designation of the “family” as a critical site for defining patriarchal gender relations, and the establishment of the ‘family’ as a legal category and an “object of administrative intervention” (Asad, 2001:9). Within the context of Islamic law, this is solidified in the marginalization of Shari’a to “family law” or “personal status law” under colonial intervention (Asad, 2001:9). Iza Hussin argues that family laws should be “understood as part of the formation and maintenance of the colonial state” and views personal status laws specifically to be a product of the colonial encounter (Hussin, 2016:27). She further posits that Islamic family law reproduced “patriarchal ideals of both elite Muslims and Victorians to produce a new legal structure and logic” which worked to regulate the family and ripple out to the society at large (Hussin, 2016:27). Ziba Mir-Hosseini makes the case that the codification processes under colonial and Ottoman control led to the creation of a family law that was a “hybrid” not wholly grounded in classical *fiqh* or Western legal thought (Mir-Hosseini, 2013).

Moreover, some scholars have argued that the terms “family” (Stowasser & Abul-Magd, 2004) and “personal status” (Massad, 2001:81) as legal categories had not been used in Islamic jurisprudence (*fiqh*) prior to the codification processes in the 19th and 20th centuries. There are multiple articulations of the term “family” in Arabic, all of which are especially pertinent as we think through the power relations that are shaped by this discourse.

In her examination of family law in Algeria, Morocco and Tunisia, Mounira Charrad argues that all family laws construct a particular “conception of gender and kinship,” but modern day Islamic family codes specifically “sanction cohesiveness of extended patrilineal kin group” (Charrad, 2001:28). The codification of Islamic law restricts the capacity for the modification of “gendered rights and privileges in specific cases,” especially in the courts (Tucker, 1998:185). Nahda Shehada critiques this perspective, which she terms the “rigidity rhetoric” (2009), and argues that despite these processes of codification, family law retains a “flexible, heterogeneous, and context bound implementation” (Shehada, 2009). She further posits that family law “does not operate in a vacuum” and is still tightly linked with the contexts that emerge from the worldviews and goals of the various institutions and actors that establish the conditions that bring the codified law and its practice into being (Shehada, 2009:28). These conditions are what accord it a wider interpretive potential, despite clear limitations. What Shehada is touching upon is the discrepancy between the legal code and social practices in courts, whereby the judge, lawyers, and other social actors can draw from various interpretive sources to formulate their arguments and decisions. Yet, despite the view that the interpretive potential of Islamic family law can be found in social practices, some scholars have posited that the codified *Shari’a* and its application by the modern nation-state, has solidified patriarchal male privilege (Kandiyoti, 2009).

3.3 Constituting the Legal Subject: Governmentality and Subject Formation

3.3.1 Governmentality

Key questions emerge as we think through the nation-state’s exertion of power over its populations and the role that law plays as a disciplining institution and structure. Despite some

critical limitations that will be addressed later on, Foucault's notion of governmentality is helpful here. Governmentality refers to the way in which the state can exercise bio-power over the individual (Woolhandler, 2014: 135). To this end, governmentality can be defined as a "complex form of [modern state] power" that is utilized to 'manage populations' and establish sovereign power over a specific territory. In elucidating his notion of governmentality, Foucault attempts to address the gap between biopolitics as a form of disciplining power and its use by the state to structure "the possible fields of actions of others" (Foucault, 1982:789). Biopolitics here is understood as a "productive power...that targets subjectivities and bodies" (Hasso, 2011:28) in order to manage populations.

However, within his theorization of governmentality Foucault diminishes the role of the law as a central part of state power. He argues that rather than using the law as a means of exercising power and control over a population, it relies on a "regulation of conduct" through methods of discipline (Foucault, 1982:789). In attempt to reconcile methods of discipline and structures of government, Timothy Mitchell posits that "at the same time as power relations become internal...they now take on the specific appearance of external 'structures' (Mitchell, 2006: 179). The law emerges as one such structure that mobilizes state processes, and should be reframed as a "mode of regulation" (Walby, 2007: 556). Indeed, Foucault viewed law as a 'tactic' of governmentality. Extended onto the family, governmentality works as a modality of governance that attempts to discipline and regulate the values and norms in the family and kinship structure.

3.3.2 Subject Formation

Building from Foucauldian arguments that juridical power constitutes the subject through a process of discursive formation, Judith Butler posits that the law produces “a notion of a ‘subject before the law’” (Butler, 1999:3). Thus, juridical power produces the very subject that it “claims to merely represent” (Butler, 1999:3). The ‘subject before the law’ is not by any means produced to be a neutral figure. Rather, they are gendered and disciplined in specific ways. Legislation produces a normative subject, and regulates their social relations with others in the imagined community in ways that reflect the aims and goals of the nation-state. As such, the law produces an ideal subject, and an ideal “woman”, “man”, “child”, and so on. Moreover, Butler posits that the subject category of “women” that is produced by the law is then restrained by the “very structures of power through which emancipation is sought” (Butler, 1999:4). Thus, if we are to look at laws legislating the family as providing certain rights or responsibilities, then they will subsequently also produce boundaries of actions. To the same end, the legal systems that become targets of social reform under the rhetoric of “women’s emancipation,” as the PDRY attempted, are constrained by these same defining structures of power.

Furthermore, legal rhetoric not only ‘produces’ subjects but further categorizes the actions and behaviors that are perceived as prohibited or permissible by the state. The subject’s actions are regulated in ways that reflect the end goals of the state and the visions of the nation. Thus, when one becomes a “subject under law,” as Sara Ahmed puts it, the form their life and actions take are also further regulated by said law (Ahmed, cited in Hamzic, 2016:13).

If the law produces certain subjects, then the question remains as to how the legal category of “woman” is defined and understood. The “woman” as a legal subject cannot be

uniform and consistent across all family legislation. The two family codes in South Yemen and the unified Yemen are evidence of the various ways in which “women” are written and articulated in the law. Seedat has posited that the “female legal subject” must be conceptualized as multiple and situational (2013:19). Feminist scholars have further argued that a gender neutral subject in the law does not exist, but rather, any supposed “neutral” figure is constructed as normatively male (Seedat, 2013: 28). The entire conceptualization of a “legal person” is in fact immensely gendered, with women acting as an exception to the norm (Cunliffe, 2013). In essence, any mention of a legal person assumes a male figure, and ‘women’ are especially distinguished. Butler understands gender to be performed and always undergoing processes of regulation and discipline. As such, gendered subjects are produced within a “highly regulatory frame” (32) that determines how particular genders and their performances becomes intelligible while others are foreclosed (Butler, 1999). This is also further complicated by subjects who do not adhere to these two binaries. These frames structure the legal system by deploying gendered institutional practices that produce and regulate the ways in which gender is performed, evaluated, and restrained.

Critical legal scholarship has identified two central ways in which the power of the law manifests. The first is juridical power, which enforces different forms of action. The second is disciplinary power, which establishes normalized identities and behaviors (Hamzic, 2016). Butler’s argument pushes us to tease apart the categories of identity that the law produces. Moreover, it emphasizes the need to move beyond simply asking what categories of gender difference are constructed, and remain critical of *how* gender difference is both produced and articulated in the law. If the juridical subject is produced in a manner that reflects certain gendered power structures, how do we make sense of the regulations imposed on the subject in

Family Law? In his analysis of legal personhood, Dupret examines the question of the individual as a “subject of law,” and who is accorded that subjectivity:

The question of ‘who’ calls for identification, from whence comes the notion of ‘able subject.’ Posing this question is a matter of ascribing to someone an action or a part of an action. The attribution of the authorship of an act is fundamental to any imputation of rights and duties: it is the very heart of the notion of capacity (2004:23).

Thus, the capacity to act formulates a key part of the production of a gendered legal subject. Legal discourse and rhetoric identifies ‘boundaries of action’ by delineating what is permissible and prohibited for subjects.

The production of the juridical subject is not undertaken in an individualized manner. Rather, it is deployed in a relational fashion that places the subject in a matrix of identities that are first defined and later reproduced. Family law emerges to regulate our most intimate relations – those of kinship, marriage, and filiation amongst others. As Mansour argues, “family operates as a tool of governance that regulates personal relations and preserves a certain type of family in order to ‘manage populations’” (Mansour, 2011:60). Thus, the law not only produces a subject but also establishes and articulates the form the ‘family’ takes. The ‘family’ itself comes under the gaze and scrutiny of the nation-state and is produced in a manner that reflects the biopolitical vision and ends of state power. To this end, family law not only defines the form the family should take and the gendered manner in which relations within and outside the family should play out, it also defines the limits and the reach of the family.

Within the context of Islamic law, the centrality of family law in producing the woman as subject is even more punctuated by the colonial past that identifies family law as both the “heart”

of Islamic law and its assignment to the realm of “private law.” Talal Asad argues that in the process of codifying and limiting of Shari’a to the realm of personal status under the auspices of colonialism, Shari’a is radically transmuted. This results in attempts to establish the “self-governing subject” under the gaze of the law (2003).

Chapter 4: People's Democratic Republic of Yemen: Family Law of 1974

State ideology and policy regarding gender equality in the PDRY centered on the rhetoric of 'women's emancipation' (*taḥryr al-mar'āh*) and the establishment of "the new woman" (*al-mar'āh al-jadīdah*) (Dahlgren, 2010:167). These notions are the foundations upon which the Family Law of 1974 is grounded. Before delving into the formation of women as subjects of the law in the PDRY, I will trace the contexts that bracketed laws and policies promulgated by the state with regards to gender. These narratives produce "women" in a particular light that frames their placement in the new nation-state. Throughout this analysis, I remain attentive to the slippage between 'woman' and 'gender' that tends to dominate analyses of family law in Yemen.

Spanning a three-year duration, the drafting and promulgation processes of the 1974 Family Law involved heavy public engagement through discussions on media platforms and the involvement of women's rights activists in the preliminary drafts (Dahlgren, 2013). Jurists relied on the 1957 Tunisian Law of Personal Status as a starting blueprint (Molyneux, 1985). In a review of key points in the law, Isam Ghanem highlights that the PDRY government argued that unlike any other state in the Middle East and North Africa at the time, it had offered its people a more substantial opportunity to deliberate and discuss stipulations in the family law (1976). This approach triggered much criticism as some argued that it altered the centrality of *ijtihād* and *mujtahids* in the Islamic legal system. A substantial part of the law is reliant on the Shafi'i school, largely building from minority opinions in order to validate particular positions that are radical and reformative in comparison to other family laws in the region (Ghanem, 1976). The fact that the drafting process relied heavily on Shafi'i thought highlights the limits of secularism in the PDRY. It further emphasizes that the establishment of a secular legal system in the South

Yemeni context was in constant tension with family law, which was undergirded by colonial efforts to identify family law as the “heart” of Islamic law. This practice of consultation of the larger public in the drafting process brought upon many concerns about the compatibility of the law with Islamic jurisprudence and Shari’a. As Dahlgren relays, one member argued that none of the proposed laws were especially innovative, but were rather grounded in Prophetic example provided by the *ahadith* (2013). He states, “we had not created anything; everything is in Islam. We only gave vitamins to old ideas, to have them triumph” (Cited in Dahlgren, 2013).

As Talal Asad argues this process of relegating Islamic law to the realm of personal status or family law was the transformation of Islamic law “into an arm of the state” (Hussin, 2016). The family in this context emerges as a legal category and “an object of administrative intervention” that underlines the “re-arrangement of the modern nation state” (Asad, 2001:3). For Asad this is a result of the secularization process whereby Shari’a is limited to family law, but also where religion is allowed to become visible in the public sphere via state law (2003). Moreover, it highlights that secularization is not the simply the relegation of religion into the private sphere, or the separation of church and state, but rather the power and capacity of the state to determine and define the role of religion as a “subsidiary of the state” (Hussin, 2016:198).

4.1 Deconstructing the Rhetoric of “Women’s Emancipation” in the PDRY

The rhetoric of “women’s emancipation” was central in both the Constitution and the Family Law, to the degree that the family law was often referred to as the “Woman’s Law” (Dahlgren, 2010). Maxine Molyneux argues that the discourse of ‘women’s emancipation’ was

grounded on aims of “socialist modernization” that were similarly found in the Soviet Union, Cuba, and the German Democratic Republic (Molyneux, 1991:267). She further contends that this rhetoric was established to fulfill two main state objectives. First, the processes of legal reform were focused on the creation of a unified and centralized state administered legal system whose power extended into rural areas that commonly used customary (*urf*) tribal law (Molyneux, 1991:247). Second, legal reform was viewed as a crucial tool for the achievement of social and political transformation, rather than simply as an adjunct to the process. Thus, social intervention and reform were textually framed in line with two central arguments. The first relied on both postcolonial nationalist and Marxist language, arguing for the necessity of eliminating the past legal structure which was believed to only benefit colonial and ‘feudal’ interests. The second argument was that the new legal system had to be constructed in a manner that strengthened the socialist revolutionary process (Molyneux, 1991:248). These shifts were perceived as a means to create laws and policy that addressed the most marginalized in Yemeni society, namely women and those in the lower class. However, Dahlgren asserts the politics that drove forward a policy driven discourse of ‘women’s emancipation’ was not merely a result of socialist formations, but established during British colonial rule in resistance to class-based structures and administrations propped up by the British (2010).

I would further add that efforts at establishing a centralized legal system that regulated the family and thus the legal subject, mimicked colonial efforts at regulating populations under a codified and “manageable” Anglo-Muhammadan Law. Moreover, following independence the regime kept the administrations and bureaucracies established by the British in place, and relied on their foundations to structure the first vestiges of a system of governance. These processes all produce a particular biopolitical subject, whose subjectivity was laden with a colonial past, and

shifting their sense of identity and belonging away from tribal or regional affiliations to be beholden to the new imagined nation-state.

In line with these objectives, the state produced narratives of the “new woman” in the PDRY as both “producer” and “mother” (Dahlgren, 2010). These interrelated discourses were embedded in most, if not all, laws that targeted women, and often acted in contradiction to one another. In her examinations of the production of the “new woman” in the PDRY in the 70s and 80s, Dahlgren argues that the state identified women’s economic independence and freedom from the patriarchal domestic authority of the family as key sites of intervention. The family was pinpointed as a site of gender oppression that did not value women’s labor and would ensure that women remained subordinated in society if left unchanged (Dahlgren, 2010). This gender oppression was attributed to “backward traditions” and British colonial rule. Thus, the state focused its attempts on attempting to “modernize” the family and introduce “new” ideals of economic and social equality that would then ripple into the larger society. Dahlgren contends that this advanced the discourse of women as “mothers” tasked with the upbringing and primary education of the future generation within the modernized “new family” (2010:136). According to Dahlgren, this “woman as mother” was distinct from past articulations in that her ‘rationality’ (*‘aqlīyah*) and capacity to make independent decisions was recognized (2010).

Concurrently, the economy of the PDRY was immensely constricted by its small population. Given that, the state required women to enter the labor market as active workers, and simultaneously increase the population as reproducers (Wurth, 2003). These economic and reproductive demands undergirded the narrative of “women’s emancipation” and the woman’s dual role as “mother” and “producer.” Molyneux asserts that the state viewed the family as the

“basic cell of society...responsible for helping to form the next generation of ‘patriotic, socialist’ subjects” (1991:254). Gender equality, brought in part through family law, was thus understood as setting the foundation for the egalitarian socialist family that would bring family relations under state regulation (Dahlgren, 2004). These arguments were borrowed from Friedrich Engels *The Origin of the Family, Private Property and the State* (1884) and Vladimir Lenin’s *On the Emancipation of Women* (1934), which had significant ramifications for South Yemeni understandings of the origins of the patriarchy (Molyneux, 1982:5). Engels locates this origin in the creation of private property, positing that women’s position in society is determined by the existent mode of production (2010). He connects the gender oppression to the sexual division of labor in the home, which creates a clear separation between the public and private spheres. The narrative produced here is one of advocacy for increasing participation in the public sphere, through incorporation into the mode of production, education, political participation, but also a gendered duty in the private sphere (Abu-Lughod, 1998). This is supported by a new narrative of what it means to be a good wife and a good mother, tasked with the development of the new family that would fulfill the goals of the socialist nation state. Abu-Lughod highlights these alternative forms of discipline and regulation through processes such as “the professionalization of housewifery, the ‘scientizing’ of child rearing, women’s drafting into the nationalist project of producing good sons, the organization into nuclear households governed by ideals of bourgeois marriage” all of which feature prominently in the PDRY’s promotion and maintenance of the new family through the 1974 family law (1998:9).

However, as both Leila Ahmed (1982) and Susanne Dahlgren (2010) argue, the rhetoric of “women’s emancipation” was not simply exercised in a top down fashion. Dahlgren contends that it was a central goal for Adenis under colonial rule and defined the social movements that

saw the independence of South Yemen from the British. It should go without say that women played a key role in the anti-colonial struggle, and helped form the prerogative for gender equality in the new and independent nation-state. Leila Ahmed notes that this part of long “indigenous tradition of active and independent women” that it is particular to the Arabian Peninsula (1982).

A key limitation of this rhetoric is that it grounds itself upon a claim of modernity that is distinct from the traditionalism of the past. This discourse locates the source of women’s oppression in colonialism and ‘traditional’ family relations (Ba’abad, 1979:18), and as such the nation state identifies their emancipation as the primary symbol of a move towards modernity. This is highlighted by state mobilization to facilitate rapid transformations in social, political and economic arenas. The dichotomous discourse of “tradition” versus “modernity” emergent in the processes of nation state formation are further embedded in the Marxist discourse of ‘development’ that promotes socialist socio-economic transformations attempting to disintegrate a “traditional” society that is bolstered by feudal social relations (Molyneux, 1991:240). Representative examples are the statements made by Aida Yafai, a member of the General Union for Yemeni Women (GUYW), who located the source of gender inequality in society’s entrapment in “feudal and tribal social relations” (1979:12). Yafai argued that the remedies to these “traditionalist” social relations are the education of the public, and the promotion of women’s active participation in the mode of production (12). By utilizing the discourse of tradition, Yafai was able to engage with culturally and socially complex issues without disturbing the nationalist discourse of productivity so heavily promoted by the state.

4.2 Examining the PDRY Constitution

Molyneux locates the bolstering of the family law of 1974 in the PDRY within the implicit secular declarations in the 1970 constitution (1995:421). Equality between men and women was explicitly stated, and was grounded in state commitments to provide “the necessary conditions for the realization of that equality” (PDRY Const. art. 36, amend. 1978). Further elaborated within the constitution was the establishment the woman’s role as both ‘producer’ and ‘mother.’ Asserting these dualistic roles, Article 36 states:

“The state shall also work for the creation of the circumstances that will enable the women to combine between participation in the productive and social work and her role within the family sphere. It shall render special care to the vocational qualifying of the working women.” (PDRY Const. amend. 1978).

In extension of these stated objectives, the family law ensured that family relations would come under direct state regulation. Dahlgren posits that this “familial ideology” was largely grounded on the “notion of complementarity in gender roles” which work together to set up the foundations for the normative “happy family” (2010:136). The family and its subjects were expected to be a ‘productive’ entity that supported the aims and goals of the nation state. In accordance with this productive discourse, the constitution frames the woman as a subject in economic and biological terms that demand that her productivity, be it in labor or reproductivity, be obligated to serve the new centralized nation-state.

4.3 Marriage

The foreword to the 1974 Family Law establishes the state's clear aim in regulating family relations in alignment with the "goals of the nationalist democratic revolution." To this end the family is identified as a key site of state intervention that must adhere and be party to the socialist interests of the state. The foreword asserts that prior to the promulgation of this family law, family relations had not been effectively regulated. Past "feudal relations" had allowed for the family to be a "site of trading" that had left Yemeni women to be treated as "hostage to those that pay the highest price" thereby tainting the "most noble human relation" (PDRY Family Law 1974). These claims make three things clear. First, they frame the patriarchal structures under which family relations operated in economic terms, describing these relations in the language of sales. Second, it explicitly targets women, highlighting that state is working to produce an altered legal subjectivity for women, and redefine the legal status that they hold within familial relations. Third, by highlighting the lack of regulation of family relations, the law institutes itself as a "technology of governance" (Hasso, 2011:45) and management.

4.3.1 Defining Marriage

Article 2 provides an innovative definition of marriage that establishes gender parity within the marital relationship while simultaneously binding the family to the state. Marriage is defined as a contract between a man and a woman who are equal in rights and duties based on "understanding and mutual respect." The article deviates from normative definitions of a marriage by placing men and women on equal footing within the marital relationship. The second part of the article defines the "purpose" of marriage as the creation of a "cohesive family

on the basis that it is the cornerstone of society” (Article 2). By linking the marital relationship to ‘cohesive family,’ the law establishes the necessity of the development of a productive family that contributes to the good of the nation-state.

From the onset, marriage is identified as a critical site for the formation and structure of the nation-state. The entirety of the Family Law uses the word *ūsrah* to refer to the family, thus implying a specific nuclear familial configuration that binds the kinship structure. There are two central references or translations for family in Arabic: *ūsrah* and *ā’ilah* (Hasso, 2011:26).

Frances Hasso highlights that the term *ūsrah* is commonly used in legal discourse in postcolonial states in the Middle East and North Africa (2011). The term is used to denote the family’s status as a “foundational unit of the state,” and implies a spatial familial configuration that is restricted to a nuclear household (Hasso, 2011:26). Indeed, the title of the PDRY Family Law can be translated to “on the matter of *ūsrah*” (*bi sha’n al-ūsrah*). On the other hand, *ā’ilah* conceptualizes the family as a “wider and more powerful network of people who are dependent on each other for sustenance, support, and food” (Hasso, 2011:26). The *ā’ilah* can be perceived as a threat to state sovereignty, as it constructs kinship networks that are more difficult to govern and regulate. Hasso contends that both terms are articulated in patriarchal ways in the modern period. However, understanding the family as *ūsrah* emphasizes women’s dependency on male figures, such as their fathers and husbands (Hasso, 2011). The state comes to stand in as the patriarchal head in the absence of these figures. She further argues that the process of codification and “modernization” of family law is exemplified by the nation-state’s attempts to “shift family norms and structures from *ā’ilah* to *ūsrah* arrangements” to fulfill its interests (Hasso, 2011:26). Thus, identifying the family as the ‘cornerstone of society’ produces a

heteronormative family that falls under the regulation of the state, and acts as a key “technology of power” (Foucault, 1988: 153) in shaping the society at large.

4.3.2 The Marriage Contract

Specific requirements and restrictions are placed on the contracting of marriage. Marriage registration is a key stipulation, requiring the contract to be in written record before authorized officials and containing the signatures of both spouses (Article 6). Any attempts to contract marriages outside the purview of the court system is not recognized, and the marriage is void without registration. In a deviation from normative practices in family laws in the Middle East and North Africa, the PDRY Family Law does away with the formula of *ījāb* (offer) and *qūbul* (acceptance).

The primacy of written documents as crucial elements in marriage registration is also exemplified, and reflects the impact of the positivist codification of Shari’a. As Messick highlights, while the importance of writing was not novel in Yemen, the practice of written document registration is a central element of a “comprehensive extension of state authority into formerly private domains” (1993:223). Coming at the rise of the modern nation-state, the practice of mandatory registrations only became normative after the codifications of family law (Welchman, 2015). Hasso argues that marriage registration requirements “are largely designed to expand state power” (2011:25) into kinship relations with the aim of producing particular subject that can then be effectively regulated.

According to jurisprudential consensus, registration was not required for a marriage to be considered valid (Welchman, 2015). This situated marriage as a “social and familial matter in

which the state had no jurisdiction” (Charrad, 2001:32). In viewing family law as a key mechanism of governance, the imposition of these registration procedures folds citizens into the administrative apparatus of the state. As Charrad argues with the case of the Moroccan family law, the requirement of registration of marriage is an essential condition that allows for other legal stipulation to be applied in regulating the family (2001).

4.3.3 Minimum Marriage Age

A minimum marriage age is established at 18 for men and 16 for women (Article 7). While this does provide some protections to young girls who might be entered into early marriages, the discrepancy in age between men and women highlights that substantive equality in the law was not established. The question of age of marriage is tightly linked with issues of legal capacity, which will be examined later on. In addition, a restriction on age disparity between spouses was established. The marriage of individuals who had a 20-year age difference was prohibited, unless the woman had attained 35 years of age (Article 9). The explicit singling out of women in this regard was reasoned as an attempt to protect women from possible harm and because a large age disparity “restricts the creation of a cohesive family” (Ministry of Justice and *Awqaf*, 1977:13). The exception of 35 years of age was further argued to be in reflection of the woman’s personal and material maturity, and in order to ensure that she be able to marry later in life.

Isam Ghanem highlights that the restrictions on age difference had no basis in *fiqh* in any of the legal schools (1976). As such, it appears to be a particular innovation on the part of the southern state; the attempt to place restrictions on age difference is reflective of the “ethos of a

classless society” that the PDRY laid claim to (1976, 193). By regulating the age difference, drafters of the law were attempting to ensure that marriages would first, be between those of equal social status, and second, compound the protections provided by the establishment of a minimum age of marriage. By establishing a 20-year age limit, the assumption is that it would protect young women from entering into marriages with older men, as shown by the 35 years of age exception.

4.3.4 The Dowry

An upper limit is placed on the dower, and the authorized party is given the right to establish a limit that is “in accordance with the prevalent standard of living” on any symbolic gifts provided during the contracting of the engagement (Article 4). The limit placed on the symbolic gift is a reflection of the socialist aims of the PDRY regime, and the push to establish a classless society. The limit imposed on the dower follows in the same regard, but furthermore draws from the earlier reference of the institution of marriage as one that placed woman as hostage to those “that pay the highest price.” In explaining this limit, the Ministry of Justice describes it as confirming the “soul” of the constitution that views women as equally capable to men in her rights and duties.

The *mahr*, or dower, holds a key place in the legal structure of marriage, one that is both restrictive, but also gives women a certain degree of agency in the marriage tie. The dowry offers the wife a consequential financial claim against her husband, and plays a central role in her ability to divorce him through the court in *khul'* proceedings. Moreover, it is her private property, and cannot be taken away from her by her husband or family members. As Annaliese

Moors argues, whereas the limit on the dower might be advantageous for educated and employed woman of a higher status, it had an adverse effect on women who did not have economic security (Moors, 1999). This highlights that any attempts to place a limit on the dower must be accompanied with substantive shifts in the economic status of women, and mitigate the gendered differences in labor, reproductive labor, contributions to the household economy, etc.

4.3.5 Polygyny

Polygyny was restricted under the family law, but not outright abolished. A man was only permitted to marry a second woman with written permission from the court in particular cases: the first wife's infertility, or her illness in an incurable and chronic disease (Article 11). Both cases have to be supported with an official medical report. However, the wife can request a judicial divorce (court ordered separation) if her husband takes on a second wife (Article 29/2). The Ministry of Justice argues that the law has established monogamous marriage as the norm, while marriage to a second only remains possible as an exception. In addition, they argue that the husband is not "free" to marry a second as he "desires" and that the court's permission should not be easily given.

In placing a woman's infertility and illness as the only exceptions, the woman is framed in entirely biological and reproductive terms. The reliance on the medical report as proof of necessity highlights the medicalized and essentialist undertones of this specific provision. In this regard, a woman's legal subjectivity is tied to a gendered biological difference.

4.4 Legal Capacity and the Abolition of Guardianship

One of the most critical moves undertaken by the Family Law of 1974 is the elimination of guardianship as a requirement for the contracting of a marriage. The code stipulates that there be two witnesses, who are mentally competent and of age. Article 10 permits the use of a *wakīl* (legal representative and agent) in the contracting of the marriage. *Wakalah* significantly departs from guardianship in that it is voluntary and chosen by the individual. Guardianship on the other hand is often provisioned to be a legal requirement. The presence of a guardian is not required for the contracting of a marriage, and even with the use of a representative, the full consent of both spouses is required.

This stipulation touches upon the question of a woman's legal capacity and her ability to contract her own marriage. In this regard, the woman's legal capacity is framed on par with a man's, with equal rights and duties. Thus, they both enjoy the same rights to enter a contract, and the "adult woman is fully empowered as a legal subject" (Tucker, 2008:166). Entangled with legal capacity is the woman's ability and power over herself. In her study of familial relations in Aden in the 1970s and 80s, Dahlgren found that many women considered this provision as the most crucial one for the establishment of 'women's emancipation.'

A central indicator of the shift in legal capacity is the question of witnessing. In the contracting a marriage the only requirement with regards to witnesses is the presence of two mentally competent and *balghyīn* (of age) individuals (Article 8). Eighteen is stipulated as the age of *bulūgh* (maturity) for both genders, unlike the provision on marriage age (Ministry of Justice and *Awqaf*, 1977). The relations of the two witnesses to the marital parties is not specific, and as such they can be someone other than the assumed guardian. The Ministry of Justice and

Awqaf argues that any gendered differentiation in witnessing is not in accordance with the political and economic direction of the socialist democratic revolution that aims at eliminating any gendered differentiations between women and men with regards to capacity (1977).

4.4.1 Maintenance

By restricting guardianship and *qiwāmah*, the family law shifts the requirements on the relationship between maintenance and the marriage tie. The law establishes family maintenance as a joint responsibility of both spouses. As Hajjami notes, this move “questions the notion of *qiwāmah* as understood and interpreted in the classical exegetical tradition” (2012:85). The law stipulates that the spouses must share the burden of marital expenses (Article 17) and children’s expenses (Article 22) “according to their ability.” With regards to the expenses of the marital home and children, if one is unable to maintain, then it falls on the other, regardless of gender (Article 20). In all maintenance cases, the court is required to consider the financial status of both the wife and the husband (Article 21). However, a gendered differentiation is identified in the maintenance of children. For a daughter, maintenance ends when she marries or is able to work, whereas for the son, it ends when he finishes school or works (Article 23). The assumption is that the daughter would receive a dowry upon marriage, and be maintained by her partner. Despite attempting shift maintenance to a more equitable definition, the stipulations when it comes to the children highlights that gendered assumptions persist.

4.5 Divorce

Although some scholars have argued that *ṭalāq* (unilateral repudiation) was banned under the 1974 Family Law (Molyneux, 1995), it was in fact only restricted and brought under the control of the courts. The section regulating divorce is referred to as judicial divorce (*al-tafrīq al-qāza'y*). A clear differentiation is made between the terms *tafrīq*, which denotes divorce but directly translates to separation, and *ṭalāq*, or unilateral repudiation. Their use at particular instances to regulate divorce proceedings highlights a subtle gendered differentiation of the rights accorded to men and women. More explicitly, in instances where women's divorce rights are addressed, the term *tafrīq* is used, whereas the gender-neutral articles refer to a divorce as an end to the marriage, or *inha*. On the other hand, articles that refer to *ṭalāq* implicitly address the husband. *Khul'*, or a divorce initiated by the wife in return for remuneration provided to the husband, is not addressed at all.

Article 25a prohibits *ṭalāq* from “one party,” while 25b outlines that divorce (referred to as *ṭalāq*) may only be authorized by the court after all avenues for reconciliation have been fulfilled. The Ministry of Justice and *Awqaf* explicitly argues that by addressing a singular party it is highlighting that men no longer have the right of *ṭalāq* (1977:34). The declaration of *ṭalāq* can only be issued by the court. Thus, the law shifts the patriarchal power offered by *ṭalāq* to the court, and as such, the state.

The revocability and irrevocability of *ṭalāq* is also discussed at length through provisions on *al-ṭalāq al-raj'ī* (revocable *ṭalāq*) and the restrictions placed on triple *ṭalāq*. Every *ṭalāq*, up to a maximum of a series of three, is considered revocable (Article 27). The husband is able to

return to his wife during the *'idah* period, but only with governmental? permission and the wife's acceptance (Article 28). As per Article 29, reasons for judicial divorce are as follows:

1. If one spouse is incurably ill, the other had no prior knowledge before marriage, and as such cohabitation is considered impossible. They must attain an official medical report to support this claim.
2. If one is absent for a duration that exceeds three consecutive years.
3. If one is unable to maintain the other.
4. If it is proven that one has harmed (*ḍarār*) the other.
5. If there is intense marital discord to the degree that continuation in marital life becomes impossible, and reconciliation is unsuccessful.
6. A wife has the right to request a judicial divorce if her husband has married another.

Several elements are of note in these provisions. First, there is no gendered differentiation except in the issue of polygyny. Second, harm (*ḍarār*) is not explicitly defined, leaving it up to the interpretation and discretion of the judge. Third, reconciliation is considered paramount, and all attempts are made to ensure that a divorce is averted. These elements highlight an attempt at establishing parity in the marital relationship, and in the process of its dissolution. However, it asserts the state's attempt at ensuring that divorces are avoided, on par with the attempt at constructing a "cohesive family."

With regards to the economics of divorce, if the court finds that the husband is to blame for the marital discord, and the wife will be left in a life of poverty and destitution, the alimony

she is entitled to a year's worth of maintenance (Article 30a). On the other hand, if the wife is found to be *mūta 'nitah*, which can be understood as obstinate, then the husband is entitled to an amount that does not exceed her dowry (Article 30b). What is particularly interesting are the discourses that are utilized in defining and describing discord in both provisions. While a man is only held to blame for marital discord, a woman is also charged with obstinacy. A woman's stubbornness and unyieldingness, further associated with marital discord, is read in this instance as reason enough for her to owe her dowry to her husband. While the law does away with the issue of obedience (*ta'ah*), the obstinacy maintains a patriarchal hierarchy within the marital relationship.

With regards to the *'idah*, the compulsory waiting period after a divorce, the normative Shafi'i durations were stipulated. Non-pregnant women were required to observe the *'idah* for 90 days (Article 31), a widow for 4 months and 10 days (Article 32), and a pregnant woman for the entire duration of her pregnancy or a miscarriage (Article 33). The *'idah* is not required if the marriage was not consummated. As opposed to the other stipulations in the law, the issue of *'idah* remained true to neo-traditionalist family laws in the Middle East and North Africa. It was reasoned to be a protective measure against the possibility of confusion in parentage and filiation and to offer the spouses a chance to reconsider their divorce. The questions of maintenance and alimony are not addressed at all in the *'idah* sections of the law.

These provisions highlight that while the Family Law was proclaimed as the heart of "women's emancipation", it still contained important gender differences. By transferring the power of verbal and unilateral repudiation accorded to the husband to the court, women were still placed in a legal position that was subordinate to their husbands. Control over the marriage tie

remained located under a patriarchal entity. Moreover, the chosen discourses surrounding dissolution of marriage highlights a biological and essentialist perspective that views the woman's infertility and obstinacy as reason enough for divorce. These discourses further ground the nation-state's prioritization of reproductivity as a central role and action for women to undertake in order to ensure the ideal of a "cohesive family" and propagate the nation-state.

4.6 Conclusion

This chapter has argued that the Southern Yemeni woman was produced as a legal subject that would uphold the productive and reproductive demands of the socialist nation-state. The Family Law of 1974 operated as a technology that allowed the nation-state to articulate its rhetoric of "women's emancipation" in a move towards modernity. The southern state produced a complex ideal figure, expressed as the "new Yemeni woman" that would fulfill her dual duties as a reproductive subject and as a productive member of the society and nation-state at large. In that regard, women became "recipients of state policy" (Al-Ali, 2004) and folded into the nationalist narrative advanced by the state.

In utilizing a critical discourse analysis at the levels of translation, hermeneutics and transliteration, this section has highlighted that patriarchal iterations of productivity and reproductivity undergirded the discourses and subject formations of the PDRY family law. While past studies have outlined the production of women as "mothers" and "workers" within the family law, I have critically traced how the legal regulation of the family defined women as legal subjects. Examining the establishment of women as social actors within the confines of the family, I argue that the use of family law to transform the family into an arm of the state locks

women in an altered state of gender inequity and a Marxist nationalist driven patriarchal structure.

The regulation of the woman's sexuality, in outlining and defining her most intimate relations, is undertaken through state demanded reproductive duties that are articulated as personal responsibilities. Concurrently, the family is constructed as a juridical object that is regulated as a self-contained entity that adheres to the structure of the modern nuclear family. By "institutionalizing new family structures" (Moors, 1999:150) the law produces the ideal family as a juridical object that maintains patriarchal power relations, a process that is central to the nation and state building projects. The rhetoric of "women's emancipation" was ascribed onto the woman as a legal subject in both regulatory and emancipatory ways, that nevertheless articulated a figure that was trapped between the state's aims and her own self-determination.

Chapter 5: Republic of Yemen: Personal Status Law of 1992 and its Later Amendments

At an all-women's roundtable following the promulgation of the 1992 Personal Status Law at the Hadramāwt Welfare Society, an intense debate ensued regarding the limitations of women's rights under the new law. A veiled woman defending the law shouted at one of the members of Parliament, "You're a communist and I speak for God" (Carapico, 1998:162). Thus, Islam was placed at the center of tensions between the North and South in determining family law. In her analysis of the shifts in family law in Yemen, Anna Wurth argues that the 1992 Personal Status Law for the unified Republic of Yemen "imposes state control where it serves men and fails to impose it where it might serve women" (Wurth, 2003: 21).

The unified legal system disposed of the socialist and secular ideologies of the South, while privileging the laws and customs of the North. Concurrently, the constitution established stated equality between men and women, but discarded many of the interventions the PDRY had made on gender relations. The new family law, referred to as the Personal Status Code, was promulgated by Presidential Decree on March 1992. Scholars view the law as a reproduction of 1979 Northern Personal Status Law with only slight changes that built from suggestions in the Unified Model Arab Personal Status Law put forward by the League of Arab States (Molyneux, 1995; Wurth, 2003).

The drafting process was undertaken by two committees: The Constitutional Committee and the Shari'a Committee under the jurisdiction of the unified Parliament. Representatives from the North were split into two camps, the secularists who wanted elements of both the PDRY Family Law and the ROY Personal Status Code, and the staunch supporters of Shari'a who

wanted to completely do away with the PDRY Family Law of 1974. In the process of negotiation, delegates from the past Southern regime, now the Yemeni Socialist Party (YSP) made little attempts to defend the PDRY Family Law (Wurth, 2003). In fact, they conceded any substantial say in the family law for more control over the labour laws. At this point, the YSP was witnessing a severe decline, and were consistently being thwarted by the Northern regime in negotiation procedures across all fronts.

The decline of the Yemeni Socialist Party was only one aspect of the larger political process underway in the transitory period. The emergence and growing empowerment of the Islamist party, Islah, positioned the former Yemeni Arab Republic (YAR) government, now organized as the General People's Congress (GPC), in a complex alliance with the YSP against orthodox Islamist reformism. Molyneux maintains that Islah was especially attentive to women's social positioning, taking a largely neo-traditionalist stance on gender relations (1995). Much of their opposition to the constitution and family law was premised on their perceived "unIslamic" nature (Molyneux, 1995:426). For example, they questioned the premise of equal social roles for men and women, and posited that equality could be achieved if women fulfilled their role in the home (Molyneux, 1995). In her study of the activism of Islamist women in Yemen, Stacey Yadav, argues that Islamists (not solely Islah) mobilized to institutionally and discursively alter social reform policies and laws after the 1994 civil war, at a point when the socialist party was at its lowest (Yadav, 2010). Concurrently, tensions between the socialists and Islamists percolated into the Women's Union, as both views clashed in their expectations for social reform (Al-Ashtal, 2012). Throughout and following the 1994 civil war, Southern women became subject to gendered anti-communist propaganda and violence. A common narrative was the framing of

Southern women as ‘sexually promiscuous,’ largely as a result of the rights they had attained under the 1974 family law and their redefined role as workers (Al-Ashtal, 2012:221).

Maxine Molyneux notes that immediately upon unification, significant shifts in gender relations with regards to marriage and divorce occurred. As she relays, men in the South more readily entered polygynous marriages and sought Northern courts to expedite divorces (1995). Upon the promulgation of the Personal Status Code in 1992, Southerners were in an uproar. Thousands went on demonstrations in Aden arguing that the new family law stripped all socialist protections that were accorded to women under the PDRY. The defeat of the South in the 1994 civil war further rendered any possible socialist intervention implausible, as all recommendations put forward by the socialist government pre-1992 were repealed. This loss is revealed in the amendment of the constitution in 1999, rewriting it so that it mirrored the Northern constitution pre-unification, and the amendment of the 1992 Personal Status Code in 1998 and 1999 abolishing the minimum age of marriage, and rendering polygyny unenforceable.

5.1 The Shari’a Postulate

Upon the drafting of the constitution, the question of Shari’a as a source of legislation became a source of intense debate. The 1991 constitution positions Shari’a as the “main source” (*al-masdar al-ra’isi*) of legislation, which provides legislative leeway. However, Islah pressed heavily for it to become the “sole source” of legislation (*al-masdar al-wahid*), which he saw come to reality in the amendment of the constitution in 1999. At this point, the YSP was all but obliterated, and a very small number of parliamentary representatives were opposed to this shift (Molyneux, 1995). This adjustment is substantial as it limits the legal system to solely

formulating legislation that were in line with Shari'a, defined narrowly by the state, which monopolized authority for interpreting the Shari'a. Furthermore, this move was a significant departure from the hybridized and somewhat secularized legal system of the former PDRY (Yadav, 2010:7).

The Personal Status Code of 1992 directs the courts to the “strongest proofs in the Islamic Shari'a” for issues that are not specifically stipulated or addressed in the code (Article 349). However, Welchman highlights that the code provides no additional direction beyond this postulate (2007). At a basic level, this emphasizes the state's commitment to a non-sectarian legal code that does not make a clear reference to a specific jurisprudential school. Yet at a deeper level, this silence leaves the possibilities for interpretation open and up to the judge's discretion. In her examination of court practices in Sana'a, Anna Wurth perceived that judges often relied on Article 349 to extend certain protections to women that were not provided for by the 1992 code (2003). For example, following the repeal of Article 5 which established a minimum age of marriage, judges evoked the Shari'a postulate to allow for the dissolution of marriages on the basis that puberty had not been attained. Thus, while the legal code itself did not recognize the woman's legal capacity or adequately address questions of consent, the court could intervene to mitigate that. As such, while codification does bring about a rigidity to Islamic family law, this example supports Shahada's argument that court practices reveal the interpretive and fluid potential of Shari'a based family law. Regardless, by leaving these issues up to the judge's discretion, women are beholden to the patriarchal authority that structures the courts.

5.2 Marriage and its Stipulations

Article 6, which defines “marriage” and its related elements, is the most explicit in its establishment of women’s position in the nation-state. It states that marriage is a union between two spouses with a valid contract (*‘aqd shari’i*) wherein the woman becomes legally permissible and sexually licit to her husband. It explicitly holds two purposes. The first is *tahseen al-furūj*, which is derived from Qur’anic reference to the guarding or preservation of ‘sexual licitness’ or ‘modesty.’ These are merely interpretations of the verse, but regardless highlight the state’s aim at maintaining a modicum of control on sexual licitness in its subjects in their particular interpretations of the Qur’anic verse. The second purpose is the establishment of a family on the basis of a *al’eshra al-ḥesna*, or good companionship. The structuring of the family on the foundations of *al’eshra al-ḥesna* is elaborated in an entire section that defines the power relations between a man and a woman as husband and wife. The boundaries of action outlined in this section are underlined by the dominance of the husband as the head of the family, thus institutionalizing patriarchal power structures within intimate and familial relations.

5.2.1 The Marriage Contract

The Personal Status Law of 1992 contains three central elements in the marriage contract: offer (*ijab*), acceptance (*qūbul*), and the dowry (*mahr*). The marriage contract renders sexual relations licit, in exchange for the bride’s placement under the *qiwāmah* of her husband. This exchange produces legal rights and obligations for each subject that are differentiated by gender. The law does not require the physical presence of the bride when concluding the marriage contract, but does require her consent. However, while a contract that is based on coercion

(*ikrāh*) is regarded as invalid (Article 10), the inequitable manner through which consent is defined for the bride – one that is mitigated by guardianship, virginity, and inadequate enforcements - undermines these requirements.

Additional articles also outline restrictions on the marriage of those who are deemed “insane” (*majnūn*) or “mentally impaired” (*ma'tūh*) (Article 11), who are not allowed to contract a marriage without judicial consent and conditions. These individuals are considered legally incapable, and as such their consent is not addressed. This follows the normative Shafi'i position that the guardian is permitted to contract a marriage for his “insane” ward regardless of her majority status (El Alami, 1991).

With regards to witnessing, the law requires two male witnesses, or a male and two female witnesses (Article 9). Provisions on witnessing highlight that the Yemeni legal system does not consider women to be full legal persons. Outside of the Personal Status Law, the No. 2 law on Evidence of 1992 stipulates that a woman's testimony “is not accepted in cases of adultery and retribution or in cases where punishment is a possible penalty” (Hussein, 2011:25). In both cases, women's legal personhood is considered to be incomplete and insufficient for testimony.

5.2.2 Polygyny

A significant shift from the PDRY Family Law of 1974 is the authorization of polygyny. A man is permitted to marry up to four wives provided that certain conditions are met. First, he is expected to have the ability to treat all his wives equitably (Article 12/1). Second, he must have the capability of maintaining all his wives (12/2). Third, that he notifies the woman that is

married to another (Article 12/3). The consent of his wife (or wives) is not required for his marriage to another to be valid. As Wurth highlights, the law gives the husband and guardian full discretion over their course of action in the issue of polygyny and does not provide any methods of enforcement to ensure that any of these conditions are met (2003).

5.2.3 Minimum Marriage Age

The 1992 Personal Status Law set a minimum marriage age at 15 years. This provision was outlined in the section on guardianship in the law and was not stipulated as a condition for the marriage contract. It contained two key conditions. First, the guardian can only contract the marriage with the girl's consent, but the marriage cannot be considered final until she is capable of having sexual intercourse. This holds even if she is older than 15 years of age. Second, the marriage of a minor is not considered permissible unless it is deemed of "clear benefit" (Personal Status Law, Art. 15 amend. 1992). Amendments made to the Personal Status Law in 1999, struck out the specific reference to age in Article 15. *Bulūgh*, which is normatively translated to puberty by the Yemeni courts, is established as the legislated "age" through which a marriage may be contracted. The law kept the requirement of "clear benefit" in the permissibility of the marriage of minors (Personal Status Law, Art. 15, amend. 1999). The amendment was heavily supported by the Islah, who argued that identifying a particular marriage age was at odds with Shari'a (Bang, 2016).

One of the primary contentions the minimum marriage age issue brings to the fore is the lack of a clear definition of a "child" in the Yemeni legal system. The Personal Status Law establishes *bulūgh* as the only indicator, and the legal system identifies *rushd*, or maturity, as 15

years of age, without exception. The 1999 amendment provides no additional enforcements to safeguard against the marriage of minors, and as such some judges relied on the article allowing for the “strongest proofs in the Islamic Shari’a” to resolve unstipulated issues (Wurth, 2003). This was specifically used to allow for the dissolution of marriages on the basis of *khiyar al-bulūgh*, or option of puberty. *Khiyar al-bulūgh* allows a young girl to request that the marriage be annulled when she comes of age. It was made permissible in the 1992 law, but repealed in the later amendments. Wurth notes in her examination of Yemeni courts that judges actively utilized it by reasoning that it was in adherence with the Shari’a.

5.3 Legal Capacity and Guardianship

5.3.1 Consent

The question of consent is heavily embroiled with issues of guardianship in the Personal Status Law. In the contracting of a marriage, the woman’s consent is dependent on her virginity (Article 23). For a virgin (*bīkr*), her consent is her silence. On the other hand, a non-virgin (*thayīb*) is required to verbally declare her acceptance. The man’s consent is not addressed, except for the provision that prohibits coercion of both genders. It is assumed that because the marriage offer comes from him, his consent is made known. In all cases, the power to control the marital tie lies with him, and that includes the power to establish the tie in the first place.

The implications of silence bring to the fore questions about the manner through which silence is read as consent, which speaks to the woman’s legal capacity as one that is restricted by virtue of her gender. It entails that refusal be verbal, and does not take into consideration the full context and power relations that structure marriage contracts. In addition, we must keep in mind

that regulations of minimum marriage age were repealed, and as such this law demands that a child be able to voice her refusal. The legal subject produced is one that can assumedly voice her discontent and refusal, irrespective of the fact that she is not considered of full legal capacity due to guardianship.

5.3.2 Al'eshra al-ḥesna, Qiwāmah, and Wilayah

The issues of consent and women's legal subjectivity are tightly entwined with questions of power, which are most explicitly outlined in structuring of guardianship through *qiwāmah* and *wilayah*. *Wilayah* entails the “right and duty of male family members to exercise guardianship over female members” (Mir-Hosseini et al, 2015:31). In the Personal Status Law, a woman may not contract a marriage autonomously, but must do it through her *walī* (guardian) and with his presence and permission. The chain of guardians is outlined in Article 16, moving from father, to the son, brother, paternal uncles, and so on. The judge may also act as a proxy guardian in the absence of one, or when the guardian is found to be rejecting his ward's marriage unreasonably. In comparison to *wakalah* or *nīyaba*, which operate as legal representations that are voluntarily chosen, *wilāyah* is considered a legal requirement. By giving the *walī* the ability to act on behalf of his ward, the law constitutes women as lacking full legal capacity to represent themselves and act autonomously.

On the other hand, *qiwāmah* as it is framed and understood in the Personal Status Law, represents the husband's authority over the wife. The “*qiwāmah* postulate,” as Welchman refers to it (2015), is at the core of the section of *al'eshra al-ḥesna*, which denotes ‘good companionship’ (Section 3). The *al'eshra al-ḥesna* section outlines the elements that constitute

this authority as the rights and duties of the husband and wife in relation to one another. The stipulations of *qiwāmah* are outlined as lists, which Abu-Odeh highlights are a “modern innovation” as a result of the codification processes and the colonial encounter (2005)

Qiwāmah is grounded in three central elements: *tamkīn*, *ta'ah*, and *nafaqah*. *Tamkīn* denotes the wife's sexual availability to her husband (Article 40.2) It is outlined as a man's right and a woman's duty. *Ta'ah* (obedience) is the wife's legal duty and requirement to obey her husband, undertake work in the matrimonial home, and not leave the home without his permission (Article 40/3). Both *tamkīn* and *ta'ah* are stipulated as a wife's legal duty in exchange for the *nafaqah* (maintenance). The *nafaqah* is the husband's legal duty to maintain his wife and includes food, shelter, and clothing. However, while the husband is required to maintain her, she asserts full economic autonomy over her finances and property.

The Personal Status Law stands in stark contrast to the PDRY Family Law, which worked to eliminate *qiwāmah* and *wilayah*. At their core, both *qiwāmah* and *wilayah* as they are understood in the Personal Status Law, substantially structure the patriarchal power relations that play out in the marital relationship as it is legally constructed, but also seep outwards to define the positioning of women in the modern patriarchal nation-state. Abu-Odeh asserts that *tamkīn* in exchange for *nafaqah* “commodifies sex during marriage.” Indeed, as Mir-Hosseini highlights with regards to classical *fiqh*, the purpose of the marriage contract was to render sex licit (2013:10). As such, the structure of *qiwāmah* regulates a woman's sexuality via her ability to her husband. Moors describes the relationship of *tamkīn*, *ta'ah*, and *nafaqah* to constitute *qiwāmah* as the “gender contract.”

Guardianship is the foundational structure for the inequitable structuring of the marriage contract, and thus establishes the woman as a lacking legal subject. It does this most centrally by regulating the woman's consent, movement, and sexuality. Despite stipulating that the marriage contract must be grounded on mutual consent (Article 23), the law makes it clear that consent is not entirely mutual by virtue of the *walī* (guardianship) requirement.

In outlining a patriarchal understanding of *qiwāmah*, along with sexual availability and obedience as central elements for *al'eshra al-ḥesna* (good companionship), the law establishes a marital relationship and family structure that is inherently inequitable. The boundaries imposed on the woman's ability to act - in the very literal act of moving in space, her confinement to the home space, and the regulation of her sexuality as one that is beholden to the husband's desires and maintenance— highlight a subject with a limited legal capacity.

5.4 Divorce

5.4.1 Ṭalāq and Khul'

Unlike the restrictions placed on *ṭalāq* (unilateral repudiation) in the PDRY, the Personal Status Law of 1992 made extra-judicial *ṭalāq* fully permissible. *Ṭalāq* is stipulated as a right accorded to the husband to “unbind the union between spouses” (Article 58). The husband is accorded three *ṭalāqs*, and may declare them without reason (Article 59). However, the *ṭalāqs* cannot occur in direct succession, and in that regard triple *ṭalāq*, which would render the divorce irrevocable, was prohibited (Article 63). A revocable *ṭalāq* does not terminate the marriage immediately, and the husband may remarry his divorced wife during the *'idda* period. However, the divorce is considered irrevocable if the husband has completed three *ṭalāqs* (Article 69). In

that event, the woman is required to marry and consummate with another before being able to remarry. All *ṭalāqs* are required to be registered in court, otherwise they are not admissible. A stipulation in the 1992 Personal Status Law gave the court the power to evaluate the husband's reasoning for *ṭalāq* to determine whether he had misused it. In that event, the wife would receive from one to three years of maintenance. This stipulation was repealed in the 1998 amendment, eliminating any evaluations of reasoning *ṭalāq*.

The rights that are accorded to the husband through *ṭalāq* stand in stark contrast to what is offered to the wife. The woman only has access to *khul'*, which is a court approved separation between spouses in return for compensation from the wife. In most cases, she is required to return her dowry to the husband. *Khul'* can only be completed by the mutual acceptance of both spouses, as opposed to *ṭalāq* which does not require or even consider the woman's acceptance and choice. Moreover, *khul'* is considered an irrevocable separation, and to that end, they cannot remarry unless the wife marries and consummates with another first.

The Personal Status Law permits *faskh*, or judicial divorce, under very strict regulations and conditions. These conditions are limited to medical "faults" surrounding issues of insanity, leprosy, atresia, castration, and so on (Article, 48), and on the grounds of the spouses undertaking of prohibited, *haram*, actions under Shari'a (Article 46). These prohibitions are not outlined, and as such are left under the discretion of the judge.

5.4.2 'Idah (Waiting period)

The *'idah* is the woman's waiting period after a *ṭalāq* or *khul'* in order to ensure that the she is not pregnant. The durations for *'idah* are very similar to the PDRY Family Law of 1974,

both drawing from majority *Shafi'ī* jurisprudential opinions. However, the Personal Status Law outlines most of the durations in terms of menstrual cycles as opposed to monthly time spans. The Personal Status Law only requires *'idah* if the marriage has been consummated, and this highlights its foundations in determining filiation. The *'idah* for a non-pregnant woman is 3 menstrual cycles, the duration of the pregnancy for a pregnant woman, and 4 months and 10 days for a widow. The law heavily delves into a biological language that attempts to determine the duration for irregular menstrual cycles.

In addition, there are specific stipulations that regulate the rights and duties of husband and wife during the *'idah* period, depending on revocability. For a revocable *ṭalāq*, the man must maintain the woman, they may inherit from one another, and remarry. However, she is not permitted to leave the marital home or work without his permission, which may result in her losing maintenance (Article 152). This keeps the stipulations of obedience in place. The *'idah* for an irrevocable *ṭalāq* or *khul'* does not allow for remarriage or inheritance, and the man is not required to maintain the woman. Free of his financial control, the woman is allowed to move freely without restriction.

The restrictions that are placed on the woman during *'idah* are reasoned as largely biological, and place the onus on the woman and her sexuality. The question is one of paternity not maternity, and as such the stringent regulations place the woman's sexuality under the authority and gaze of the husband and the courts (Tucker, 2008). Tucker contends that the regulations of the *'idah* and the woman's body extended "a husband's control of sexuality beyond the period of marriage" (Tucker, 2008:103).

5.4.3 The Politics of Divorce

The tensions in power relations that *ṭalāq* brings to the fore are deeply rooted in what Kecia Ali views as a the “legal structure of marriage as a form of *milk*, ownership or control” (2006:36). *Ṭalāq* emphasizes the husband’s full authority over the marriage tie, which offers him the ability to end the marriage without reason. The inequities that emerge from *ṭalāq* are further grounded in financial control, via the monopolization of maintenance. Drawing from her analysis of marriage in early Islamic jurisprudence, Ali highlights that the regulations of divorce demonstrate the jurists’ conceptualization of the marriage contract as extending a husband’s “ownership or control (*milk*) over the wife and marriage tie” (Ali, 2010:162). His unilateral ability to dissolve that tie is an extension of the unequitable foundations of the marital contract, and “marriage as a whole system” (Ali, 2006:37).

5.5 Conclusion

During the debates surrounding the draft of the 1992 Personal Status Law, it became increasingly clear that the YSP was going to give up family law in exchange for other legislations such as labour laws. Thus, women’s rights were bartered publicly in political negotiations in the formation of the unified nation-state. The view of most Northern politicians was that the PDRY Family Law of 1974 was too secularized and not in accordance with Shari’a, as such it could not be used in the establishment of a new family law. Borrowing from the law would stand in contradiction to a nation-state that centralized the Shari’a as its core source of legislation, and one that was doing away with the socialist form of governance of the former PDRY state.

To resist these moves, Southern activists took to studying the Qur'an and Sunna (prophetic example) in order to highlight the compatibility of the 1974 family law with Shari'a (Dahlgren, 2013). It is clear from my analysis that the law was not in fact incompatible, as many of its provisions were heavily grounded in normative Shafi'i fiqh. Rather, it engaged with the Islamic legal tradition in a transformative manner. Regardless, the Personal Status Law of 1992 passed and was later amended to reflect even more stringent restrictions on Yemeni women.

These contentions highlight the tensions that emerge as a newly unified nation-state attempts to very literally draft a vision of itself. In this regard, different actors competed for an articulation of the nation-state and its subjects that aligns with their interests. This chapter has argued that women's entanglement in this process is especially acute in the provisions that place her within a patriarchal familial and societal structures that are undergirded by the legal postulates of guardianship and control over the marriage tie. While her ability to control her finances elaborates on her capacity to act, the structure of marriage under the Personal Status Law restricts her legal capacity. The law establishes a marital relationship that is inherently inequitable, thus marking a significant shift from the articulations of the woman as a legal subject in the PDRY whereby attempts were made to situate her as equally legally capable. The establishment of a family on the basis of a *al'eshra al-ḥesna*, which is constructed in an entirely patriarchal manner, demonstrates the type of family that the unified Yemeni state is attempting to produce and regulate. Unlike the PDRY Family Law, the Personal Status Law was not concerned with the woman as a productive member of the mode of production, but rather centered on her sexual availability and reproductive capacities to articulate her as a legal subject.

Chapter 6: Conclusion

Processes of nation-state formation are often violent. The developments of legal frameworks that place ‘women’ under the biopolitical regulation of the state work in tandem with the geopolitical violence that renders certain bodies as indispensable. The violence of the 1994 civil war resulted in the disintegration of the political power of the South Yemeni elite, but it also shifted people’s understandings of their place in the unified Yemeni nation-state. This is underlined by reevaluations of the Southern woman of her place in a nation-state that erased all vestiges of “women’s emancipation” and “social protection” from its nationalist narratives.

A key component of my argument has been that the family law is deployed as a tactic in order to produce and regulate a legible legal subject. Both family laws were mobilized as key mechanisms for social intervention. I have attempted to trace the production of the woman as legal subject in the family law as a process of delineating boundaries of action and defining the woman’s place and role in the nation-state. In the case of the PDRY, this is demonstrated through the construction of the woman as a “mother” with reproductive and productive duties, and the establishment of the nuclear family as a self-contained entity that stands as the “cornerstone” of society. By producing and rooting new family structures, the PDRY demonstrated its aims at utilizing the family as a key technology for social intervention. I argued that the PDRY’s use of family law locked women into an altered state of gender inequity marked by its post-colonial and Marxist driven nationalism. On the other hand, the Personal Status Law in the unified Yemen produced the woman as legal subject that is defined and restricted by the institution of guardianship, and is thus beholden to the male head of the family and the patriarchal nation-state. This legal subject is lacking legal capacity to represent herself, to assert

autonomy over her own sexuality, to move, work, and be a self-determining actor. The discourse of *al'eshra al-ḥesna* further defines a woman's place in the marital and familial structure, and within the nation-state at large. I read *al'eshra al-ḥesna* as a central discourse in the nationalist narrative that is constructed by the Yemeni state, whereby the social and political positioning of men and women are clearly inequitably defined. However, despite the fact the PDRY Family Law attempted to regulate the family in a manner that at times produced patriarchal boundaries on women, it highlights that the legal reform of Islamic family law can be transformative while still rooting itself in the Islamic legal tradition.

As I write, Yemen is in a moment of rupture. The 2011 revolution that led to the ouster of president Ali Abdullah Saleh hurled Yemen into another process of nation-state reconfiguration. The instatement of Abd Rabou Mansour Hadi as President and the establishment of the National Dialogue Conference in 2013 brought to the fore questions of the precarious state of Yemeni unity. The southern Hiraak movement has grown in strength, leading demands for southern succession and calling for justice regarding the appropriation of southern land and resources by the Saleh regime. This has devolved into the establishment of the Southern Transitional Council, which stands in opposition to Hadi's regime and the Houthi-Saleh coalition. These fractures in Yemen's political sphere continue to draw from the unaddressed conflicts brought about by the unification process – namely the violence done onto the south during the 1994 civil war and Saleh's authoritarian rule for 33 years.

Family law reveals the tensions that are embedded in a fractured yet supposedly unified nation-state. It is used as a tool to lay claim on the Islamic legal tradition, to define it in a manner that serves state interests, and to shape a vision of an imagined nation-state. What persists

amongst the southerners is a nostalgia for a separate Southern socialist state, as they draw from the nationalist discourses of modernity, secularism, and the role of the Islamic legal tradition that persisted in the post-colonial PDRY. As such, my initial questions resurface, albeit in modified ways, to ask how the production of a legal subject in a state of conflict intersects with these processes of nation-state formation, and what ramifications this holds for women's place in a ruptured nation-state.

A key limitation in this thesis has been the lack of ethnographic analysis of the lived experiences and social practices of women as they navigate family law on the ground. While the law produces subjects, norms, and particular iterations of boundaries of action, its deployment in courts would reveal the contentious ways in which marriage and divorce are negotiated. Moreover, substantial work is required to examine the effects of the current war on the practice of family law. The emergence of the war economy, along with the crumbling of the Yemeni legal system and modes of governance may highlight a significant shift in the role of the courts and the people's access to them. Marriages and divorces do not cease because of war, and when the courts are not open and accessible, the nature of these negotiations accommodates that gap.

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Appendices

Appendix A People's Democratic Republic of Yemen, Family Law (1974)

Introduction:

In consideration of state on the role of the family in building the society and raising its children well, components that are protective of the nation have been created to give their souls for protection and building of the stated unified Democratic Yemen expressing the hopes and will of the working people.

In ensuring the state's interest of the importance of organizing family relations in keeping with the principles and goals of the nationalist democratic revolution and ending forever all past relations that governed Yemeni family relations and hampering its positive role in constructing a society.

Given that family relations in all its forms have not strived for a united order except for feudal relations that allowed for the most noble human relations to be sites of trading and has left the fate of the Yemeni woman hostage to those that pay the highest price.

Given that our people have denounced and deplored the continuation of the bad conditions for family relations it became necessary for the governing authority in the PDRY to dedicate the struggle of the Yemeni people in this law. The family law that for the first time organizes Yemeni family relations in a way that opens vast prospects for creative work and equitable revolutionary relations that pushes for more production, innovation, and creativity.

Article 1. This law is to be named the "The Family law"

A.1 Marriage

Section 1 – Marriage and engagement (*khuṭba*)

Article 2. Marriage is a contract (*‘aqd*) between a man and woman, equal in rights and duties. Its basis is understanding and mutual respect, and its purpose is to create a cohesive family on its basis as the cornerstone of society.

Article 3. The engagement (*khuṭba*) is an agreement preceding the contracting of the marriage, its objective is to provide the appropriate conditions for both parties interested in marrying in ensuring the establishment of a stable marital life. It is forbidden for the family of the girl who is wanted for engagement to accept the engagement separately without consulting her and attaining her acceptance.

Article 4. It is permissible during the duration of the engagement to exchange symbolic gifts that do not form part of the dowry (*mahr*) and it is not permissible to count it in the waiver of the engagement by either of the engaged. It is permissible for the authorized party to apply this law, to impose an upper limit on the price of the symbolic gift that is in accordance with the prevalent standard of living, and establish what does not count as a symbolic gift.

Section 2: Marriage contract and its requirements.

Article 5. The marriage is contracted with the acceptance of the two concerned parties, and in any phrase that fulfills the meaning of marriage or in writing, or understandable sign language.

Article 6. The contract is not in force except if:

6.1. Recorded before an authorized official

6.2. Contains the signature of both spouses on a certificate and record of marriage.

Article 7. It is required in the contracting of the marriage that the man has attained 18 years and the woman 16 years.

Article 8. The contract of the marriage is not admissible except with the presence of 2 mentally competent and *balgheen* (of age) individuals.

Article 9. It is not permissible to conduct a marriage that has a disparity in age that exceeds 20 years except if the woman has attained 35 years of age.

Article 10. It is permissible to have a proxy in the contracting of marriage.

Article 11.

11.1. It is not permissible to marry a second woman except with written permission from the district court and the court cannot give permission unless the following facts are proven:

- (a) Infertility of the wife with a medical report provided that the husband had no knowledge of it before the marriage.
- (b) Wife is sick with an incurable chronic or transmissible illness provided/evidenced in a medical report

11.2. The written permission of the court comes in force if it is not challenged before the higher court within a month of its issuance.

Section 3: Prohibited – Incest

Article 12. A person is prohibited from his ascendants and descendants, his father's descendants, and the highest degree of his grandparents' descendants.

Article 13. The man is prohibited from:

13.1. A wife of his ascendants or descendants and their spousal relations.

13.2. Ascendants of his spousal relations, and the descendants and ascendants of his wife.

Article 14.

14.1.

(a) What is forbidden from blood relatives and in-laws is similarly forbidden to milk siblings.

(b) For prohibitions to extend to milk siblings it is required that breastfeeding occurs in the first 2 years and that it amounts to 5 separate nurses and the infant is content with each of them.

14.2. There are no effects on consummation in the prohibitions in articles 12, 13, and 14 of this law.

Article 15. It is prohibited [for the husband] to marry another wife or a woman on *'idah* (waiting period) from him.

Section 4: The effects of an incorrect marriage

Article 16. The following effects are provided for a marriage whose conditions, as stipulated by this law, are not met.

16.1. Filiation of the children.

16.2. Prohibition of affinity (*musaharah*)

16.3. Separation *'Idah* (waiting period) upon separation or death.

Section 5: Marital home, maintenance, and dowry

Article 17. The spouses share the burden of the marital expenses and providing the demands of the marital home according to their ability.

Article 18. It is not permissible that the dowry amount, divided into advanced and delayed, exceed 100 dinars.

Article 19. It is forbidden to pay additional amounts for the marriage contrary to what is stated in articles (17) and (18) of this law.

Article 20. The husband and wife share the expenses of their shared life after marriage, and if one of them is unable to do so then the other is required to maintain and carry the burden of marital life.

Article 21. The court must consider the financial status of both sides when examining maintenance cases.

Article 22. The father and mother must share their children's expenses according to their ability, if it is impossible for one to do so, then it falls on the other to bear the expenses of his own.

Article 23. The maintenance for the children continues until the female marries or works, and the boy finishes his schooling or works or reaches the point of earning like his peers/those of similar status.

Article 24. It is required for the able child, be they male or female to maintain their poor or unemployed parents, if it is not apparent that they chose unemployment.

A.2 Legal separation

Article 25.

25.1. A unilateral *ṭalāq* (repudiation) is forbidden.

25.2. The *ṭalāq* is not certified and the waiting period does not begin until the attainment of permission from the competent district court. It is not permissible for the court to issue permission before referring the case to the People's Committee, following the failure of

reconciliation attempts between the spouses, and ensuring that there is reasonable cause for divorce and that the continuation of marital life and good companionship (*al'eshra al-ḥesna*) becomes impossible.

Article 26. It is not permissible for the court to permit more than one *ṭalāq* at a time.

Article 27. Every *ṭalāq* is revocable except the *ṭalāq* completing the third.

Article 28. A revocable *ṭalāq* does not terminate the marriage immediately. The husband has the right to return his wife during the *'idah* (waiting) period after attaining a certificate of revocability from the responsible official conditional on the wife's consent.

Article 29.

29.1. It is the right of either wife or husband to present a request to the court to terminate the marital relationship under the following circumstances:

- (a) If the other is sick with an incurable illness and it is impossible to have a marital relationship on the condition that this is supported with an official medical report provided that the requester did not have knowledge of it before the marriage.
- (b) If one of them is absent for a duration that exceeds 3 consecutive years. If the absentee returns during the *'idah* period than it is permissible to restore the marital union.
- (c) If the able person of them [the spouses] fails to maintain the incapable other, then the judge grants him a reasonable duration that does not exceed 3 months, after which if he is unable to maintain then the court separates them.
- (d) If it is proven that one has harmed the other or exacerbated discord between them whereby it is impossible to continue marital life and the court is unable to reconcile them.

29.2. It is the woman's right to request a court ordered separation if her husband has married another wife as provided in article (11) of this law.

Article 30.

30.1. if the court has found that the husband is responsible for the discord that resulted in the divorce and the wife would suffer poverty and destitution than it is permissible for the court to order reasonable compensation for the wife that doesn't exceed in every case a year's maintenance.

30.2. If it is found that the wife is the obstinate (*mūta 'nitah*) one and is the cause of the discord than the court is permitted to order an appropriate compensation for the husband that does not exceed, in all cases, the amount of the dowry.

A.3 Effect of the Termination of Marital Union.

Article 31. The *'idah* (waiting period) for the non-pregnant woman is 90 days.

Article 32. The *'idah* of one whose husband is deceased is 4 months and 10 days.

Article 33. The *'idah* for the pregnant continues through her pregnancy or a miscarriage.

Article 34. The *'idah* begins from the date of divorce, death, or court ordered separation.

Article 35. The *'idah* is not required before consummation except in death.

Article 36.

36.1. If the husband dies and the wife was in a *'idah* for a revocable divorce than she transfers to a death *'idah* and the duration that has passed is not counted.

36.2. If he dies and she is a *'idah* for an irrevocable divorce than a death *'idah* is not required.

She completes a divorce *'idah*.

A.4 Pregnancy and its Effects

Section 1: Filiation

First: Filiation from valid marriage

Filiation of the infant in the case of marriage:

Article 37. The least duration for pregnancy is 180 days and the most is 1 calendar year.

Article 38.

38.1. The filiation of the child to the husband in a valid marriage is proven under the following two conditions:

- (a) The minimum period for the duration of pregnancy has elapsed since the marriage was contracted.
- (b) There is no evidence showing that the spouses have had no physical contact for a period exceeding the duration of the pregnancy, such as one of them being in prison or living in a distant country.

38.2. if one of those conditions is refuted than the child's filiation to the husband is not proven, unless he admits or declares it.

The lineage of the infant after separation or death of husband:

Article 39. If the completion of the *'idah* has not been declared by the divorcee (female) or a husband that has predeceased her, the filiation of her child is proven if he is born within a year of the date of *ṭalāq* or death. It is not proven if the duration is longer than this except if the husband or his heirs claim him [the child].

Article 40. The filiation of a child of a divorcee and a husband that has predeceased her, who have declared the completion of the *'idah*, is established if the child was born less than 180 days from the time of declaration and less than a year from the time of *ṭalāq* or death.

Second: Filiation in an invalid marriage

Article 41.

41.1. If, in a marriage whose conditions are incomplete after consummation, a child is born 180 or more days after the date of consummation, then his filiation to the man is established.

41.2. If his birth is after desertion or separation, filiation is not established except if she [the woman] brings the child forward within a year of the date of desertion or separation.

Article 42. If a woman comes forward with a child after relations with a man, between the minimum duration of pregnancy and its maximum, then the child's filiation to this man is established.

Third: Determining filiation

Article 43. Establishing filiation, even in terminal illness, for the person with unknown descent is evidenced by the declarant if the age difference between them supports this filiation.

Article 44. Filiation to the mother or father is established if the declarant is in good faith with them and the age difference supports it.

Section 2: Custody

Article 45. For *ahliyya* [capacity] for custody the requirements are *bulūgh*, a sound mind, and the ability to care for a child and his person.

Article 46.

46.1. The boy remains until the age of 16 and girl until 15 under the custody of the mother even if she marries. It is permissible for the court in every occasion/case to decide against this if the entire capacity of the mother – or her husband in the case of her marriage – for custody in light of the facts of the case that is supported with a social investigation.

46.2. In all cases, the court must consider the interests of the child whose custody is sought.

Article 47. The right of custody is restored if the reason for its loss no longer applies.

Article 48. It is not permissible to travel with a child outside the Republic with whomever capacity for custody has been determined, except with permission from the court.

A.5 Final Provisions

Article 49.

49.1. Each person that has conducted, certified, or contributed in certifying or conducting any marriage contract contrary to the provisions of this law is punished with a fine that does not exceed 100 dinars or a prison sentence that does not exceed 2 years, or with both punishments concurrently.

49.2. Any person who breaches any provisions of this law is punished with a fine that does not exceed 100 Yemeni dinars or with jail for a duration that does not exceed a year, or with both punishments concurrently.

Article 50. The Minister of Justice and *Awqaf* issues the decisions that are applied and interpreted in the provisions of this law.

Article 51. Any article that contradicts the provisions of this law is nullified.

Article 52. The law is enforced from its issuance.

Article 53. This law is promulgated in the official news press.

Appendix B Selected Articles, Republic of Yemen, Personal Status Law (1992)

Article 5. This law shall be called (Personal Status Law).

B.1 Khutba and ‘Aqd

Section 1: Khutba

Article 2. The *khutba* (engagement) is the approaching of an interested party, or his guardian, to the woman’s guardian to ask for her marriage. It is prohibited to engage a Muslim to her Muslim brother except with permission, or it is left as with the case of the *‘idah*, except for the irrevocable *‘idah*.¹

Article 3. It is forbidden to engage an impeached (*muharama*) woman, permanently or temporarily.

Article 4.

4.1. The engaged parties may renounce the engagement.

4.2. If the renunciation is from the engaged woman, then she is required to restitute the gift or hand over its equivalent at the time of purchase. If the renunciation is from the engaged man, then it is not required to return the gift to him.

4.3. If the engagement ends with death, a reason of which no party is responsible, or an impediment to marriage, then none of the used gift must be returned.

Article 5. If harm is sustained in the renouncement, then the one responsible is charged with what the court deems necessary and estimated in compensation. ²

¹ Amended 1998 in law no.27

² Ibid.

Section 2: The Marriage Contract (*'aqd*)

Part 1 – Contracting the marriage: Its principles and requirements

Article 6. Marriage is the union of two spouses with a valid contract (*'aqd shar'ī*) by which a woman becomes legally permissible (*shar'īya*) to a man and its role is to maintain *alfurūj* and establish a family based on *ḥesn al 'eshra* (good companionship).³

Article 7. The following is required for the validity of the contract:⁴

7.1. That it is contracted in a single court

7.2. The offer of what is customarily understood as marriage made by the guardian of the female being contracted, a male, blood relative, or with his permission or from a legal representative (*wakīl*).

7.3. The acceptance of the marriage proposal before any objection by the groom, his legal guardian, or a representative (with his permission).

7.4. At the time of the contract, the bride and groom shall be identified by their first name, family name, or any identifying feature.

7.5. The *ijab* and *qubūl* (offer and acceptance) shall be final, uniform, abiding by the terms, and not subject to any time limit. Any condition that does not relate to a legislated purpose for either of the spouses or breaches the contract's requirements is revoked.

7.6. The spouses should be free from any of the marital impediments (*mawāni'*) mentioned in part three of this section.

Article 8. Elements for the contract to be complete:⁵

³ Ibid.

⁴ Ibid.

8.1. A bride and groom, as the reason of the contract, and *ijab* and *qubūl* (offer and acceptance). The contract must be conducted in speech or writing, or a letter from those absent from court proceedings. The contract is permissible from the deaf in sign language.

Article 9. The contract is concluded with the presence of two equitable Muslim witnesses, or a man and two women to hear the statements of *ijab* and *qubūl* (offer and acceptance) from the contractors in the court, or in writing or sign language. ⁶

Article 10. A contract based on coercion (*ikrāh*) of the bride or groom is invalid.

Article 11.

11.1. A *'aqd* cannot be contracted for the insane or mentally impaired, except by his/her guardian after permission from a judge.

11.2. The judge cannot allow the marriage of insane except with the satisfaction of the following terms:

- (a) Acceptance of other party for marriage after becoming acquainted with their condition.
- (b) That it is not an illness that can be passed on to the children.
- (c) That the marriage is for their benefit and not harm of others.

11.3. The two conditions stipulated in this article are confirmed by a report from the concerned parties.

Article 12. It is permissible for a man to have up to four wives upon the fulfillment of the following:⁷

12.1. The ability to be equitable, otherwise he may only marry one.

⁵ Amended 1998 in law no.27

⁶ Ibid.

⁷ Ibid.

12.2. That the husband has the ability to maintain them.

12.3. Informing the woman that he is married to another.

Article 13. If a non-Muslim enters Islam with his wives, approve their marriage except in that which Islam has forbidden.

Article 14. Whomever is responsible for the form of the contract, the husband, and the wife's guardian must register the marriage contract certificate to the competent jurisdiction in the appropriate registry within a month. One of the individuals mentioned in the certificate is sufficient representation for the rest...the record of the marriage contract must ensure the required information such as the age of marriage, the identity card numbers, and if known, the amount of the prepaid and deferred dowry (*mahr*).⁸

Part 2: Guardianship in marriage

Article 15. A guardian's marriage of his minor female ward is valid. The person whom she is contracted to in marriage may not consummate the marriage, nor is she to live with him, until she is ready for intercourse even if she is over fifteen years old. The contract of a minor is only valid if their interest is proven.⁹

Article 16. The guardian (*walī*) contracting the marriage must be the next of kin. The next of kin is determined in order: the father as the highest, then the son as lower, then the brother, then his sons, then the paternal uncle, then his sons, then the uncles of the father, then their sons, in this order. It is presented to whomever has relations to a father and mother, and there are several within one degree of relations, then the *wilaya* (guardianship) is to all of them. It is

⁸ Amended 1998 in law no. 27.

⁹ Amended 1999 in law no. 24.

valid for them to contract (*'aqd*) her [marriage] to whomever has antecedence, with her consent. It is invalid to contract [her marriage] by whomever is late, if they have contracted to more than one person at once. In that event, the contract is null and void, unless she consents to one of these contracts, thus invalidating the rest. ¹⁰

Article 17. The judge is the guardian for those without a guardian (*walī*). If a woman with unknown parentage claims that she has no guardian (*walī*) with no dispute, her claim is confirmed after the judge's consideration and affirmation of her oath in court. ¹¹

Article 18.

18.1. If the immediate guardian (*walī*) is contravening in religion/faith, crazy, or cannot be contacted, then the guardianship (*wilaya*) transfers to whomever follows him.

18.2. If the woman's guardian is preventing her marriage, the *qadi* shall order him to marry her. If he refuses, the *qadi* shall order the next closest guardian relation, and then the next after him to marry her. If there are no guardians or if they refuse, then the *qadi* shall marry her to an equal and a dowry of her peers.

18.3. The woman's say in what is stipulated in the previous two articles is not accepted without evidence. ¹²

Article 19. The guardian is considered to be preventing the marriage if he refuses to give a *balīgh* woman of a sound mind and willing to marry a man whose social standing is commensurate with her own to marriage; unless it is to wait to determine the status of the betrothed, but that cannot exceed the duration of month.

¹⁰ Amended 1998 in law no. 27.

¹¹ Ibid.

¹² Ibid.

Article 20. It is permissible that the contract be concluded by a proxy who pronounces the *ijab* and *qubūl* (offer and acceptance) in the court.

Article 21. The use of a proxy in marriage is permissible if the assigned guardian is in protracted and uninterrupted absence. It is permissible for the proxy to marry off she who he has guardianship (*wilaya*) over, but this must not be in breach of the stipulations in article 23 of this law.

Article 22. Whoever conducts a contract (*'aqd*) without guardianship (*wilayah*) or legal representation rights (*wikalah*) is a *fathūly*, and a marriage contracted by a *fathūly* is considered void.

Article 23. The woman's consent is required. The consent of a virgin [*bīkr*] is her silence and a non-virgin (*al-thaīb*) her verbal pronouncement.

Part 3: On the prohibitions of marriage

Article 24. An individual who has been breast fed is forbidden (*yuharam*) [for marriage], similarly to a biological offspring, and the *hirma* is proven by the suckling mother and her husband on the state of the nursing. The nursing is not guaranteed except by the child's suckling from the breast of the nurse mother in 2 years for 5 separate occasions.¹³

Article 25. It is forbidden for a man to marry someone who:

25.1. Contradicts religious sanctity (*almilah*) if she is not of the book.

25.2. An apostate – having left Islam.

25.3. If she is married to someone else.

¹³ Amended 1998 in law No. 27

25.4. A cursed woman (*al-mula'annah*) by he who has accursed her by he who has accused her.

25.5. Divorced from him 3 times before she consummates with another husband and completes her *'idah* from him.

25.6. The woman in a *'idah*, except from the person she is on a *'idah* from in a revocable divorce, or a minor separation in a *khul'* after the *'aqd*.

25.7. Prohibited woman on account of *haj* or *'omra* (pilgrimage)

- a. A hemophrodite (*khantha*).
- b. A missing woman before the lifting of the marriage.

Article 26. It is forbidden for a man to bring together two women, if one them is supposed by a male, he would have been prohibited to marry the other. ¹⁴

Article 27. the woman that is in a *'idah* from a revocable *ṭalāq* is considered to be under the guard (*'isma*) of her divorcee until her *'idah* is complete.

Article 28. The woman in in *'idah* from a revocable *ṭalāq* under the guard of her divorcee until her *'idah* is completed.

Article 29. It is forbidden for a Muslim woman to marry a non-Muslim man.

Section 3: On the rules of marriage

Part 1: General Rules

Article 30. Every marriage that has fulfilled the pillars and requirements stipulated in the last section is valid, even if it has not been followed by a consummation (*dukhūl*). It is regulated

¹⁴ Ibid.

by all effects of marriage stipulated in this law from the contracting, unless it is in suspension. Marriage is considered suspended before consent is attained, once it is attained, the effects of marriage from the moment of contracting resume. The suspension is valid for the contracting (*'aqd*) [of marriage] of the minor and crazy, at which point the effects become mandatory from the contracting (*'aqd*). They are able to dissolve (*faskh*) [the marriage] upon attainment of *bulūgh* or recovery.¹⁵

Article 31. The marriage whose pillars and requirements, as stipulated in the last part, are not fulfilled, is invalid, and it is not regulated by the effects of marriage before consummation. The two parties must be separated, if it has not already been done with their acceptance, unless the missing requirement in the contract (*'aqd*) is permissible in their sect, or it [the contract] was entered by the ignorant and it has not breached the considered consensus in both cases.¹⁶

Article 32. The following is stipulated for all invalid marriages following consummation:

- a. The requirement of dowry (*mahr*) like her peers, or the determined dowry, whichever is least.
- b. Verification of filiation in the manner specified by this law.
- c. Requirement of *'idah* following consenting separation, sentencing, or death.
- d. Prohibiting affinity
- e. Lapse of limit for whoever consummated with ignorance.

Part 2: Dowry (*Mahr*)

¹⁵ Amended 1998 in law No. 27

¹⁶ *Ibid.*

Article 33.

33.1. The *mahr* is required for the contracted bride, ...Where a *mahr* nuptial gift [mahr] is bestowed on a bride under a valid contract, ie. One entered into by mutual agreement, the contract shall specify what is excluded from the gift in terms of property and lawful benefits.

33.2. The *mahr* is the woman's property (*milk*), she may use it as she wishes, and no contrary conditions may be set. ¹⁷

Article 34. The *mahr* may be expedited or delayed, completely or partially. The guardian may delay the dowry, but she can claim it if the deferral was undertaken without her consent.

Article 35. The *mahr* is required with real consummation, and it is entitled with the death of one or both spouses, unless its before the consummation. ¹⁸

Article 36. Half the entitled and stated *mahr* is required upon *ṭalāq* (divorce) or *fashk* (dissolution), if it [divorce] is from both spouses together. If the divorce is from the wife's side, she is not entitled to any of the *mahr* and must return what she took from that which she is not entitled to.

Article 37. If the *mahr* is not stated or has been incorrectly stated, then the divorced women, before consummation, is entitled to pleasures like that of her peers, which does not exceed half the *mahr* of their peers. ¹⁹

Article 38. It is required for the wronged female a *mahr* that equals her peers.

Article 39. It is permissible for the woman to refrain from consummation until the *mahr* is stated and what is not delayed with her consent is delivered. If it is delayed for a known duration,

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Amended 1998 in law No. 27

then she does not have to refrain the occurrence of the delay with consideration of article 34 of this law.²⁰

Part 3: On *al'eshra al-ḥesna* (good companionship)

Article 40. The husband has the right of *tā'ah* (obedience) over his wife in what serves the interest of the family as follows:²¹

40.1. Moving with him to the marital home unless she has conditioned in the contract that she stays in her home or her family's home. He has to be allowed to live with her and consummate the marriage.

40.2. To be sexually available to him. (*tamkīn*)

40.3. She must obey his orders without obstinacy and perform her work in the conjugal home like her peers.

40.4. Not to leave the conjugal home except with his permission, a legitimate [*shar'ī*] excuse, or a similar customary reason that does not damage honor or her duty towards him.

Particularly, she may address her finances or her employment, which are agreed upon and does not conflict with the law. A legitimate reason also includes serving her senile parents if they do not have anyone to serve them but her.

Article 41. A husband's duties to his wife is as follows:

41.1. Preparing a conjugal home that suites both their status.

41.2. Maintenance and clothing commensurate with his and her peers.

²⁰ Ibid.

²¹ Ibid.

41.3. Treating her equitably to his other wives if he has more than 1 wife.

41.4. Not intervening in her personal finances and monetary affairs.

41.5. not harming her materially (*mādīyan*) or mentally (*ma'nawīan*).

Article 42. It is required that the conjugal home be separate, and that the wife feels secure of herself and her finance. In this consider the status of the husband, the dwellings of his peers, and the country's customs and not cause him harm. The husband must house his children from his wife and others. If they are *balghīn* and forbidden from women, their housing them is his responsibility and he is required to expand the house to accommodate them in a manner that does not harm the wife, if the contrary has not been conditioned upon the contracting of the marriage.²²

B.2 Marriage Dissolution and its Provisions

Section 2: *Talāq* and *khul'*

Part 1: *Ṭalāq* and its provisions

Article 58. *Ṭalāq* (unilateral repudiation) is a declaration that unbinds the union between spouses. It is either explicitly declared or implicitly reduced to intention. Divorce is concluded in Arabic or in another understandable language, in writing, or in sign language.²³

Article 59. The husband has three *talāq's* over his wife that are renewed upon her remarriage and consummation with another husband.

²² Amended 1998 in law No. 27

²³ *Ibid.*

Article 60. *Ṭalāq* takes place from a chosen and charged husband, or a representative on behalf of the wife. The judge may permit the guardian of an insane person to conduct the *talāq* on their behalf if there is a suitable reason and their interest has been verified.

Article 61. *Ṭalāq* uttered by a drunk who has lost his awareness and is unable to discern the evidence and condition of his statements and actions upon the occurrence of *ṭalāq* cannot be concluded.

Article 62. *Ṭalāq* is either *sunni* or *bid'ī*

62.1. *Sunni* - in the event of pregnancy or she's *taherah lam yegm3ha* her husband – (fuck her)

62.2. opens up for interpretive potential

Article 63. A *ṭalāq* cannot follow a *ṭalāq*, regardless if it is punctuated by a revocable remarriage in verbal or actual declaration “*malam tatakh'alāh raj'a qawliya aw raj'ya*”

Article 64. A *ṭalāq* associated with a number more or less becomes one *ṭalāq*

Article 65. A *ṭalāq* that is conditioned on doing or leaving something occurs upon the occurrence of the action that conditioned it. ²⁴

Article 66. A *ṭalāq* does not happen by “swearing right hand” “*yamīn al ṭalāq*” or the haram or necessitating *alkatara* if *ṭalāq* is not intended. ²⁵

Article 67. The *ṭalāq* becomes revocable if it occurs after her true consummation without monetary compensation or benefit and has not been integral to the three if the *'idah* is complete and a revision has not occurred. The *ṭalāq* then becomes irrevocable, minor and if the divorce has fulfilled integral the 3 than its majorly irrevocable.

²⁴ Ibid.

²⁵ Ibid.

Article 68. A revocable *ṭalāq* does not terminate the marriage and the husband may take back his divorced wife during the '*idah* (waiting period) and if the '*idah* is completed without review than the divorce becomes an irrevocable minor separation.

Article 69. An irrevocable *ṭalāq* immediately terminates the marriage. If it is a minor irrevocable separation, then it is not forbidden for the divorced to remarry his divorcee with a new '*aqd* (contract) and *mahr* (dowry) during the '*idah* (waiting) period in a *khul*' or after the '*idah* in a *ṭalāq*. If it is an irrevocable separation of a greater finality in that it completes 3 *ṭalāqs*, then the woman is forbidden to her divorcee. Only if she marries another who truly consummates with her, and completes her '*idah* from him is it permissible for the first to remarry her with a new '*aqd* and *mahr*.²⁶

Article 70. If the spouses have agreed on the divorce and have disagreed about it being revocable or irrevocable than the say is for the person that denies the irrevocability except if the husband is مقراً - that he has thrice divorced/*ṭalāq* her than the say is his and if the spouses disagree about the occurrence of the *ṭalāq* in a time gone by than the say is for he who rejects its occurrence.

Article 71. If a man divorces his wife and it becomes evident to the judge that the husband was arbitrary in divorcing her without reasonable cause, and that the wife will suffer poverty and destitution from this, then it is permissible for the judge to award her a compensation against her divorcer according to the case and the degree of arbitrariness, provided that this does not exceed the amount of one year's maintenance for her peers, besides maintenance for the

²⁶ Amended 1998 in law No. 27

'idah. The judge may require the payment to be made in lump sum or monthly instalments, as appropriate for the case. ²⁷

Part 2: *Khul'* and its provisions

Article 72. *Khul'* is a separation between spouses in return for compensation from wife or another party, even if anonymously, be it in monetary value or benefit. ²⁸

Article 73. The *khul'* is completed with the acceptance of the spouses or as evidenced by a contract or term. What is required for *ṭalāq* is required for *khul'*, except that the wife is responsible for the compensation.

Article 74. The *khul'* is considered a minor irrevocable separation unless it completes 3 separations, then it is an irrevocable separation of greater finality.

Article 75. The *khul'* is considered a *ṭalāq*, a minor irrevocable separation, if it has not completed 3 than it is a major irrevocable separation. The fulfilment of compensation is required in *khul'*.

Section 3: Remarriage, *'idah* (waiting period), and acquittance

Part 1: Remarriage

Article 75. Remarriage is concluded in verbal statement although jest or impermissible action in time or otherwise is permissible without the agreement/consent of the wife or her guardians.

Article 76. If remarriage occurs in verbal statement than the husband is required to attest to it and inform the wife of it. If she is insane than he must inform her guardian.

²⁷ Repealed 1999 in law No. 24.

²⁸ Amended 1998 in law No. 27.

Article 77. If the man and woman disagree after the completion of the *'idah* to attain remarriage than the say goes to repudiator.

Article 78. If the woman claims that her *'idah* is completed and no one disputes her, then she swears under oath unless it is presumed that she is lying.

Part 2: *'Idah*

Article 79. The *'idah* concerns *ṭalāq* (repudiation), annulment or death.

Article 80. *'Idah* for *ṭalāq* or annulment is not required except after consummation. For *ṭalāq* it begins from the date of its occurrence unless the woman is not dependent on the husband, then it begins from the date of her knowledge. In annulment, it begins from the date of its ruling. The *'idah* for death is required before and after consummation, and it begins from the date of the woman's knowledge of her husband's death. It is required to absolve consummation out of suspicion, and it begins from the date of the knowledge of the prohibited (*al-'ilm bilmani*).

Article 81. The time period of *'idah* (waiting period) of pregnancy in all cases upon delivery or miscarriage. The *'idah* of a woman with a deceased husband that is not pregnant is 4 months and 10 days.

Article 82. *'Idah* for *ṭalāq* for a non-pregnant woman is as follows:

82.1. For menstruation 3 cycles that do not include the one she was divorced during.

82.2. She who has an interrupted cycle waits for 3 months and if she does not menstruate than her *'idah* is complete. If her menstruation returns she recommences 3 cycles.

82.3. The *'idah* for a woman with extended blood secretion is 3 cycles, if she recalls her cycle schedule, otherwise it is three months. If her husband dies during the *'idah* from a revocable *ṭalāq*, then she must resume the *'idah* for death from the date of her knowledge of her husband's death.

Article 83. The woman who has requested *khul'* has a *'idah* for 1 menstrual cycle, if she menstruates. Otherwise, it is 3 months.

Article 84. *'Idah* for annulment is as follows:

84.1. The woman in an invalidly contracted marriage has a *'idah* for 1 menstrual cycle, if she menstruates. Otherwise, it is 3 months.

84.2. The rest of the annulled are required to complete the *'idah* of the divorced as stipulated in article (82).

Article 85. In the circumstances where the *'idah* is completed with a menstruation, then woman's is to swear by it, if she claims what is considered the norm. If she claims the non-normative its ordered at most for every month a menstruation.

Article 86. A *'idah* for a revocable *ṭalāq* has 8 stipulations:

86.1. Remarriage is possible.

86.2. Inheritance between spouses

86.3. Inadmissibility of going out/leaving without his permission.

86.4. Necessity for shelter

86.5. Necessity for maintenance

86.6. Prohibiting a blood relative of the married woman

86.7. Forbidding the marriage of 5

86.8. Resuming the *'idah* if he dies or remarries and then divorces in consideration of what is stipulated in the last provisions in Article 82.

Article 87. A *'idah* for an irrevocable *ṭalāq* has 6 stipulations

87.1. Not remarrying

87.2. Not inheriting.

87.3. Permissibility of leaving without permission

87.4. No necessity for shelter

87.5. No necessity for maintenance

87.6. The man may marry a close blood relative of the divorced woman.