**The American University in Cairo**

**School of Global Affairs and Public Policy**

**STRATEGIES FOR CHANGE:**
**Exploring the Impact of the 2004 Nationality Law Reform**
**Campaign on Gender Equality in Egypt**

**A Thesis Submitted to the**

**Department of Law**

**in partial fulfillment of the requirements for the degree of**
**Master of Arts in International Human Rights Law**

**By**

**Catherine E. MacKay**

**May 2012**

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# ACKNOWLEDGMENTS

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ABSTRACT

Prior to 2004 Egyptian law allowed for conferral of nationality by paternal descent only, with few exceptions. By barring Egyptian women from passing their nationality to their children, such legislation reflected a belief that women were in fact not full members of the national political community on an equal footing with men. Facing pressure from both internal and external sources, the Egyptian government reformed the law in 2004, thereby allowing women to confer their nationality on their children. Yet nearly eight years later many children eligible for Egyptian nationality have yet to acquire it, and Egyptian women are arguably no closer to being acknowledged as full and active citizens of their own country. This reality brings the success of this and other legal reform efforts addressing gender inequality into question.

This research project aims to explore the intersections of law, citizenship, gender-based discrimination and social reform movements as played out in the case of Egypt's 2004 nationality law reform. It is framed within an understanding of citizenship as the active participation of the individual in the public life of the community, and advances the notion that for women to be considered as citizens on an equal footing with men requires that they be afforded the opportunity, space and resources to become active participants. It further examines the role of law in social reform movements, questioning whether the "success" of reform movements is to be found in the writing of new law itself, in improved implementation and enforcement of law, in increased social mobilization, or in a combination thereof. Finally, through interviews with Egyptian pro-reform advocates, it analyzes the 2004 nationality law reform with a view to understanding the mixed success of legal reform movements attempting to combat deep-seated patterns of social discrimination, and explores the reformers' choice of tactics and the impact of these choices on the ultimate achievement of their broader goal of gender equality.

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# INTRODUCTION

While researching broadly on statelessness I came across a brief mention of a group of stateless individuals in Egypt about whom I had never before heard mention – the children of Egyptian women and foreign men who are for a variety of reasons unable to acquire their fathers' nationality. I found myself wondering: how could this possibly be? How could the children of Egyptians, born and raised in Egypt, be considered stateless in their own country? As I explored further what unraveled was a complicated story of the origins of citizenship as a masculine institution; the importation of Western conceptions of citizen and nation to the Middle East and North Africa, where they exist to this day in tension with indigenous notions of individual and group identity; and the continuing struggle of Egyptian women to be recognized as equal members of their own society. I was astonished to discover that many countries throughout the MENA region do not recognize women as sources of nationality. That in 2012 there is even a question surrounding the right of women to pass their nationality to their children seemed to me a stark indication of how far women have yet to go before they will be considered as men's equals.

Just months later I was sitting in a classroom a few floors above Cairo's famed Tahrir Square when my classmates and I heard a commotion coming from the street below. It was the 8th of March 2011, less than a month after the fall of President Hosni Mubarak, and a small group of women, inspired by the atmosphere of public protest and expression that had helped bring an end to Mubarak's 30-year regime, had gathered in the square to celebrate International Women's Day. They were there to remind Egypt and the world that, having succeeded alongside their male counterparts in what just a month prior

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would have seemed impossible, they had no intention of simply fading into the background by returning quietly to their homes. As they gathered in Tahrir with their signs and their chants – a common sight since the start of the uprising on January 25th – a group of men gathered and began heckling them. In the end they were literally chased from the square to the following refrain: "You are not Egyptians! […] Better for you to go home and feed your babies!"[1] Over the ensuing weeks I could not shake this scene from my head, of the visceral anger stirred up by the image of women banding together to claim a space in the public eye for themselves and their demands, and of the denial of their Egyptianness for daring to do so.

Thus it was that I decided to research the 2004 legal reform that granted Egyptian women the right to confer nationality. I wanted to better understand the dynamics that allowed for women to be recognized as sources of citizenship while simultaneously denying them the free public expression that lies at the heart of a citizen's rights. What I discovered caused me to question the efficacy of legislative reform efforts aimed at dislodging years of accumulated social and cultural conditioning regarding the place of women in society. While I could not help but admire the activists who devoted themselves to the campaign to amend Egypt's nationality law, I came away unconvinced by what seemed an incomplete attempt to shift the attitudes of the Egyptian public toward gender equality.

This research project is my attempt to find explanations for these unsettling discoveries. It aims to explore the intersections of law, citizenship, gender-based

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[1] Human Rights Watch, *Egypt: Ensure Women Equal Role in Elections, Reform*, March 28, 2011, http://www.hrw.org/news/2011/03/28/egypt-ensure-women-equal-role-elections-reform, last visited May 11, 2012.

discrimination and social reform movements as played out in the case of Egypt's 2004 nationality law reform. It is framed within an understanding of citizenship as the active participation of the individual in the public life of the community, and advances the notion that for women to be considered as citizens on an equal footing with men requires that they be afforded the opportunity, space and resources to become active participants. It further examines the role of law in social reform movements, questioning whether the "success" of reform movements is to be found in the writing of new law itself, in improved implementation and enforcement of law, in increased social mobilization, or in a combination thereof. Finally, through interviews with Egyptian activists, it analyzes the nationality law reform with a view to understanding the mixed success of legal reform movements attempting to combat deep-seated patterns of social discrimination, and explores the reformers' choice of tactics and the impact of these choices on the ultimate achievement of their broader goal of gender equality.

It is my belief that as Egyptians navigate the period of political, social and cultural unrest following the fall of the Mubarak regime, questions regarding the role of law in society, Egyptian cultural and political identity, and notions of what it means to be a citizen of a "new" Egypt, are of vital importance. This paper is an attempt to grapple with these questions.

**A Brief Overview**

Nationality is internationally accepted as a fundamental human right,[2] and is enshrined as

such in a variety of international and regional legal instruments.[3] Yet women the world

over routinely face restricted access to nationality rights, including the right to pass their

nationality to their children. Egypt, like many states both in the MENA region and

beyond, for years granted nationality almost exclusively on the basis of paternal descent.[4]

Such practice reflects societal and cultural beliefs about the location of women within the

state and their position as bearers of rights. That women lacked the ability to pass their

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[2] REFUGEES INTERNATIONAL, NATIONALITY RIGHTS FOR ALL: A PROGRESS REPORT AND GLOBAL SURVEY ON STATELESSNESS (2009), available at http://www.refugeesinternational.org/policy/in-depth-report/nationality-rights-all.

[3] UDHR article 6 states that "everyone has the right to recognition everywhere as a person before the law," while article 15 asserts that "everyone has the right to a nationality" (*Universal Declaration of Human Rights*, U.N. GA 217 A (III) (1948)); ICCPR article 16 posits that "everyone shall have the right to recognition everywhere as a person before the law," while article 24(3) provides that "every child has the right to acquire a nationality" (*International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1966)); CRC article 7(1) states that "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents", while article 7(2) goes on to say that "Sates Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless" (*Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989)); Article 6(4) of the African Charter on the Rights and Welfare of the Child asserts that "States Parties … shall undertake to ensure that their Constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws" (*African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990)); Article 7 of the Covenant on the Rights of the Child in Islam refers to state obligations to address the issue of statelessness of children born both on a state's territory or to those eligible for its citizenship but residing outside its territory (*Covenant on the Rights of the Child in Islam*, OIC/9-IGGE/HRI/2004/Rep.Final (2005)). The Covenant also addresses the right of children of unknown descent to a nationality. CEDAW Article 9 requires states to grant women equal rights with men to acquire, change or retain nationality, prohibits the automatic change of nationality due to marriage to an alien or change of a husband's nationality, and grants women equal rights with respect to their children's nationality (*Convention on the Elimination of All Forms of Discrimination Against Women,* G.A. Res. 34/180, 34, U.N. Doc. A/34/46 (1989)).

[4] Except in isolated cases where a child was born on Egyptian territory to unknown parents, or to an Egyptian mother and a father who was either stateless, unknown, or whose nationality was unknown (Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality, in* AFRICA CITIZENSHIP AND DISCRIMINATION AUDIT: THE CASE STUDY OF EGYPT, Open Society Justice Initiative report by the Center for Migration and Refugee Studies (The American University in Cairo 2005)).

nationality to their children was an indication that they themselves were not viewed as full members of their own national community on an equal footing with men.

The belief that women are not full and equal members of the community is also reflected in the stark differences in citizenship participation between men and women. Faced with a variety of obstacles - including lack of independent resources, primary responsibility for the care of families, relegation to the domestic sphere, and cultural assumptions regarding their role and abilities – women are far less likely to engage in the activities most closely associated with citizenship. Yet despite these restrictions, women do find ways to participate as citizens, albeit often in ways different from men.

Women's citizen participation has in part taken the form of involvement in social reform movements, which have focused in large part on granting them access to formal citizenship rights on par with men. Yet by focusing their efforts on simply reforming the law so as to include them, it may be argued that women's rights activists fail to address the broader underlying issues of attitude and behavior that directly affect their interactions as members of the community.

The success or failure of social reform movements rests in part on the strategies employed to see them through. Law typically plays a central role in such movements, but it behooves anyone with a genuine interest in social change to question whether this pride of place is justified. In fact, the role of law in social reform movements has long been a topic of debate. Those who view the legal system as being first among the institutions that shape social attitudes and behavior are inclined to situate law at the center of any effort to effect social change. At the other end of the spectrum we find theorists who view law as too complicit in relations of power to faithfully serve as a site of resistance and

change.[5] Between these poles can be found proponents of a mixed approach, viewing law as merely one among many tools of resistance, useful in some respects, harmful in others, and always to be used strategically in combination with other tactics of social pressure and mobilization.

By engaging in awareness-raising and pressure tactics women's rights activists were able to secure the amendment of Egypt's nationality law in 2004, allowing Egyptian women to pass their nationality to their children regardless of the nationality of the fathers. Through the use of a variety of tactics they garnered enough support, both among elite decision-makers and within the population at large, to bring change to the law. Viewed solely in terms of the passage of progressive legislation, this reform effort can be considered a success. Yet while the accomplishment is certainly significant, one must question the impact the nationality law reform has had on broader attitudes and behaviors relating to gender equality in Egypt.

This paper uses the example of the 2004 Egyptian nationality law reform to explore the role of law in social reform movements. It argues that in emphasizing legislative reform over other social change tactics, women's rights activists succeeded in amending the law to reflect greater gender equality but missed the opportunity to affect broader cultural change. It begins in Chapter 1 by introducing the concept of citizenship as it is conceived of globally and in the Middle East. It presents an argument for viewing citizenship as participation, and analyzes how women fit into the participatory paradigm. It concludes with a discussion of the reproduction of gender discrimination through

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[5] Sally Engle Merry, *Resistance and the Cultural Power of Law*, 29 L. & Soc. Rev. 11 (1995) (referencing Marxist critiques of law as a tool for resistance).

nationality law. Chapter 2 provides a brief foray into the interaction of women and law in the Middle East and North Africa and examines Egypt's nationality law reform in terms of its justifications, the resistance encountered, the substance and effects of the reform itself, as well as the barriers to implementation. Chapter 3 explores various tactics used in social reform movements, focusing on how change happens, the role of law in social change, and the problems inherent in reform imposed from above and imported from outside. It concludes with an exploration of the various tactics used by gender equality activists in recent years in the MENA region. Chapter 4 presents an analysis of Egypt's 2004 nationality law reform through the eyes of the reformers. It uses information gleaned from interviews with activists to examine the tactics used to bring about this particular legislative reform, as well as to address broader gender equality issues in Egypt. The paper ends by arguing that while women's rights activists secured a significant achievement in the 2004 reform, their focus on legislative change represents only part of the picture in the struggle for gender equality.

**Methodology**

The fieldwork for this project consisted of interviews with seven members of the Egyptian women's rights NGO community. All seven were either personally involved with the nationality law campaign or represented organizations that either played a direct role in the campaign or are involved more generally in gender equality advocacy in Egypt. I used connections within the Cairo NGO community to access initial participants, who then assisted me in identifying further participants. This method of participant identification and selection necessarily created a sampling bias. That in combination with

the small size of the interview sample means that the information collected cannot be considered representative of the views of participants in the nationality law reform campaign as a whole. This is particularly significant when it comes to discussions of the involvement (or lack thereof) of average Egyptian women in the reform effort. Considering, however, that those interviewed represented a variety of Egypt's leading women's rights organizations, most of which were directly involved in the nationality law campaign, I am reasonably confident that the views expressed provide an accurate glimpse into the minds of the campaign's chief strategists and actors.

The participants were asked a set of standard open-ended questions, though were also given the freedom to provide their own insights and information outside the prescribed questions. All interviews were conducted in English.

# CHAPTER 1

## UNDERSTANDING WOMEN AS CITIZENS

**DEFINING CITIZENSHIP[6]**

If we are to understand the rights of women as citizens we must first come to an

understanding of citizenship itself. This is not a simple task, given the myriad ways in

which the concept has been defined and explored. "Citizenship" denotes membership of a

community but leaves open to debate how that membership is defined, or even to which

community it refers. It typically involves a set of rights and obligations, yet defines

neither their nature nor content. Some define citizenship as a status, others as a practice.[7]

Most analyses begin by identifying citizenship as the indicator of a relationship

between the individual and the state. The more legal/political conceptualizations view

citizenship as a mark of membership in the state,[8] or a certificate representing legal

access to state institutions and resources.[9] The oft-quoted sociologist T.H. Marshall

described citizenship as "a status bestowed on those who are full members of a

community," and noted that "all who possess the status are equal with respect to the

rights and duties with which the status is endowed."[10] Such legal-centric formulations

have been criticized as being excessively narrow, and as focusing on what Ruth Lister

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[6] Throughout this paper the terms 'nationality' and 'citizenship' will be used interchangeably. While the synonymous nature of the two concepts is by no means an accepted fact, a discussion of their theoretical differences falls outside the scope of this paper.

[7] RUTH LISTER, CITIZENSHIP: FEMINIST PERSPECTIVES, 3 (MacMillen 1997).

[8] Carol Batchelor, *Stateless Persons: Some Gaps in International Protection*, 7 INT J REFUGEE L, 232, 235 (1995).

[9] URI DAVIS, CITIZENSHIP AND THE STATE: A COMPARATIVE STUDY OF CITIZENSHIP LEGISLATION IN ISRAEL, JORDAN, PALESTINE, SYRIA AND LEBANON, xiii & 3 (Ithaca Press 1997).

[10] T.H. Marshall, *Citizenship and Social Class* (1950), *reprinted in* CITIZENSHIP DEBATES: A READER, 93, 102 (Gershon Shafir ed., University of Minnesota Press 1998).

refers to as 'formal' as opposed to 'substantive' citizenship.[11] In emphasizing access to

legal citizenship status, and assuming that once included an individual automatically

enjoys equal access to its associated rights, 'formal citizenship' theorists are accused of

ignoring the realities of political, social and economic power at play.

What Bryan Turner characterizes as a more sociological take on citizenship

focuses less on the institution as status, and more as a "set of practices (juridical,

political, economic & cultural) which define a person as a competent member of

society."[12] He concerns himself with the social forces producing the practices that shape

citizenship and the "social arrangements whereby benefits are distributed to different

sectors of society."[13] Such a focus expands to include not only the relationship between

state and individual, but also the political relationships between citizens themselves.[14]

One of the most fundamental philosophical debates in the field of citizenship

studies revolves around notions of active and passive citizenship. Ancient thinkers

conceived of the passive citizen as bound by an obligation of obedience to a supreme

sovereign ruler, and as limited in his personal political autonomy and removed from

political representation.[15] By contrast, active citizenship was characterized by the

participation of individual citizens in decision-making, and envisioned as the activity of

fulfilling one's obligations toward one's fellow citizens.[16] The political participation of

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[11] LISTER, *supra* note 7.
[12] BRYAN S. TURNER, CITIZENSHIP & SOCIAL THEORY (Sage Publications, 1993), 2.
[13] *Id.*
[14] LISTER, *supra* note 7.
[15] David Burchell, *Ancient Citizenship and its Inheritors, in* HANDBOOK OF CITIZENSHIP STUDIES, 89, 89 (Engin P. Isin & Bryan Turner eds., Sage Publications 2003).
[16] *Id.*

the active citizen was viewed as a means to gain respect,[17] and great value was thus placed on public life and public debate, as well as on the "realization of self as a political being."[18] Following this train of thought, Mary Dietz presents citizenship as:

> [A] continuous activity and a good in itself, not as a momentary engagement . . . with an eye to a final goal or a societal arrangement . . . That activity is a demanding process that never ends, for it means engaging in public debate and sharing responsibility for self-government.[19]

Ruth Lister presents us with another dichotomy in the dialogue surrounding citizenship, as she juxtaposes what she terms the 'rights' and 'obligation' approaches.[20] The former rests upon a notion of civil and political rights flowing from membership in the community, and serving as a means by which the state "guarantees freedom and formal equality of sovereign individual citizens."[21] Here again citizenship is viewed as a passive status. By contrast, the obligation approach, similar to the active citizenship model, holds the essence of citizenship to be political participation, which is viewed as a civic duty and the expression of the citizen's full potential as a political being.[22] Similar to Dietz's description of active citizenship, the obligation model views political activity as an end in itself, and associates it with the pursuit of the common good and the self-development of the individual citizen.[23]

Ultimately, it is difficult not to take issue with the more legalistic, rights-based formulations of citizenship as being too narrowly focused, and too blind to the realities of

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[17] Mary Dietz, *Context is All: Feminism and Theories of Citizenship*, 116 DAEDALUS: LEARNING ABOUT WOMEN: GENDER, POLITICS, AND POWER, 1 (Fall 1987).
[18] RIAN VOET, FEMINISM AND CITIZENSHIP, 10 (Sage Publications, 1998) (describing the civic-republican model of citizenship).
[19] Dietz, *supra* note 17, at 16.
[20] LISTER, *supra* note 7.
[21] *Id.* at 13.
[22] *Id.* at 17.
[23] *Id.* at 23.

power dynamics at play. A grant of citizenship - conceived of as status - and formal access to its associated rights, is no guarantee of the ability to exercise those rights. This becomes particularly clear in the case of women, who have largely been admitted to the ranks of the citizenry in formal terms but who, as we shall see, are by no means able to participate in the public life of the community on a par with their male counterparts. However one chooses to frame it – as practice, as active citizenship, as obligation - by viewing citizenship through the lens of participation, it is transformed into something far more dynamic than a mere pronouncement of inclusion in the community, and we are better positioned to examine the realities of access to citizenship and its benefits.

**Benefits of Citizenship (i.e., Rights)**

Why in the course of these discussions do we so often hear references to an individual's right to nationality? What makes this status such a sought-after commodity? This is largely to do with the benefits that flow from the formalization of an individual's relationship to the state. Political liberal constructions of citizenship place the possession of rights - typically defined as individual rights, and conceived of as "concrete, specific, legal, determined on a state-by-state basis, and claimable in court" - at the heart of citizenship.[24] This is based on a belief in the natural rights of man and the premise that "each individual eligible for citizenship is the moral and political equal of every other."[25]

In one of the field's classic analyses, T.H. Marshall describes citizenship as consisting of three categories of rights, beginning with the civil (those rights necessary

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[24] VOET, *supra* note 18, at 60-61.
[25] Don Handelman, *Contradictions between Citizenship and Nationality: Their Consequences for Ethnicity and Inequality in Israel*, 7 INT'L. J. POL., CULT. & SOC. 441, 443 (1994).

for individual freedom, such as liberty of the person and free speech), followed by the

political (those rights allowing for participation in the exercise of political power), and

finally by the social (those rights guaranteeing economic welfare and a share in the social

heritage of the community).[26] Marshall views the story of citizenship as being one of

progress, beginning with the establishment of civil rights in the 18th century, and adding

successive layers of rights through time.

A second facet of Marshall's progress narrative lies in the extension of rights to

increasing numbers of people, as one by one, previously excluded groups are granted

membership in the community and access to its resources.[27] As such, group mobilization

and political struggle become inextricably linked with citizenship,[28] as access to rights

must at times be wrested from states with a vested interest in limiting community

membership.[29] Lister, in fact, views social struggle as a central element of the citizenship

narrative, as "much of the political history of the twentieth century has been characterized

by battles to extend, defend or give substance to political, civil and social rights of

citizenship."[30]


**CITIZENSHIP IN THE MIDDLE EAST/ARAB WORLD**

Citizenship is often presented as a concept unique to the West. According to Engin Isin,

this is the result of an othering process whereby the dominant citizenship narrative has

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[26] Marshall, *supra* note 10.
[27] *Id.*
[28] VOET, *supra* note 18.
[29] The state's interest in limiting access to citizenship may be based on its desire to control its social, cultural, or linguistic identity, but also on practical concerns related to the considerable resources necessary to ensure the rights associated with citizenship, such as education, health care or welfare benefits.
[30] LISTER, *supra* note 7, at 4.

been built in part on the positioning of the Orient as a frame of reference for comparison.[31] Isin locates Max Weber as the prime proponent of this orientalist construction of citizenship.[32] In Weber's account, occidental cities arose from the settling together of individual strangers who came together by choice and swore an oath of citizenship subjecting themselves to a law exclusively applicable to them, which they had an active role in creating. Perhaps most importantly, the ancient occidental city allowed for the formation of groups based on bonds other than lineage, kinship or religion.[33] By contrast, oriental cities never allowed for the dissolving of tribal bonds or identities, thus preventing the establishment of a legal status of urban citizenship or the possibility of common action along anything but clan and kinship lines.[34]

Whether or not we accept Weber's hypothesis, it is fair to say that concepts of citizenship, wherever they have their origin, have taken on a different flavor in the Arab world than in the West. According to Gianluca Parolin, this is due to the divergent paths taken by the Latin/Western and Arab/Eastern worlds from their similar foundation in Greek philosophy.[35] While the West located the heart of political authority in sovereignty, fostered the figure of the individual as paramount, and developed the notion of natural rights (as derived from natural law) and membership in the political community as a means of ensuring those rights, the East founded its political authority in uncontested rules based on religious legitimacy, combined civil and religious authority in

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[31] ENGIN F. ISIN, BEING POLITICAL: GENEAOLOGIES OF CITIZENSHIP (University of Minnesota Press 2002).
[32] Engin F. Isin, *Citizenship After Orientalism, in* HANDBOOK OF CITIZENSHIP STUDIES, *supra* note 15.
[33] Max Weber, *Citizenship in Ancient and Medieval Cities* (1981), *reprinted in* CITIZENSHIP DEBATES, *supra* note 10.
[34] *Id.* Weber postulates that Islam played a role in this, with its emphasis on clan and kinship, though as will be discussed later, it is unclear that Islam in fact encouraged clan associations above all others.
[35] GIANLUCA P. PAROLIN, CITIZENSHIP IN THE ARAB WORLD: KIN, RELIGION AND NATION-STATE (Amsterdam University Press 2009).

the role of the caliph, maintained much of its traditional kin-based social structure (characterized as automatic, perpetual and exclusive), and defined its interpersonal relationships in terms of group rather than individual relations.[36]

Parolin analyzes Arab notions of belonging according to three forms of group membership: that of the kin group, religious community, and nation-state. Membership in the kin group is identified as the first form of group membership in pre-Islam Arabia, and is traced through a single line of patrilineal descent.[37] As kinship formed the basis of the main societal bond, genealogical lines were safely guarded, and individuals could only gain full membership if both of their parents were Arab members of the same kin group. It was through membership in the kin group that protection was afforded, and there existed no concept of individual rights.[38] With the arrival of the Prophet Mohamed came the formation of a religious community and the creation of a centralized political power in the Arabian peninsula.[39] The goal of Islam was to "obliterate every trace of the ancestral system of the previous era" to form a brotherhood of believers, but traces of the kin group system stubbornly remained.[40] An individual became a member of the community either through birth or conversion. Every child born to a Muslim man was automatically a Muslim, and a Muslim could only generate other Muslims as a Muslim woman was obliged to marry a Muslim man.[41] Islamic law took precedence over other forms of law, religious or otherwise, and applied to all Muslims wherever they were.[42]

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[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.* at 61.
[41] PAROLIN, *supra* note 35.
[42] *Id.*

Parolin's third and final form of group membership was born with the first Ottoman Nationality Law (of 1869), which was intended to clearly establish whom the Ottoman state had jurisdiction over, and was framed according to political, rather than religious, authority. One of its goals was the equalization of all Ottoman subjects, regardless of ethnic or religious affiliation. It has been characterized as the legal origin of citizenship in the Middle East,[43] and represented a broadly-based importation of Western models of citizenship, law and application of law.

While this law may have introduced Western notions of citizenship into the law of the emerging Middle Eastern nation-state, it cannot be said that a Western philosophy of citizenship was adopted wholesale. This is particularly evident when it comes to the concept of rights, whether perceived as an individual's right to a nationality in the first place or the implied provision of rights as a consequence of nationality. Uri Davis notes that the tendency of states born out of the fall of the Ottoman Empire was to regard citizenship "not as a certificate representing the rights of the individual vis-à-vis the state, but as a certificate of loyalty to the imagined community of the nation."[44] Furthermore, it was conceived of as a privilege granted by the head of state, and not as a fundamental right.[45] It is important to understand this underlying attitude toward rights when analyzing the position of marginalized groups in the Middle East. For arguments advocating for increased access to citizenship and its benefits may encounter significant barriers within such a context when framed in the language of rights.

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[43] DAVIS, *supra* note 9.
[44] *Id.* at 27.
[45] Abbas Shiblak, *The Lost Tribes of Arabia*, 32 FORCED MIGRATION REV. 37 (2009).

If the first Ottoman Nationality Law was born of a desire to consolidate civil power and define the jurisdiction of the empire, post-Ottoman laws regulating membership in the political community can be interpreted as assertions of sovereignty on the part of newly emerging nation-states.[46] Article 1 of the 1930 Hague Convention states that, "it is for each State to determine under its own law who are its nationals."[47] This determination plays a role in defining the state's self-identification,[48] as the state, through the vehicle of citizenship, constructs the "legal and ideological parameters of inclusion and exclusion."[49] While some states construct their visions of inclusion around reinforcing territorial communities, others attach to it more highly charged "sentiments of membership based on exclusive notions of race, descent or other qualifying factors."[50]

Though similarities may certainly be found throughout the Middle East, each state has taken a particular route to defining national identity and "the citizen" depending upon its own challenges. While Iraq under the Ba'ath was controlled by a minority ruling elite which courted the loyalty of the population away from family and ethnic groups and toward the state, Lebanon's uniquely heterogeneous and factionalized ruling elite "bolstered primordial affiliations at the expense of national loyalties."[51] In Egypt's early days as a nation-state, focus was placed on the sharing of linguistic and religious ties,

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[46] PAROLIN, *supra* note 35.
[47] *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*, League of Nations, 179 L.N.T.S. 89 (12 April 1930). The article goes on to state that, "This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."
[48] U.N. Division for the Advancement of Women, *Women, Nationality and Citizenship*, WOMEN: 2000 AND BEYOND, 3 (2003).
[49] LISTER, *supra* note 7, at 51.
[50] Batchelor, *supra* note 8, at 238.
[51] Margot Badran, *Competing Agenda: Feminists, Islam and the State in Nineteenth- and Twentieth-Century Egypt, in* WOMEN, ISLAM AND THE STATE, 201, 201 (Deniz Kandiyoti ed., Temple University Press 1991).

with nationality reserved for those considered most easily assimilable along ethnic and religious lines.[52] Parolin highlights the use of nationality as a political tool for manipulating demographics, presenting as examples Bahrain, where the grant of nationality has been used to counterbalance the demographic majority of Shias, and post-Ottoman Iraq, where a perceived need to increase the population led to a generous opening of nationality to any Ottoman subject, regardless of ethnic origin.[53]

Whatever influences they may have absorbed and whatever attitudes they may have adopted through the years, the majority of states in the Middle East have come to embrace what Shiblak perceives to be "a narrow concept of citizenship and restrictive nationality laws."[54] Paramount throughout the region has been the principle of *jus sanguinis*, or nationality by descent, whereby citizenship is passed to children at birth simply by virtue of their having been born to a citizen.[55] This may be juxtaposed against the principle of *jus soli*, whereby nationality is granted to an individual by virtue of birth within the national territory. If one were to look at this through a Weberian lens, it would be easy to draw a link between his notions of occidental territoriality and the principle of *jus soli* (currently practiced more commonly in Western countries) versus the oriental focus on family and kin and the principle of *jus sanguinis*.

Further to the more restrictive practice of *jus sanguinis* is the tendency among Middle Eastern states to grant nationality largely on the basis of **paternal** *jus sanguinis.* With few exceptions, states in the region grant nationality automatically only to the children of male citizens. Exceptions may be made for children born to female citizens

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[52] *Id.*
[53] PAROLIN, *supra* note 35.
[54] Shiblak, *supra* note 45, at 37.
[55] PAROLIN, *supra* note 35.

when the identity of the father is unknown, his nationality is unknown, or he is stateless, and also to children born within the national territory to unknown parents. The practice of paternal *jus sanguinis* falls very much in line with what may be viewed as a progression from the patrilineal determination of group membership predominant in the kin groups of pre-Islam Arabia, to the admittance of any child born to a Muslim father into the brotherhood of Muslim believers, and finally to the automatic conferral of citizenship on the children of any male citizen of the nation-state.

## WOMEN AS EQUAL CITIZENS & FULL MEMBERS OF SOCIETY

Having outlined basic conceptualizations of citizenship, both globally and regionally, we now turn our attention to the notion of women as citizens. Dominant liberal formulations of citizenship pose it as a gender-neutral institution. In theory, all citizens have equal rights under the law and any inequality between them must be due rather to injustice than to citizenship itself.[56] Yet many theorists argue that citizenship is in fact "deeply gendered"[57] insofar as conceptualizations of citizenship are derived from a set of values that explicitly and implicitly privileges men and the masculine.[58] The reality of women's secondary status suggests that for them full and equal citizenship does not exist,[59] since

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[56] VOET, *supra* note 18; *see also* Maurice Roche, *Citizenship, Social Theory and Social Change*, 16 THEORY & SOCIETY 363 (1987), noting that the equal status, rights and duties implied by liberal constructions of citizenship mean that any inequalities related to gender, class, race or other categorizations are not relevant to the status of citizenship itself.
[57] Suad Joseph, *Gendering Citizenship in the Middle East, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, 3 (Suad Joseph ed., Syracuse University Press 2000); *see also* LISTER, *supra* note 7.
[58] Kathleen B. Jones, *Citizenship in a Woman-Friendly Polity*, 15 SIGNS 781, 781 (Summer 1990).
[59] VOET, *supra* note 18.

even in contexts where women have gained legal equality their membership in the political community is still less full than men's.[60]

Women have traditionally been excluded from the legal status of citizenship in part because (public) political values were explicitly tied to maleness, and women were viewed as being inherently apolitical/antipolitical beings belonging to the private sphere.[61] Such arguments exhibit what Lister calls an "essentialist categorization of men and women's qualities and capacities," and rest on false dichotomies associating the public/male/citizen with the disembodied mind, the abstract, rational, impartial, independent, active and strong, and the private/female/non-citizen with the particular, embodied, emotional, irrational, dependent, passive and weak, rooted in nature and concerned with the realm of domestic concerns rather than the good of the community as a whole.[62] In some formulations women's exclusion results from a perception that they are incapable of autonomous thought or action, and thus require the mediation of others on their behalf.[63] Accordingly, women's citizenship has often been perceived of as superfluous, as their interests were thought to be represented by their male relatives, whether father, husband or other.

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[60] Jones, *supra* note 58.
[61] VOET, *supra* note 18.
[62] LISTER, *supra* note 7.
[63] VOET, *supra* note 18; *see also* Jean-Francois Lyotard, *The Other's Rights, in* ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 1993, 135, 146 (Stephen Shute & Susan Hurley eds., Basic Books 1993). Lyotard frames political personhood as the ability to enter into dialogue with other members of a community: "As children, we are kept on the margins of interlocution, and condemned to exile. The situation of *infantia* is that of the incomplete human being who *does not yet speak*. The child is spoken to and spoken of, but is not an interlocutor even though he is plunged into the interlocutory community. He is affected by [the statements that concern him] but [he] has no language in which to articulate his own affective states." It could easily be said that women have historically been infantilized, and as such have been painted with a similar brush to the children in Lyotard's discussion. This sort of infantalization of women is clear in such contexts as Sudan's Islamic Penal Code (1991), in which women are treated as legal minors.

Women's exclusion has manifested itself in more than strictly formal political terms, but also in the social and economic spheres. And in fact, their exclusion from the former is inextricably tied to their marginalization and dependence in the latter. Lister notes that the independence and autonomy that men possess - and that permits them to act publicly as citizens - is "predicated on women's dependence," an economic dependence born of the responsibility women take for the care of families, which simultaneously frees men and prohibits women from pursuing the activities that have come to define citizenship.[64]

**Women's Citizenship Participation**

Part of the confusion surrounding the role of women as citizens lies in the sheer number and variety of visions for women's citizenship. The classic liberal argument put forth during the late 18th century suffrage era framed women's citizenship in the language of equality. If natural rights were held to be the basis for (male) citizenship rights, then to not extend those same rights to women could only be justified if women were considered to not have the same natural rights as men.[65] This belief is echoed in Mary Dietz's argument that women should simply be included as citizens along the same lines as men, with access to the same rights, privileges, responsibilities, spaces and role in decision-making.[66] Yet this has proven difficult to accomplish. Early notions of citizenship were

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[64] LISTER, *supra* note 7.
[65] VOET, *supra* note 18.
[66] Dietz, *supra* note 17; VOET, *supra* note 18, at 26-9, characterizing this view as springing from what she terms the 'humanist' strain of feminism, one which posits that women should simply be offered the same opportunities as men. Humanist feminism takes existing male types of behavior as an example for women, and would incorporate women into an existing ideal of citizenship, granting them equal rights and duties to

constructed around the citizen as soldier and defender of the nation. This correlation

between military service and citizenship translated into a set of superior social citizenship

rights for men and the exclusion of women, who were not admitted into the ranks of the

military.[67] Paid employment has since replaced military service as the key to

citizenship,[68] with the full citizen being perceived as one who is financially independent

and contributes to the sustaining of the nation through his labor and income. Yet despite

women's growing presence in the labor force, they are largely considered as secondary or

marginal earners, with men firmly ensconced in the head of household/breadwinner role

most closely associated with full citizenship.[69]

　　As a means to maneuver around these obstacles some feminists have advocated

for the acknowledgment of motherhood and other forms of caring work traditionally

performed by women in the private sphere (and without pay) as the "ethical equivalent of

military service" and a basis for a "feminine citizenship" which would put them on an

equal footing with men.[70] Rousseauian conceptions place women in the role of

"republican mothers" by assigning to them the task of educating their sons in the virtues

of citizenship, thus reducing them to producers of citizens, rather than citizens in their

own right. More generous formulations of women's citizenship view gender difference as

a means to the betterment of society and politics, and call for political equality in rights,

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men. Voet argues that the focus of humanist feminists is limited in that it lies in the possession of rights
rather than in their exercise.

[67] LISTER, *supra* note 7; *see also* Jones, *supra* note 58, noting that some feminist responses to this limitation
have been campaigns to allow women into the military, and thereby into the ranks of equal citizenship.

[68] LISTER, *supra* note 7.

[69] *Id.*

[70] *Id.* at 198.

but expressed through different duties and activities for men and women, the combination of which serves to strengthen the state.[71]

It seems that despite these various visions we have not progressed much beyond simple inclusion of women into formal citizenship status as defined by the male citizen model. And while few would deny that women have made great strides in gaining admission to this status and access to many of the formal rights associated with it, as Voet notes, rights (formal citizenship) are only a precondition for active (substantive) citizenship, and it is "at the level of participation that we see the major distinctions between male citizens and female citizens, not at the level of rights."[72] The current struggle for women centers more around their exclusion from citizenship participation and their socialization as non-political beings.[73]


### *Barriers to women's participation*

So what is it exactly that stands between women and the exercise of citizenship activity? The barriers are many and varied, and take both material and psychological form. To begin with, women suffer disproportionately from poverty.[74] Women's economic dependence on men and lack of access to the labor force, as well as the unequal distribution of income within the family translate into less flexibility for women, and a diminished voice within the family and control over their own activities.

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[71] VOET, *supra* note 18.
[72] *Id.* at 67.
[73] VOET, *supra* note 18.
[74] United Nations Development Programme, *Human Development Report: 1995,* noting that in 1995 women constituted 70% of the world's poor.

Time is another resource with profound implications on an individual's ability to act as a citizen in the public sphere, and to pursue the self-development critical to the effective exercise of citizenship.[75] Tasked with the responsibility of caring for families (and in modern times this is often combined with women's paid labor outside the home), women rarely have the luxury of time with which to pursue citizenship activities. Moreover, women's relegation to the private sphere limits their physical mobility and translates into diminished access to the means of economic and political participation.

Lying at the heart of women's lack of access to public citizenship activity is the sexual division of domestic labor, which Lister believes "moulds female and male access routes to the public sphere."[76] She notes that even in those cases where public childcare has been made available to help free women up for increased public participation, the division of the remaining domestic labor falls more heavily on women. Without addressing this disparity, it will not be possible for women to enjoy full and equal access to citizenship activity.

Further to the material restraints on women's public activity are the psychological barriers that keep them from citizenship participation. Socialized to accept a subservient role both within and outside the family, women often lack both the skills and the self-esteem to successfully act in the political arena. The economic dependence resulting from traditional family configurations creates an emotional dependence and a lack of confidence in women's own separate identity and abilities, which is a necessary element

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[75] LISTER, *supra* note 7.
[76] LISTER, *supra* note 7, at 144.

in effective citizenship participation.[77] Excluded from decision-making within the family, given the chance women find themselves unprepared to participate in decision-making in the public sphere.

All of which is to say that if we conceive of active, public political participation as lying at the heart of citizenship, women, who are typically lacking in the time and resources necessary for such participation, find themselves at a distinct disadvantage, leaving them largely excluded.

### *The various forms of women's participation*

For all the reasons just discussed women undeniably have significantly lower rates of participation in the sphere of formal politics and decision-making than men. However this does not translate into a complete lack of female presence in public life. Due to constraints on time and other resources, women are far more likely to engage in what has been referred to as 'informal politics.'[78] This often takes the form of involvement in community-based action on the local political stage, behind which women are often a driving force. And it is primarily as mothers that women first cross the public-private divide to enter the political arena, for it is as mothers, and not as women, that they often feel most "justified in taking over public political space."[79] Thus women translate their private responsibilities into public citizenship claims, and motherhood becomes a vehicle

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[77] Susan James, *The Good-Enough Citizen: Citizenship and Independence, in* BEYOND EQUALITY AND DIFFERENCE (Gisela Bock ed., Routledge 1992).
[78] LISTER, *supra* note 7, at 137.
[79] *Id.* at 149.

for political citizenship as women struggle to protect their families.[80] A second arena in which women's presence has loomed large is in the struggle for social citizenship rights, at what Lister terms the "intersection of social and political citizenship."[81] She posits women's interaction with social welfare institutions as a primary manifestation of their political activity, as they contest individual agency decisions and organize to affect a change in policies that affect a broad base of welfare claimants.[82]

Whatever their motivation, it is clear that involvement in small-scale, informal political action serves a purpose for women. It may be seen as a means by which women strengthen their self-esteem and gain the political competence necessary for sustained and active citizenship, and by which they come to identify themselves as political beings.[83] Yet this informal mode of political participation is not often recognized as citizenship action.[84] Lister contends that "the invisibility of women's political activism is in part a reflection of the tendency to define politics within the narrow terms of the masculine sphere of formal politics," and argues for the recognition of women's informal political participation as simply a different form of political citizenship.[85] She notes that while such recognition would go a long way in promoting the inclusion of women into the

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[80] Yet it should be noted that even where women take on overtly political roles, their participation may be manipulated so as to present it in terms deemed more socially acceptable. Such was the case with Safiya Zaghlul, wife of Sa'ad Zaghlul, a leader of Egypt's 1919 revolution. Mervat Hatem notes that upon the exile of the national leadership of the revolution, including her husband, Safiya fought to maintain the political cohesion of the party and the national struggle. Yet her activity was presented at the time as the 'nurturing' of the revolution, and she came to be called *Umm al-Masiriyiin* (the mother of all Egyptians). Thus we see mothering transposed to the public arena, and women's caretaking skills put in service of the nation. (Mervat F. Hatem, *The Pitfalls of the Nationalist Discourses on Citizenship in Egypt, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57, at 38).
[81] LISTER, *supra* note 7, at 169.
[82] *Id.*
[83] *Id.*
[84] Jones, *supra* note 58.
[85] LISTER, *supra* note 7, at 145-6.

ranks of the citizenry, in order to achieve true equality it must also be balanced with women's admission into more formal modes of political participation, as well as the improvement of links between the two realms of political action.

All the news is not bad when it comes to women's participation in the public sphere. Aili Mari Tripp has observed an exponential increase since the early 1990s in the arenas in which women are able to voice their concerns and in the forms of mobilization women have adopted.[86] She notes that previously much of women's activity on the national level had been linked with single political parties or regimes in response to calls for the establishment of institutional mechanisms to promote women's advancement and institute international agreements.[87] Even without the existence of international pressure, official women's organizations have often been established and controlled by political parties and regimes as a means to promote limited reform while also channeling women's political activity in pre-approved ways. Yet Tripp notes a shift in the form and characteristics of women's mobilization, including an increased autonomy from the party/regime model; an increased heterogeneity of small organizations focused on different facets of women's advancement coming together to address specific issues; greater emphasis on formal political strategies and the selective use of courts; growing challenges to government gender policies and laws (including constitutions); the aggressive use of the media to highlight the demand for rights; and an explicit effort to bridge traditional gaps between women and within women's organizations based on

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[86] Aili Mari Tripp, *Women in Movement: Transformations in African Political Landscapes, in* THE POLITICAL INTERESTS OF GENDER REVISITED: REDOING THEORY AND RESEARCH WITH A FEMINIST FACE, 230 (Anna G. Jonasdottir & Kathleen B. Jones eds., United Nations Press 2009).
[87] This happened particularly in response to calls made at the UN Women's Conferences in Mexico City in 1975 and Beijing in 1995.

educational, ethnic and other backgrounds.[88] Kathleen Jones highlights women's use of

direct action as an informal method of public participation. Through activities such as

Take Back the Night events, where women gather en masse to assert their right to inhabit

public spaces free from the fear of violent attack or harassment, they are speaking and

being heard publicly, but in a voice outside the norm of citizenship activity.[89]


**Reproduction of Discrimination Through Nationality Law**

Given that women have historically not been viewed as full and equal members of the

political community, it is unsurprising that they would be discriminated against under the

law, and particularly the area of law that regulates the acquisition and conferral of

citizenship. Women have largely been subsumed into the political personalities of their

male relatives and restricted from passing what in practice amounts to partial citizenship

to their family members, whether husbands or children.

Article 1 of the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW, 1979) defines discrimination against women as:

> Any distinction, exclusion or restriction made on the basis of sex which has
> the effect or purpose of impairing or nullifying the recognition, enjoyment or
> exercise by women, irrespective of their marital status, on the basis of
> equality of men and women, of human rights and fundamental freedoms in
> the political, economic, social, cultural, civil or any other field.[90]

Core CEDAW obligations include: the elimination of gender discrimination, both direct

and indirect, in law; protection against discrimination in public and private, whether at

the hands of public authorities, the judiciary, organizations, enterprises or private

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[88] Tripp, *supra* note 86.
[89] Jones, *supra* note 58.
[90] *Convention on the Elimination of All Forms of Discrimination Against Women,* G.A. Res. 34/180, 34, U.N. Doc. A/34/46 (1989).

individuals; and the improvement of the *de facto* position of women through the implementation of concrete and effective policies.[91] Article 9(1) of the Convention grants women equal rights with men in regard to the acquisition, change or retention of nationality. Article 9(2) further grants women equal rights with men in regard to the nationality of their children. It must be noted that several countries, Egypt included, have placed reservations on CEDAW Article 9, based on perceived conflicts with either *shari'a* law, domestic nationality law, the unity of the family principle, or objections to dual nationality, all of which take precedence over aspirations toward gender equality.[92]

Gender discrimination in nationality law must be viewed as "part and parcel of an overall socio-cultural tendency to de-prioritize women's needs and rights."[93] The need for reform in this specific regard was acknowledged as a concern as early as 1933, which saw the drafting of the Montevideo Convention on the Nationality of Women by the Inter-American Commission on Women.[94] The Montevideo Convention asserted that there should be no distinction based on sex as relates to nationality, whether in legislation or in practice. Nearly a quarter century later (1957) the Convention on the Nationality of Married Women was drafted as a means to establish the independent nationality of married women. Neither instrument garnered many signatories, effectively nullifying their impact on both international and domestic law and practice.

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[91] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures)* (2004).
[92] U.N. High Commissioner for Refugees [hereinafter UNHCR], *UNHCR Handbook for Protection of Women and Girls*, 53 (2008).
[93] Center for Research and Training on Development [hereinafter CRTD], Gender Citizenship and Nationality Programme, *Denial of Nationality: The Case of Arab Women, Summary of regional research*, 30 (February 2004).
[94] U.N. Division for the Advancement of Women, *supra* note 48.

Nationality law is a complex arena with consequences that are both far-reaching and tangibly felt. The UN Division for the Advancement of Women notes that:

> Nationality laws are rarely simple or comprehensive, and their technical nature makes them inaccessible to many people. Moreover, movements of peoples across international borders frequently make the laws of more than one State applicable in the determination of a person's nationality. Inconsistency between, and lack of coordination of, nationality laws between and among States means that nationality may be uncertain or contested, causing hardship to the individuals concerned.[95]

These hardships are many and varied, and in the more extreme cases may result in an individual being rendered stateless. Furthermore, they are disproportionately felt by women. Informal statistics reported by the UN High Commissioner for Refugees indicate that in those countries operating discriminatory nationality laws, women in fact make up 51-78% of the stateless population.[96]

### Marriage & Citizenship

As has been previously mentioned, through the years and across continents women have been excluded from acquiring a legal personality of their own. Rather, through the practice of **dependent nationality**, a woman's legal status has historically been acquired through her relationship to a man, whether father or husband, who in theory represents her interests in the public arena.[97] Upon marriage, this takes shape in the principle of **coverature**, by which married women are "subsumed into the legal personalities of their husbands."[98] The husband, as head of household, enjoys the status of civil citizenship,

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[95] *Id.*

[96] UNHCR, *supra* note 92. This 2008 report found that 51% of Vietnam's and 78% of Egypt's stateless population were noted to be women.

[97] U.N. Division for the Advancement of Women, *supra* note 48; *see also* CRTD, supra note 93.

[98] Nancy Fraser & Linda Gordon, *Contract versus Charity: Why is There No Social Citizenship in the United States?, in* CITIZENSHIP DEBATES: A READER, *supra* note 10, at 119.

while the wife lives under his 'cover.' Nancy Fraser and Linda Gordon view this

subsuming of women as a constitutive characteristic of modern civil citizenship insofar as

marriage was the act that shed men of their own dependence on their families, and

transformed them into family heads and legal individuals in their own right. Early civil

rights were not conceived of as individual rights, but rather as the rights of male family

heads acting on behalf of their families.[99] Having dependents (including wives) became a

qualification for full civil citizenship. Fraser and Gordon thus note that "it was by

protecting, subsuming, and even owning others that white male property owners and

family heads became citizens."[100] The principle of coverature formed the basis of a sort

of 'indirect citizenship', which deprived women of a voice of their own, both within and

outside the family.[101]

　　While the decisions to marry and reproduce are ostensibly private ones, their

effect on the composition of the citizenry make them of interest to the state.[102] This is

particularly the case in relation to foreign spouses, but may also be observed within

national populations themselves. Suad Joseph notes that in Lebanon, where the balance of

political power rests on a complex system of confessional representation, women and the

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[99] CRTD's study notes that this configuration is still prevalent in the MENA region, where the assumption that all members of a family should have the same nationality is based on notions of the family as a single unit, represented by the male head of household (CRTD, *supra* note 93).

[100] Fraser & Gordon, *supra* note 98, at 120; similarly, Ursula Vogel notes that women weren't merely latecomers in Marshall's evolution of access to citizenship rights, but rather their exclusion from early forms of citizenship was part and parcel of the construction of the entitlement of men as both individuals and representatives of families (Ursula Vogel, *Is citizenship gender specific?, in* THE FRONTIERS OF CITIZENSHIP (Ursula Vogel & M. Moran, eds., MacMillan 1991)).

[101] Nira Yuval-Davis notes that law in Victorian England went so far as to deprive women of citizenship upon marriage to *any* man, whether English or not. It was only in 1948 that this restriction was amended to apply only in cases of marriage to foreign men (Nira Yuval-Davis, *Women, Citizenship and Difference*, 57 FEMINIST REV. 4, 12 (1997)).

[102] Sandra Fernandez, *Pluralities* (2011) [unpublished Master's thesis, The American University in Cairo].

family are vital to the reproduction of sectarianism.[103] If women marry out of their

sectarian group, lineages lose membership and thus representational power. Women's

marriage and reproductive choices thereby become of interest to the state and subject to

its control, and women who marry out of the group cease to belong to it.[104]

Within the context of transnational marriage we find these ideas taking shape in

the form of the **unity of nationality** principle.[105] This springs from the assumption that

all members of a family should carry the same nationality as a means to reduce the

potential division of loyalties.[106] Moreover, there exists an assumption that the woman

will be the ones to move to her husband's state rather than other way around. This rests in

part on the belief that the introduction of foreign men is potentially disruptive to the state,

since they take jobs from local men and dilute national identity and subvert national

interests by their very presence in public life.[107] For that reason, restrictions on foreign

husbands tend to be much harsher than those on foreign wives. The consequences for

women married to foreign men can be severe. The dominance of patriarchal principles

has meant that, unsurprisingly, women are the ones to give up their citizenship upon

marriage to acquire that of their husbands.[108] In the most extreme cases this shifting of

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[103] Joseph, *Elite Strategies for State Building: Women, Family, Religion and State in Iraq and Lebanon* [hereinafter *Elite Strategies*], in WOMEN, ISLAM AND THE STATE, *supra* note 51, at 189.
[104] The exclusion of women who 'marry out' is mirrored in Muslim religious practice, wherein a Muslim women is forbidden to marry a non-Muslim man. In terms of nationality law, women are not conceived of as individuals but rather as family members whose rights and duties are defined in relation to their kinsmen, and as such if they choose to marry out they may be henceforth excluded from the kin group or nation-state (as in Kuwaiti women married to non-Kuwaitis, who as a result of their choice of marriage partner, cease to be Kuwaiti (Haya Al-Mughni & Mary Ann Tetreault, *Citizenship, Gender, and the Politics of Quasi States, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57)).
[105] UN Division for the Advancement of Women, *supra* note 48.
[106] Which again rests on the assumption that nationality entails loyalty to the state in exchange for the state's duty to protect (CRTD, supra note 93).
[107] U.N. Division for the Advancement of Women, *supra* note 48; CRTD, *supra* note 93.
[108] Abla Amawi notes that the Jordanian Nationality Law of 1954 went so far as to state that "the wife of the Jordanian is a Jordanian and the wife of a foreigner is a foreigner." This language was amended in

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nationality occurs automatically, and if the woman's state revokes her citizenship upon

marriage but her husband's doesn't automatically grant its citizenship, she may find

herself stateless.[109]


### *Conferral of Nationality on Children*

The majority of states that provide for nationality by descent (both in the Middle East and

throughout the world) do so according to the nationality of the father, irrespective of the

nationality of his spouse.[110] Exceptions are typically only made in cases where the mother

is unmarried or the father is unknown or stateless, though this may be difficult to prove

and is by no means guaranteed. In reality, children may easily be born without a

nationality if the father is stateless or unknown, if his country does not allow for

transmission of nationality to children born outside its territory, if he is unwilling or

unable to register his children at a consulate, or if he refuses to acknowledge paternity.[111]

In some countries a woman having a child out of wedlock is prevented from passing on

her nationality, also potentially rendering the child stateless.

Joseph asserts that "the tensions between passing citizenship on through land

versus blood are critical to the gendering of citizenship," noting that "the privileging of

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1987, though Jordanian women are still barred from passing nationality to their husbands (Abla Amawi, *Gender and Citizenship in Jordan, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57, at 161).

[109] UNHCR, *supra* note 92; the UNHCR has recognized that statelessness may arise as a result of "denial of a woman's ability to pass on nationality […] loss of nationality due to a person's marriage to an alien or due to a change of nationality of a spouse during marriage." (UN High Commissioner for Refugees, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, No. 106 (LVII) (6 October 2006).

[110] U.N. Division for the Advancement of Women, *supra* note 48.

[111] UNHCR, *supra* note 92. Within the Egyptian context this occurs not infrequently in what some have termed 'summer marriages,' wherein wealthy men from the Gulf states holiday in Egypt and take temporary wives, whom they then leave behind (often with children) when they return to their home countries.

blood in citizenship rules has gone hand in hand with the masculinization of descent and the hyper-valorization of patrilineality."[112] Thus in the form of citizenship laws based on paternal *jus sanguinis* we see yet another validation of men as the locus of citizenship and women as secondary at best, external at worst. By refusing women the right to serve on equal ground as sources of citizenship, states demonstrate a belief that they do not in fact occupy the same citizenship status as men.

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[112] Joseph, *Gendering Citizenship*, *supra* note 57, at 8.

# CHAPTER 2

## WOMEN & LAW IN THE MIDDLE EAST & NORTH AFRICA

Despite constitutional provisions to the contrary, women in the Middle East and North

Africa face a great deal of discrimination, both in law and in practice. A 2004 Freedom

House survey of 17 MENA countries came to the conclusion that it was in this region that

"the gap between the rights of men and those of women is the most visible and significant

and where resistance to women's equality has been most challenging."[113] The study

found that though most of the countries surveyed had equal rights guarantees written into

their constitutions, enforcement of these guarantees was severely lacking. The areas of

greatest concern were found to be: the codification of inferior status due to legal

discrimination,[114] particularly within family and citizenship law; the prevalence of and

lack of legal protection against domestic violence;[115] the lack of information and

education for women, resulting in an absence of voice; and a lack of complaint

mechanisms by which women may attempt to have their grievances aired and

addressed.[116] These factors, in combination with long-standing social customs that render

behavior change and enforcement particularly challenging, have led to the entrenchment

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[113] FREEDOM HOUSE, WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: CITIZENSHIP AND JUSTICE, 1 (Sameena Nazir & Leigh Tomppert eds., 2005).

[114] For example, the survey found that in most MENA countries women were subject to harsher penalties than were men charged with the same crime, particularly in relation to 'moral crimes' involving sexual behavior (and perceived of as negatively impacting family honor).

[115] The survey found the MENA region to be unique in its array of laws, practices and customs that "pose major obstacles to the protection of women or the punishment of abusers … intensified by a legal structure that places the burden of proof entirely on the female victim in cases of gender based violence, something that discourages women from reporting acts of violence or demanding legal redress." Furthermore, a woman's testimony is typically treated as less than a man's in cases relating to rape or domestic violence (*Id*. at 6-7).

[116] Lack of access to the legal system in combination with the social pressure to obey one's husband were found to be serious obstacles keeping women from seeking legal redress. At the time of the study, Egypt was the only one of the seventeen countries surveyed that offered an official mechanism whereby women might file complaints relating to gender discrimination.

of a system in which women enjoy neither equal rights as citizens nor an independent legal identity.[117]

**Women & Citizenship in Islam**

If we are to examine women's citizenship and law in the Middle East we must address the place of women as members of the community of Islam. The Qur'an acknowledges women as political actors with the individual ability to pledge allegiance to the Prophet (and thereby to the community of believers, or *ummah*).[118] Many scholars and advocates for women's rights within a Muslim context are quick to point out that women were bearers of rights as members of early Muslim communities on a level quite comparable to men. They had the right to independent legal and economic identity, payment for work, ownership and inheritance of property, learning and liberty of thought and movement, performance of the pilgrimage and participation in Holy War, and control over their own lives through marriage contracts stipulating the right to initiate divorce, financial compensation, monogamy and child custody.[119] By all accounts these look much like modern-day expressions of human and citizenship rights. Yet it must be noted that "Quranic laws on women as political actors provide principles of women's welfare within

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[117] *Id.*

[118] Barbara Freyer Stowasser, *Women and Citizenship in the Qur'an, in* WOMEN, THE FAMILY, AND DIVORCE LAWS IN ISLAMIC HISTORY, 23, 29-30 (Amira El Azhary Sonbol ed., Syracuse University Press 1996).

[119] Mervat Tallawy, *International Organizations, National Machinery, Islam, and Foreign Policy, in* MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION: IMPLEMENTING THE BEIJING PLATFORM, 128, 137 (Mahnaz Afkhami & Erika Friedl eds., Syracuse University Press 1997).

the context of communal welfare."[120] Women (similar to men) are not granted rights on an individual basis, but rather on the basis of their membership in the community.

We must also acknowledge that in Islam there exist concepts that limit a woman's ability to act as an independent and equal member of the community. The first is the concept of **complementarity**, which posits that men and women were endowed by God with different, yet equally important and complementary, roles based on their natural dispositions.[121] Men's natural disposition secures them a place in the public sphere of citizenship participation and political decision-making, while women's destines them for a life of caring responsibilities within the context of the home and family. The second concept can be perceived of as stemming from the first, and involves the exercise of male guardianship over women, who are exhorted to trade the protection (whether physical or economic) of their husbands for obedience to his word. As such we may observe a gender-based determination of the rights and responsibilities of citizens in the *ummah*,[122] which, perhaps not surprisingly, have expanded to involve male social and political preeminence.


**Personal Status Law**

Stemming from the preeminence of Islamic over civil law within the *ummah* is a further characteristic that makes Middle Eastern countries unique in the world: the presence of

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[120] Stowasser, *supra* note 118, at 38.
[121] Afsaneh Najmabadi, *Hazards of Modernity and Morality: Women, State and Ideology in Contemporary Iran, in* WOMEN, ISLAM AND THE STATE, *supra* note 51 (noting that Islamist opposition to women's rights is often based on arguments that complementarity of roles is divinely ordained, and thus equality between the sexes is an injustice).
[122] Fati Ziai, *Personal Status Codes and Women's Rights in the Maghreb, in* MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

**personal status laws**, or **family codes**. These are sets of laws governed by religious law principles, and pertaining specifically to aspects of family relationships including marriage, divorce, child custody and inheritance. Essam Fawzy notes that personal status law is the lone jurisdiction to have successfully resisted repeated attempts at secularization as other legal arenas have been absorbed into a civil law framework.[123] He notes also that governments have proven cautious in amending personal status laws, for fear of provoking resistance based on prevailing religious, male hierarchical and ideological movements. The result has been a sort of hybrid legal system, whereby the state asserts influence over women's public role while religious institutions retain control over their private and family lives.[124] Joseph argues that the anchoring of family law in religious law, perceived of as absolute and nonnegotiable, has resulted in the sanctification of the family and the codification of its patriarchal rules, with impact well beyond the realm of the family.[125]

In a practical sense, what this means for women is that those aspects of the legal system that have arguably the most intimate and powerful impact on their lives are governed by Islamic law principles that clearly place men in the position of head of household and chief decision maker. This has the effect of granting men social, and in some cases, legal authority over their wives,[126] particularly in a context where the family

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[123] Essam Fawzy, *Muslim Personal Status Law in Egypt: The Current Situation and Possibilities of Reform through Internal Initiatives, in* WOMEN'S RIGHTS & ISLAMIC FAMILY LAW: PERSPECTIVES ON REFORM, 15 (Lynn Welchman ed., Zed Books 2004); *see also* Ziai, *supra* note 122.
[124] Though Margot Badran argues that the division between the two is by no means clear (Badran, *supra* note 51).
[125] Joseph, *Gendering Citizenship*, *supra* note 57.
[126] FREEDOM HOUSE, *supra* note 113.

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rather than the individual is constructed as the basic unit of society.[127] Mounira Charrad argues that personal status laws are a key element in constructions of the legal self, determining whether the person is defined primarily as an autonomous individual or as a member of a patrilineage.[128] Thus, when Tunisia amended its law to allow women to act as their own guardians in selecting a spouse, the right to marry was shifted from a right ascribed to the patrilineage, to one belonging to the individual woman.[129]

This move on the part of the Tunisian government to define personal status rights as belonging to individual women is, however, an unusual one in the region. In most states personal status codes construct men as autonomous and women as dependent.[130] Examples of common family law provisions cementing these roles include the injunction of a wife's obedience to her husband; a husband's power over his wife's right to work and travel; the ability of men to divorce their wives without recourse to the courts, while at the same time requiring women to apply to court for divorce and to meet very specific conditions in order to initiate such proceedings; and the granting of half the share of family inheritance to women as to men. It is clear to see that within this context women are regarded as both less than men and as not in need of a separate public identity or an independent legal relationship to the state since all rights are granted through the mediation of male family members.[131] As such women are prevented from exercising authority over their own lives and persons in equal measure to men.

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[127] CRTD, *supra* note 93.
[128] Mounira M. Charrad, *Becoming a Citizen: Lineage Versus Individual in Tunisia and Morocco, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57.
[129] *Id.*
[130] Hatem, *supra* note 80.
[131] CRTD, *supra* note 93. Women's lack of direct relationship to the state is exemplified in Jordan's Passport Law, which bars a woman from obtaining a separate passport without her husband's written

Fawzy argues that personal status laws reflect the directions of social momentum, and both reveal and mirror women's status and position within a given society.[132] Taking it to a more personal level, Homa Hoodfar writes that "it is in the area of family code . . . that every woman experiences on a daily basis her relegation, in the name of 'Islam' and religious dictate to lesser citizenship and personal status."[133] It is for these reasons that personal status codes have become a primary battleground in the struggle for gender equality in the MENA region, as women's rights organizations and liberal-minded lawyers, judges and Islamic scholars throughout the region have fixed on this area of the law as central to the perpetuation of women's status as second-class citizens. Many locate equity and democracy in marriage, divorce and parenthood as the "cornerstone of full citizenship for women,"[134] and note that while women are regarded as inferior and are excluded from decision-making within the family, it will remain impossible for them to attain equal status in the public sphere.[135]

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permission, as well as provisions requiring a woman's marriage to be negotiated by a male guardian (*wali*). Additionally, under Jordanian law, family registry books - used for all transactions related to the claiming of entitlements from the state (ie, bread subsidies, voting cards, documentation, school registration) - are issued in the name of (what is assumed to be the male) head of household. This means that not only is a family's access to state-issued rights limited to its male representative, but women who have been widowed or abandoned or are married to non-Jordanians have been unable to benefit from citizenship entitlements. This provision has recently been amended to allow divorced and widowed women to obtain their own registries, but those married to non-Jordanians are still excluded (Amawi, *supra* note 108).

[132] Fawzy, *supra* note 123, at 17 (paraphrasing Nasser Hamed Abu Zeid, *Dawar'ir al-khauf; qira'a fi khitab al-mara'a, Beirut; markaz al-thiqafi al-'arabi*, 1999, 283).

[133] Homa Hoodfar, *Iranian Women at the Intersection of Citizenship and the Family Code: The Perils of "Islamic Criteria", in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57, at 300.

[134] *Id.* at 304. Hoodfar notes that while this is an opinion that was at one time expressed largely by activists and intellectuals in Iran, as a result of a broadening of the public discourse on personal status laws it is increasingly articulated by women from diverse cultural, geographic and social backgrounds.

[135] One woman interviewed by Hoodfar under the auspices of the Women Living under Muslim Laws Network, Women and Law Program asked, "What does it mean for the Iranian woman to have the right to choose the president and members of parliament if they find themselves divorced without compensation for having gone to the polling stations to exercise those rights? . . . What does it mean for a woman to become a president or an ambassador if she has to ask for permission of her husband to leave her house to attend the presidential office and rule the country?" Hoodfar also notes that such arguments have been flipped and used by proponents of women's position as dependents, as when a group of Iranian *ulema* (religious

**Women and Law in Egypt**

Like many in the region, the Egyptian constitution guarantees equal rights to all citizens without discrimination, though it makes no specific mention of gender as a basis for discrimination.[136] Though personal status laws do regulate relations within families, the lack of a uniform code within Egypt means that women from different religions are subject to different laws.[137] Women are granted equal access to the courts, and their testimony is worth the same as men's, though issues may arise when women find themselves confronted by the patriarchal attitudes of court officials and judges.[138] Though women have enjoyed full suffrage since 1956, in 2003 they made up just 37.4% of registered voters, and the political system works against their efforts to run for office.[139] Labor laws have been amended to provide concessions for working mothers (including the provision of nurseries in workplaces, full pay for maternity leave and two years off for family care), but employers routinely find creative ways of circumventing such policies.[140] Violence against women is not uncommon, and protection against gender-based violence is not often guaranteed. Domestic violence is not considered a crime by law. While it does constitute grounds for divorce, women wanting to divorce for this reason are required to produce medical reports documenting the abuse. Furthermore,

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scholars and interpreters of Islamic law) in the 1960s argued that "a woman who does not have freedom of choice in her own home and is under control of her husband should scarcely be trusted with the power to decide the policies and laws of the country" (*Id.* at 296).

[136] *Constitution of the Arab Republic of Egypt (*September 22, 1971) *(last amended March 26, 2007)*, Article 40.

[137] FREEDOM HOUSE, supra note 113. There was some hope among women's rights activists that this would be regularized by the introduction of family courts in 2004, but it has not had that effect in practice.

[138] *Id.*

[139] *Id.*

[140] *Id.* Hatem notes that this was the case from very early on. Labor law no. 91, passed in 1959, provided for day care services where there were more than one hundred female workers in any given workplace, but employers responded by simply avoiding hiring more than ninety-nine women (Hatem, *supra* note 80).

entrenched social attitudes surrounding domestic violence mean that it is largely ignored by police.[141] Similar problems relating to societal acceptance of violence against women among authorities and communities have led to a lack of investigation of honor crimes and pressure exerted by police on women to drop charges against their rapists.[142]

Egypt has seen recent advances in laws affecting gender equality. In 2000, the Egyptian Parliament passed what has popularly come to be known as the "*khul* law."[143] The legislation grants women access to no-fault divorce without their husbands' consent (*khul*), and also contains provisions on a woman's right to a divorce from an '*urfi* (unofficial) marriage, witnessing and documentation requirements of *talaq* (men's right of unilateral divorce through simple pronouncement of particular words), a woman's right to travel without her husband's consent, imprisonment of husbands for refusing to pay maintenance, as well as the creation of a new marriage document requiring a husband to disclose if he is already married, and allowing for stipulations to be written into the contract. 2002 saw the establishment of a gender Ombudsman's office, while in 2004 a family court was established and the first female judge was appointed to the Constitutional Supreme Court.[144]

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[141] A 2002-3 survey by Egyptian Women's Legal Assistance found that less than half of those women reporting having been subject to incidences of domestic violence during that time had sought assistance (FREEDOM HOUSE, *supra* note 113).

[142] Freedom House notes that while feminists did succeed in abolishing the law forgiving rapists who married their victims, this success has been undermined by police who not only encourage women to drop rape charges, but also pressure women to marry their perpetrators (*Id.*)

[143] The controversy surrounding the *khul* law will be discussed in further detail below.

[144] FREEDOM HOUSE, *supra* note 113. The ombudsman's office was initiated to investigate allegations of discrimination in the workplace, personal status law and inheritance. It assigns pro bono lawyers to women who cannot afford to file court cases on their own. The office also investigates cases of domestic violence, and reportedly coordinates with the Ministry of Interior to provide training to police officers in registering domestic violence complaints. According to a report by the National Council for Women, the office reportedly received 7,000 complaints within the first two years of its existence, and was able to resolve 40% of the cases that were brought to its attention (National Council for Women, *Implementation of the Beijing Platform for Action: Egypt* (2004),

**Egyptian nationality law and the 2004 reform**

*Why reform?*

What is it about nationality laws in the Middle East that demand reform? What does the

current state of the law say about how women are (de)valued in their societies? What

practical effects do discriminatory nationality laws have on women and their families?

All of these are questions that merit examination. In an effort to understand the scope of

the problem, the Beirut-based Collective for Research and Training on Development

(CRTD) spearheaded a study in 2003 of citizenship law in the MENA region. At the heart

of the study's findings was the fact that though all countries surveyed were guided by

constitutions theoretically committed to gender equality, their citizenship laws lay in

direct contradiction to this commitment.[145] And the consequences felt by women who

made the decision to marry foreigners but remain in their own countries were both wide-

ranging and profound.

For many such women, the first indication of any sort of problem is the refusal of

the authorities to register their children.[146] For many the only way to register a child is at

the husband's embassy, a task which only he can accomplish, and which presents

obstacles if he is away, has divorced his wife, or if consular services are far away or there

exist no diplomatic relations between the countries in question. In the most extreme

cases, the child of a national mother and foreign father may be rendered stateless, but at

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http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CGYQFjAE&url=http%3
A%2F%2Fwww.un.org%2Fwomenwatch%2Fdaw%2FReview%2Fresponses%2FEGYPT-
English.pdf&ei=3XCuT82gAZHysgbdm-
y3Bg&usg=AFQjCNEqXtARkgs9j9NTWnI3rBsecPy5DA&sig2=-by1JfjbZZR9x47F1tqpTw).
[145] Lina Abou-Habib, *Gender, Citizenship, and Nationality in the Arab Region*, 11 GENDER & DEV. 67
(2003).
[146] *Id.*

the very least he or she is treated as a foreigner in the mother's country, even if it is the country in which the child was born and lived its entire life.

Living as a foreigner in one's own country carries a variety of practical consequences, affecting such things as the right to residence, education, employment, health care, property ownership and inheritance, access to state aid, and the ability to obtain identity documents, passports and permission to travel. Most women interviewed in the CRTD study spoke of the difficulties they experienced in providing education for their children. In Egypt, foreign children are subject to school fees of as much as six times the rate paid by nationals for primary education. Oftentimes such families are also expected to pay these inflated fees in foreign currency. If the children do manage to secure an education they will find themselves upon graduation subject to employment restrictions designed for foreigners. This means that they must obtain (and regularly renew) work permits in order to find official employment. This is further complicated by the need to acquire residency permits, a procedure which they must undergo on the same footing as any foreigner applying to live in Egypt.[147] At every step, from birth registration to school fees to residency and work permits, women and their children come face to face with labyrinthine bureaucracies, endless paperwork and exorbitant fees.[148]

Even more worrisome are the potential consequences if a mother is unable to acquire any documentation for her children. Particular classes of women – the poor, rural, and those who possess no identity documents of their own – may find themselves stymied by the complex processes and fees involved. And the absence of identity documents in

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[147] CRTD, *supra* note 93.

[148] One interviewee recounted that she spent the better part of fifteen years shuttling back and forth between government agency offices just to ensure that her children could receive the education their fully-Egyptian counterparts took for granted (Abou-Habib, *supra* note 145).

many MENA countries, where individuals are typically required to present them upon request, means such families live in constant fear and suffer from severe restrictions on their freedom of movement.[149] A further fear for women married to foreign men is that in the event of divorce, they may lose custody of their children entirely and be powerless to prevent their husbands from taking the children back to their home countries. [150]

The social and psychological impact on women married to foreigners may be equally as damaging. The CRTD study found a lack of social acceptance within MENA states of such mixed marriages, particularly if the husband was non-Muslim, of a darker complexion, or coming from a geographically distant country.[151] This corresponds with other accounts of women who found themselves repeatedly asked, "why couldn't you find an Egyptian to marry?,"[152] and goes to the heart of notions of national identity. Women who ran into barriers while attempting to procure services for their children that they thought ought to be automatically proffered often reported experiencing psychological shock, anger, trauma, humiliation and a sense of injustice.[153] Many saw the refusal to grant their children nationality in their own country as a deprivation of their fundamental rights and a restriction of their right to live as full citizens with the freedom

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[149] Abou-Habib, *supra* note 145. One Jordanian teenager interviewed noted that she and others like her felt "like prisoners in our own homes" (CRTD, *supra* note 93, at 22).

[150] This fear of losing custody and even access to their children leads some women to remain in abusive relationships long after they would otherwise have left (CRTD, *supra* note 93).

[151] Abou-Habib, *supra* note 145.

[152] New Woman Foundation, *My Nationality is My and My Family's Right* (2009), http://www.youtube.com/watch?v=RHgoL08tBRA&feature=relmfu (part 1), http://www.youtube.com/watch?v=g_VGXHkcBHk&feature=relmfu (part 2), http://www.youtube.com/watch?v=DWEtZKF3MRo&feature=relmfu (part 3), http://www.youtube.com/watch?v=kgrPRAP55Ic&feature=relmfu (part 4) (interview with Soumaya Ibrahim).

[153] Abou-Habib, *supra* note 145. One Jordanian woman noted the humiliating treatment she received at the hands of civil administrators when she said that "I am not treated like a human being when I go do my paperwork at the Ministry of Interior." (CRTD, *supra* note 93, at 22).

to marry as they choose. In addition to violating their rights as individuals, they felt that such discriminatory nationality laws violated their rights as mothers, inhibiting their ability to secure basic rights for their children. And many women expressed feelings of guilt and regret over the unintended consequences of their choice of spouse on their children.[154]

The majority of the women interviewed by CRTD, regardless of class or education level, reported a lack of awareness of the legal ramifications of marrying a foreigner prior to their decision to do so, and only discovered the consequences upon having their first child, or upon divorce or the death of their husbands.[155] This highlights a widespread ignorance of the law and its practical impact on the lives of women and their children.

### *Resistance to Reform*

As noted previously, the question of nationality is a political one, and states choose to proffer or withhold nationality for a variety of reasons. Some states justify the withholding of nationality as a response to national security concerns. In countries such as Lebanon this may be due to concerns over the potential destabilization of the state's demographic composition,[156] whereas in Egypt the exclusion of the children of mixed marriages has historically been based on a fear of dual loyalties and the perception of half-Egyptians, particularly those with Israeli fathers, as potentially hostile to Egyptian

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[154] One woman interviewed noted that, "I am the reason why my daughters have no future." (Abou-Habib, *supra* note 145, at 72).
[155] CRTD, *supra* note 93.
[156] Abou-Habib, *supra* note 145.

interests.[157] One may easily ask, as does Lina Abou-Habib, why these concerns are so

often raised only in regard to the children of national women and foreign men, and not

the other way around. The only answer seems to be that such determinations follow

patriarchal modes of thought based on assumptions that a woman and her children should

follow the husband and settle in his country and not the reverse. This is reflected in the

Egyptian government's rationale for its reservation to CEDAW article 9 (granting women

equal rights to men with respect to the nationality of their children):

> This is in order to prevent a child's acquisition of two nationalities where his
> [sic] parents are of different nationalities, since this may be prejudicial to his
> future. It is clear that the child's acquisition of his father's nationality is the
> procedure most suitable for the child and that this does not infringe upon the
> principle of equality between men and women, since it is customary for a
> woman to agree, upon marrying an alien, that her children shall be of the
> father's nationality.[158]

Other justifications have included the fear of a sudden population increase and the

resulting burden on state resources, as well as a sense that the granting of citizenship to

the children of Egyptian women and unknown men might result in legitimation of, and an

increase in, illegitimate births.[159]


*The reform itself*

The drive to amend Egyptian law to allow women to pass their nationality to their

children began years before its successful conclusion with the passage of Law

154/2004.[160] Egyptian women's organizations identified the topic as one of concern as

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[157] Fernandez, *supra* note 102.
[158] U.N. Division for the Advancement of Women,
http://www.un.org/womenwatch/daw/cedaw/reservations.htm, last visited May 9, 2012.
[159] Fernandez, *supra* note 102.
[160] *Law No. 154 of 2004*, Official Gazette, Vol 28 bis (a) (July, 14 2004) (which amended Law 26/1975).
The law was followed by *Decree No. 12025 of 2004*, issued by the Ministry of Interior (Al-Waqa'e'Al-

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early as 1993 during their preparations for the International Conference for Population

and Development (held in Cairo in 1994). 2001 saw an upsurge of interest in the arena of

women's citizenship rights in the MENA region, as the Machreq/Maghreb Gender

Linking and Information Project (MACMAG/GLIP) identified citizenship as a key area

in need of reform, and launched a regional reform campaign.[161] That same year the

Egyptian Association for the Development and Enhancement of Women (ADEW)

sponsored a conference which included discussions concerning nationality law.[162] In

2003, the Egyptian government followed suit. That year President Hosni Mubarak

signaled his intention to amend the 1975 Nationality Law (Law 26/1975) in a speech at

the annual conference of the ruling National Democratic Party. The Justice Minister was

immediately tasked with establishing a committee of experts, including representatives

from the Ministry of Interior and the National Council for Women, to draft the

amendment.[163]

According to some estimates, the amendment had the potential to affect up to one

million individuals, representing 468,000 families.[164] Egypt's 2008 CEDAW report

(compiled by the National Council for Women) claimed that thousands of children of

Egyptian women married to foreigners had obtained Egyptian nationality as soon as the

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Masreya (Egyptian Proceedings) Vol. 166 bis, (July 26, 2004) and outlining the procedures by which the law was to be implemented.

[161] Abou-Habib, *supra* note 145.

[162] Hala Sakr, *A Matter of Survival*, AL-AHRAM WEEKLY, May 3-9, 2001.

[163] Laila Reem, *Citizens At Last*, AL-AHRAM WEEKLY, July 1-7, 2004. Fernandez notes that the Konrad Adenauer Foundation, a German NGO with an interest in improving the development situation of women as a means to contribute to the development of Egypt as a whole, assisted in the drafting process (Fernandez, *supra* note 102).

[164] Reem, *supra* note 163. Other statistics from the time estimated that 287,000 Egyptian women were married to foreigners. If each of those women had just two children each, that would put the number of affected children at half a million (Sakr, *supra* note 162).

law was issued.[165] Estimates from early 2010, just over five years after the amendment's

passage, were that 17,000 affected individuals had acquired nationality.[166]

According to the law, acquisition of citizenship is immediate for those born after

its enactment.[167] Those born prior to its passage were required to submit an official

request to the Ministry of Interior, and would automatically be granted nationality within

a year if they hadn't been informed otherwise. There exists some confusion regarding

whether the law contained a statue of limitations governing how long an individual had to

submit an application, with some sources claiming that failure to apply for citizenship

within one year of the law's passage would result in permanent loss of the opportunity,[168]

while other sources note that individuals applying well past the year mark have had no

difficulty in acquiring citizenship.[169]


***Barriers to Implementation***

Whatever the case may be, the application process for those born prior to the amendment

does not appear to be a simple or straightforward one, requiring the submission of birth

certificates for both the applicant's parents, a copy of their marriage contract, as well as

the mother's national ID card, the applicant's birth certificate, foreign passport, proof of

educational qualifications and photos, and for those over sixteen, proof of residence in

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[165] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women : Combined 6th and 7th periodic reports of States parties : Egypt* (September 5, 2008), CEDAW/C/EGY/7,

[166] The International Observatory on Statelessness, http://www.nationalityforall.org/egypt, last visited May 12, 2012.

[167] *Id.*

[168] Reem, *supra* note 163.

[169] Fernandez, *supra* note 102.

Egypt for the previous ten years[170] as well as a clean criminal record.[171] Fernandez notes

that the process "requires a tremendous amount of paperwork authenticating the origins

of the mother."[172] The obstacles to particular categories of individuals - including poor

and rural women, who may never have been issued birth certificates or national ID cards

of their own, illegitimate children, who may also not have been issued with birth

certificates,[173] or those living far from the administrative offices where applications must

be lodged and followed up on – seem obvious.[174]

The challenges inherent in such a protracted, costly and complex process are

compounded by a deficient implementation system as well as discriminatory

implementation that excludes particular groups of individuals, such as the children of

Palestinian and Sudanese fathers.[175] Furthermore, the discretionary power granted to the

Ministry of Interior over each application means that an individual's chances of acquiring

nationality rest on the willingness of Ministry employees to register and process them, a

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[170] According to Fernandez, this requirement has been lifted
[171] Reem, *supra* note 163.
[172] Fernandez, *supra* note 102, at 74.
[173] A 2008 amendment to the child law may have alleviated this particular obstacle, in that it permits illegitimate children to receive birth certificates in their mother's name if the father is unknown (Freedom House, *Women's Rights in the Middle East and North Africa 2010 – Egypt* (March 3, 2010), http://www.unhcr.org/refworld/docid/4b990125f.html.
[174] Such requirements are reminiscent of the gender-specific procedures for voter registration established with the 1956 Egyptian Constitution. All men were automatically registered to vote, while only those women who requested the right were to be registered. Women desiring to vote were required to petition the state to be included in the list of registered voters. This process again disadvantaged illiterate women and required visits to local police station where they were faced with generally uncooperative bureaucrats. This resulted in low numbers of women registering, which "allowed the state to claim that the right to suffrage was the concern of a small minority of privileged women whose political concerns were not those of the illiterate and depoliticized majority" (Hatem, *supra* note 80, at 49).
[175] Women's Learning Partnership, *Gender and Citizenship Programme: Major Developments in 2006* (December 21, 2006), http://www.learningpartnership.org/lib/gender-citizenship-programme-major-developments-2006.

power that is often exercised arbitrarily.[176] The International Observatory on Statelessness noted that though the Ministry of Interior began processing applications immediately after President Mubarak's 2003 announcement, progress has been slow relative to the numbers of individuals and families affected.[177]

Further to the challenges mentioned above, some formal restrictions do still apply. Though the children of Egyptian women and foreign men may be granted citizenship, they are forbidden from holding certain government positions or joining the army or police (a form of service required of all Egyptian males).[178] And until just recently the children of Palestinian men were barred from obtaining citizenship regardless of the nationality of their mothers. This policy was purportedly meant to fall in line with the Casablanca Protocol of 1965, an Arab League recommendation that Arab states refrain from granting citizenship to Palestinians in an effort to preserve Palestinian identity and the right to return.[179] It was originally written into the text of the law, but faced such opposition that the wording was removed. Such individuals were, however, still excluded in practice. This particular exclusion calls into question the overall effectiveness of the reform, when one considers the fact that by far the largest group of Egyptian women

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[176] Maria Golia, *Egypt's New Nationality Law Doesn't Bar Discrimination*, THE DAILY STAR (May 19, 2004), noting that, "[a]pplicants spend a significant amount of money and some 40 hours being shuffled from window to window and repeatedly asked to acquire previously unmentioned documents from offices located elsewhere in town. When one applicant expressed frustration, a civil servant scornfully replied: 'What do you expect me to do, write a list of the papers you need and put up a sign?'" Another woman interviewed for the documentary "My Nationality is My and My Family's Right" recounted that though she applied for citizenship for both of her children, only one succeeded in acquiring it, as the authorities demanded an extra 1,200 LE for the second child, which she was unable to afford (New Woman Foundation, *supra* note 152).

[177] International Observatory on Statelessness, *supra* note 166.

[178] FREEDOM HOUSE, *supra* note 113; Reem, *supra* note 163.

[179] Gianluca P. Parolin, *New policy on Egyptian citizenship for children of Palestinian fathers*, EUROPEAN UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP, http://eudo-citizenship.eu/citizenship-news/530-new-policy-on-egyptian-citizenship-for-children-of-palestinian-fathers, last visited April 28, 2012.

married to foreigners is married to Palestinians.[180] Such women continued to protest this

unwritten restriction, taking their cases to court in an attempt to force the government to

acknowledge that they have the same right as other Egyptian women to confer nationality

on their children, regardless of the citizenship status of their husbands. On 2 May 2011

the Ministries of Interior and Foreign Affairs issued Decree No. 1231, allowing for

Egyptian women married to Palestinian men to transmit their nationality,[181] though it is

as yet unclear what prompted the government to make this move. It is also unclear what

portion of the population in question has benefited from Decree No. 1231, though

statistics prepared for the EU Democracy Observatory on Citizenship note that of the

2,756 individuals who were granted citizenship status by the Ministry of Interior between

the months of July and October 2011, 2,574 were the children of Palestinian men.[182]

While on the face of it Law 154/2004 appears to be a victory in the struggle for

gender equality in Egypt, upon deeper inspection this becomes decidedly less clear. It is a

symbolic victory for certain – a visible step in the direction of progress. Yet it is difficult

not to view it as anything but a half measure. Aside from the restrictions and logistical

difficulties mentioned above, the fact remains that women are still barred from passing

nationality to their husbands in the same way that Egyptian men are allowed to do for

their foreign wives.[183] Furthermore, the requirements, fees and procedures involved are in

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[180] Laila Reem put the number at 33% of all Egyptian women married to non-Egyptian men (Reem, *supra* note 163).
[181] Women's Learning Partnership, *Post-Revolution, Egypt Establishes Right of Women Married to Palestinians to Pass Nationality to Children* (May 13, 2011), http://www.learningpartnership.org/lib/post-revolution-egypt-establishes-right-women-married-palestinians-pass-nationality-children-1.
[182] Parolin, *New policy on Egyptian citizenship*, *supra* note 179.
[183] The foreign wives of Egyptian men may apply for citizenship just two years after marriage.

fact similar to those for foreign adults applying for Egyptian citizenship,[184] which runs

contrary to the goals of activists who saw the amendment as a means to equalize men and

women's ability to pass their nationality to their children. Furthermore, the confusion

among various sources surrounding the actual content and application of the reform

highlights not only the difficulties inherent in keeping abreast of the law and its impact,

but also a certain lack of commitment on the part of the state to ensure implementation of

its own legislation. Some have gone so far as to argue that, "[w]hile commentators insist

that the amendment signifies governmental willingness to guarantee women their rights,

in reality it highlights an inbred reluctance to do so."[185] This may be further evidenced by

the fact that it took the Egyptian government an additional four years to withdraw its

reservation to CEDAW Article 9(2).[186]

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[184] Women's Learning Partnership, *Egypt: Discrimination Continues Despite Law Reform* (September 15, 2009), http://www.learningpartnership.org/lib/egypt-discrimination-continues-despite-law-reform.
[185] Golia, *supra* note 176.
[186] Egypt withdrew its reservation to CEDAW Article 9(2) in 2008 (Freedom House, *supra* note 173).

# CHAPTER 3

## TACTICS FOR SOCIAL REFORM

**LAW & SOCIAL REFORM**[187]

In order to understand the place of the 2004 nationality law reform within the broader

context of the Egyptian women's rights movement, we must first ponder the role of law

generally within social reform movements. Most social and legal scholars would agree

that law cannot be divorced from society. It is simultaneously a social cause and effect,

and exists as "part of the broader pattern of collective perception and behavior in the

resolution of social problems."[188] As such, what may be considered the appropriate

means of solving a particular social problem is highly dependent on a variety of factors,

from the underlying social conditions of the time and place, to the nature of the problem

itself, to the specific groups implicated in it.[189] Yet while the interconnection of law and

society may be undeniable, what is less clear is the role law can and should play in efforts

to affect changes to the social order.

Legal-centric analyses conceive of law as the logical battleground for social

change, as it is in and through law that rules governing social behavior are articulated and

enforced. According to Lawrence Friedman and Jack Ladinsky, social change follows an

orderly and rational pattern, beginning with the definition of a social problem, followed

by a process of continuous adjustment.[190] This process necessarily involves recourse to

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[187] Portions of this section are taken from an unedited, unpublished paper written for a course at the
American University in Cairo, entitled: *One Tool in the Toolbox: The Role of Law in Social Change,*
(Catherine MacKay, May 2011).

[188] Lawrence M. Friedman and Jack Ladinsky, *Social Change and the Law of Industrial Accidents*, 67 COL.
L. REV. 50 (1967), at 51.

[189] *Id.*

[190] *Id.*

the law, which is viewed as an important indicator of social change and of the shifts in

powers, duties and rights that flow from such change. Friedman and Ladinsky's measured

approach is echoed by Alan Hunt, who views social change as a process by which

existing hegemonic discourses are gradually replaced by new hegemonies.[191] Hunt views

this process in part as a struggle for the control of law, whereby subordinate classes strive

to achieve authority and norm-creating capacity.[192] This approach is predicated on the

understanding that in order to succeed, reformers must engage in struggle within the

existing terrain, of which law forms a central component.[193]

Those theorists situating legal processes at the heart of social change view the

legitimation offered by law as necessary to the realization of new social claims[194] and to

the strengthening of the position of groups outside the fringes of power.[195] The legal

recognition of a right lends authority to an individual claim, and backs it up with the

legitimate force of the state, raising its status and setting the expectation that it will be

granted without delay or question.[196] Joel Handler argues that litigation can be a useful

tool for "clearing away the underbrush" of legal structures of disenfranchisement while

raising consciousness and providing legitimacy.[197] The enlistment of the moral authority

of courts and constitutions in defense of a right is thus viewed as a useful tool for

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[191] Alan Hunt, *Rights and Social Movements: Counter-Hegemonic Strategies*, 17 J. L. & Soc. 309 (1990).
[192] This is echoed in Marshall's, Voet's and Turner's arguments (discussed in Chapter 1) that the struggle for citizenship rights is a story of social progress, as increasing numbers of groups mobilize to claim admittance to the political community, with all that membership entails.
[193] Hunt, *supra* note 191.
[194] *Id.*
[195] Joel F. Handler, Social Movements and the Legal System: A Theory of Law Reform and Social Change, 4 (Academic Press 1978).
[196] Handler views courts as a tool most suited for use by those who find the balance of political forces against them. If such groups had access to political power, they would not need to resort to courts, but finding themselves outside the circles of influence they use courts as a means to neutralize inequities in bargaining power (*Id.*).
[197] *Id.*

drawing support and influencing public opinion,[198] which in turn produces changes in

behavior and social relations.

Others view law more skeptically as a tactic for altering perceptions, and resist the

notion of law as the central battleground for social change. Stuart Scheingold warns of

the tendency of reformers to be seduced by what he terms the "myth of rights," which

rests on a false belief in the power and efficacy of the legal system and the ability of

judicial declarations of rights to translate directly into social reform.[199] Scheingold posits

that:

> Legal frames of reference tunnel the vision of both activists and analysts leading
> to an oversimplified approach to a complex social process . . . The assumption is
> that litigation can evoke a declaration of rights from courts; that it can, further, be
> used to assure the realization of these rights; and, finally, that realization is
> tantamount to meaningful change. The myth of rights is, in other words,
> premised on a direct linking of litigation, rights, and remedies with social
> change.[200]

Reformers who base their efforts solely in the legal arena thus fall prey to the belief that

once established, rights and their attendant obligations are legally enforceable and

ethically persuasive, and put us on the road to resolution of the social problem in

question. Furthermore, such a focus, according to Scheingold, results in what is

ultimately a superficial search for easy opportunities for legal reform of the most obvious

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[198] As an illustration of this belief, Michael J. Klarman points to theories that the U.S. Supreme Court
decision in Brown v. Board of Education served to "prick the conscience" of northern whites by placing the
moral authority of the Court behind school desegregation efforts, thus paving the way for further gains
during the civil rights movement (Michael J. Klarman, *How Brown Changed Race Relations: The Backlash
Thesis*, 81 J. OF AM. HIST. 81 (1994)).
[199] STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE,
(University of Michigan Press 2004) (1974).
[200] *Id.* at 5.

and egregious wrongs rather than a more thoughtful prioritization according to long-range goals targeting underlying social patterns.[201]

Tomiko Brown-Nagin goes a step further in conceiving of law and social reform movements as being "fundamentally in tension,"[202] largely due to the fact that resort to the law risks undermining the necessarily insurgent nature of social reform movements. She distinguishes between what she terms the 'definitional' and 'inspirational' roles of law – when law is used to define a social movement's goals and actions, the movement is robbed of its ability to introduce broader, systemic issues. Alternately, social movements that take *inspiration* from the law, using it strategically as one among many tools in a broader struggle for public opinion, are more likely to succeed.

It is important to note that even the harshest critics of the centrality of law to social reform movements don't advocate abandoning its use entirely, but rather view law as one among many tools for social change, to be used strategically as the situation calls for it. The fact that it cannot be ignored even by those who would most like to speaks to the primacy of law as an institution regulating social behavior. While many may wish it otherwise, it seems to be generally agreed upon that law must form some part of any strategy for social change.

**How Does Change Happen?**

Opinions regarding the centrality of law to reform efforts are invariably shaped by conceptions of how social change happens. The ultimate goal is a change in the way

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[201] *Id.*

[202] Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 COL. L. REV. 1436 (2005).

people relate to each other, but the process by which that happens (and thus the means used to make it happen) can be understood in a variety of ways.

Idit Kostiner, in her study of social justice activists in the San Francisco Bay area, speaks eloquently of how conceptions of change impact activists' opinions regarding the utility of law as a means to bring it about.[203] Those people who see social activism as a means to secure concrete changes in the lives of specific individuals tend to view law as a useful tool insofar it has the power to solve the concrete needs of marginalized individuals. However, it is criticized for its limitations in regard to the high cost of litigation and the bureaucratic hurdles that render implementation and enforcement difficult. Those activists who view social change in more political terms - as relating to systemic oppression and the distribution of power - focus on the empowerment of marginalized communities to unite, organize and introduce their concerns to a debate that is conducted largely without their input. Such reformers tend to be highly critical of law as reflecting the interests of the majority, reproducing social inequalities and preventing social change. Yet, understanding law to be a powerful institution, they recognize that it is difficult to ignore, and advocate for its use as a supplementary strategy to community organizing. Kostiner's third category of activists view social change as being a cultural project of shifting personal attitudes and beliefs. Law, to them, is marginal, as it operates in a different realm than culture; it can reflect change, but isn't a strategy for change. For these reformers, the emphasis must be on education and training, which is a deeply personal process, and has little to do with laws or regulation.

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[203] Idit Kostiner, *Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change*, 37 L. & SOC. REV. 323 (2003).

**The Role of Law in Social Change**

*The limitations of law as a tool for change*

Much of the debate surrounding law and social change centers on how social problems and their solutions are defined and framed. Legal definitions tend to be narrow and selective, and typically exclude alternative approaches. By translating social problems into legalese, the "social chemistry underneath" gets lost,[204] and conversations devoted to dismantling the underlying attitudes that generate inequality are excluded.[205] Once the issues are narrowed enough to suit the legal framework, it becomes a question of *what* has happened, but not of *why*.[206] Thus resort to the law forces social movements to focus their agenda on a single, narrow, more easily obtainable objective, and neutralizes their ability to affect broader, more substantive change.[207]

This phenomenon can be seen reflected in the shifts in feminist reform efforts in the post-suffrage era. Having gained the vote many feminists noted the failure of the

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[204] Brown-Nagin, *supra* note 202.

[205] Smita Narula elaborates on this process in a discussion of legislation in India providing for proportional representation of "untouchables" (*Dalits*) in education, employment and legislative bodies. Such legislation, meant to address the widespread exclusion of this particular social class from institutions granting opportunity and influence, fails to concern itself with the social attitudes that underlie the exclusion, or with the composition of a social and legal structure that is built upon caste privilege (Smita Narula, *Equal by Law, Unequal by Caste: The "Untouchable" Condition in Critical Race Perspective,* 26 WIS. INT'L. L. J. 255 (2008)). Similarly, Brown-Nagin highlights the inability of advocates for the upholding of affirmative action legislation in the United States to introduce into the wider debate the discriminatory admissions procedures that lie at the heart of the continued need for such legislation (Brown-Nagin, *supra* note 202). Susan Miller and Rosemary Barbaret also identifies this process in legal responses to domestic violence, which tend to focus efforts on addressing the micro-level causes of violence against women - including education, poverty, learned family behavior, and substance abuse - rather than the macro-level issues of male domination and patriarchal social and legal structures (Susan L. Miller & Rosemary Barbaret, *A Cross-Cultural Comparison of Social Reform: The Growing Pains of the Battered Women's Movements in Washington, D.C. and Madrid, Spain*, 19 L. & SOC. INQUIRY, 923 (1994)).

[206] William L.F. Felstiner, Richard L. Abel and Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…,* 15 L. & SOC. REV. 631 (1980); according to Scheingold, "the law game provides an answer for every question and at the same time cuts the debate off short of first principles," meaning that a focus on the law shifts attention toward rights and obligations as recorded in legal rules, and away from the tougher underlying moral questions (SCHEINGOLD, *supra* note 199, at 57).

[207] Brown-Nagin, *supra* note 202.

provision of such a fundamental citizenship right to bring 'equal citizenship' to women. Thus Voet notes a historical shift in the focus of feminist reform efforts from formal citizenship status to broader social constructions of gender roles and women's economic dependency. For although women had technically gained the right to become political actors, they still lacked the power to participate on an equal footing with men.[208] True equality would involve freedom from the social conditioning and economic dependence that precluded women's full participation.[209]

Madu Mehra further argues that law is often attributed with a coherence it does not in fact possess, which can tempt reformers into a false sense of security.[210] Viewed in this light, progressive legislation may in fact be considered harmful, in that it is presented as evidence of progress, thus encouraging marginalized communities to abandon the work necessary to bring about deeper attitudinal and behavioral change.[211] The few examples of progress are used as proof of overall success, thereby allowing attention to shift elsewhere.[212] This critique views seemingly progressive law reform as a "safety valve" to diffuse pressure for more substantive reform.[213]

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[208] VOET, *supra* note 18.

[209] *Id.*

[210] Madu Mehra, *Exploring the Boundaries of Law, Gender and Social Reform*, 6 FEM. LEGAL. STUD. 68 (1998).

[211] Kostiner, *supra* note 203.

[212] Narula, *supra* note 205

[213] Narula sees this phenomenon at work in the dismantling of *de jure* discrimination (in this case, legislation providing for proportional representation of *Dalits* in education, employment and the legislature), which may lay the foundation for social transformation, but also masks the reality of *de facto* exploitation and abuse by discouraging further scrutiny into the structures and attitudes that encourage exclusion in the first place (*Id.*)

*Intention v. implementation*

Practical reform through law is further problematized by the gap that exists between legislation and implementation. Without institutional support, legal reform remains theoretical. Policy implementation is a political process typically involving two sets of actors with asymmetrical access to power and resources.[214] When prioritizing allocation of limited resources, implementing authorities are selective in the rules they choose to enforce, and they respond most to their more organized and influential constituents, who tend not to be the ones seeking change.[215] Monitoring of implementation is left to the interested parties, which again advantages those with more resources and greater staying power. In the end we may observe, as did the U.S. Civil Rights Commission in 1959, that the problem often lies less in discriminatory laws than in the discriminatory application and administration of apparently non-discriminatory laws.[216]

In a study of Swedish gender equality policy of the 1970s Ingrid Pincus noted a variety of political and administrative factors inhibiting implementation of reform.[217] To begin with, the drafting of legislation is a political process involving compromise and often resulting in vague policies that may prove difficult to implement. Implementation at the local administrative level is also infused with its own politics, and is often left in the hands of those most affected – often adversely – by policy shifts. Such individuals are in a position to exercise not only the power to get things done, but also to prevent change by failing to act. This is a particularly salient issue in the case of gender equality policy,

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[214] Ingrid Pincus, *Men, Power and the Problem of Gender Equality Policy Implementation, in* THE POLITICAL INTERESTS OF GENDER REVISITED, *supra* note
[215] Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC. REV. 95 (1974).
[216] HANDLER, *supra* note 195, at 120.
[217] Pincus, *supra* note 214.

which aims to shift power relations in favor of women, but which is typically implemented by men, who have a vested interest in maintaining the status quo. Pincus also highlights the important distinction between women's access to the policy drafting and implementation stages. She noted that women's presence was greater during the former, where they were able to get gender reform policy on the agenda. Yet their presence at the implementation stage, in the agencies responsible for putting policy into action, was much less felt. This has a direct and discernible impact on the success or failure of implementation efforts.

Implementing agencies tend to be large and decentralized, and often exercise significant discretion at the field level. Handler notes that this setup provides multiple opportunities for evasion, particularly if the process in question is a complicated one with many steps. Implementation of reform thus comes to require the obedience of a variety of agencies and actors, and it can be extremely difficult to monitor actions or changes in behavior. Handler writes that "[i]n study after study, it has been demonstrated that the field-level officials have within their power the ability to thwart or accept changes in administration," and that implementing agencies are at the mercy of their field-level participants, who have the expertise, location and position from which to control relevant information and access.[218] Noncompliant authorities exist at every level of implementation, from the judges who refuse to implement personal status laws with which they don't agree (or who simply postpone all cases relating to said laws)[219] to the doctors and village heads who falsify age certificates and marriage forms to allow for

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[218] HANDLER, *supra* note 195, at 20.
[219] Fawzy, *supra* note 123, referring to Egyptian judges who refused to implement policy change relating to what was termed 'Jihan's Law', after the wife of then president Anwar Sadat.

women under the officially prescribed marriage age to be married off by their families.[220] When such agencies and individuals fail to adopt the reformist perspective, social reform groups are left in the position of monitors, which they typically do not have the access or resources to fulfill.[221]

One of the more practical obstacles standing in the way of successful implementation of legal reforms and realization of rights is the labyrinth of administrative and court procedures required for an individual to see them to fruition. While a state may claim an individual has access to nationality, as we have seen, complex and costly administrative procedures may prohibit attainment for particular segments of the population.[222] In another example, women who have been granted the opportunity to seek divorce in court may find themselves facing insurmountable structural difficulties, including the requirement that they prove that the harm inflicted by their husbands is intolerable. Court proceedings may last years, which again disadvantages the poor and those living far from administrative and court offices.[223] Furthermore, social and cultural norms often discourage women from seeking redress through administrative institutions and courts when they find that their legal rights have been violated.[224]

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[220] *Id.*, referring to rural Egypt, where early marriage remains widespread despite government attempts to combat the problem through the raising of the minimum marriage age. Fawzy attributes the circumventing of the law not only to deliberate falsification of documents, but also to poverty, ignorance and the inadequate enforcement of the law.

[221] HANDLER, *supra* note 195.

[222] Batchelor, *supra* note 8.

[223] Fawzy, *supra* note 123.

[224] Ziai, *supra* note 122.

*Other structural factors inhibiting change*

Social and economic inequalities clearly have an impact on the ability of women to benefit from progressive legislation.[225] Women's economic and emotional dependence on men, their lack of time due to caring responsibilities, and the deeply ingrained social perceptions that render them less than men mean that the practical impact of legal reform becomes diluted. According to some, without first meeting certain material conditions to equalize the position from which men and women approach the law, the exercise of formal rights and liberties is not possible.[226] Voet argues that negative freedom for all (i.e., the assumption that all those admitted to the ranks of the citizenry exist on an equal footing and therefore are both entitled and able to access citizenship rights) is inadequate if one group is dominant in that it possesses the positive freedom to do as it will and to enforce rules on another.[227]

Many scholars point to the lack of awareness and access as among the most elemental barriers prohibiting women from exercising the rights granted to them under the law. What Amawi terms "legal illiteracy" renders women ignorant of the laws affecting them and unaware of their rights. A survey conducted at the time of the debate surrounding the proposed *khul* law in Egypt revealed that though the law was a topic of much public debate, still only 12.5% of women surveyed knew of its most significant provisions (compared with 22.5% of men).[228] This is a result of a combination of high illiteracy rates among women (particularly among the poor and rural), which meant that they got their news through social interactions rather than newspapers, and their more

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[225] *Id.*

[226] VOET, *supra* note 18.

[227] *Id.*

[228] Fawzy, *supra* note 123, at 81-2.

limited social circles, which impacted the likelihood of their coming across such information. The confusion surrounding the actual content and application of the 2004 Egyptian nationality law reform further highlights the difficulties inherent in keeping abreast of the practical implications of the law. While governments may bear the ultimate responsibility for promulgating legislative reform, their activities fall short of raising awareness regarding the application of laws. This task falls largely to NGOs,[229] which typically lack the resources to conduct widespread and sustained informational campaigns.

**The problems of reform from above and outside**

*Reform from above*

While those in positions of authority often stand in the way of reform as a means to protect their own privilege, it is also important to examine what happens when governments and social elites are the proponents of change, and use the law to impose top-down reform. Sometimes this occurs out of a genuine desire to bring about change, while in other instances, passage of progressive legislation may merely reflect a state's desire to appear as though its policies are in conformity with regional and international standards. There is in fact a constant push and pull, in part due to the conflicting interests of the state itself. The state must balance the desire to promote its own image as a progressive force (whether under the influence of foreign pressures or because of a desire to juxtapose itself against other internal political forces) against its need to placate the more conservative forces in society. At the same time it is in the state's interest to rein in

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[229] Ziai, *supra* note 122.

those forces calling for radical change. Governments in the MENA region have often

responded to this dilemma by co-opting gender equality initiatives, bringing them under

the umbrella of state agencies as a means to show women (and the international

community) that the state is committed to gender reform, while limiting both the shape

and application of reform efforts and keeping them in line with broader national

priorities.[230] Regimes throughout the region have employed a common tactic for both

legitimizing and controlling women's initiatives, whereby a female relative of the current

ruler is placed at the helm either of the state-sponsored organization tasked with

overseeing women's affairs[231] or of efforts to pass legislation regulating women's

status.[232]

Whatever the motivation, there are always difficulties inherent in top-down

reform decisions imposed by governments and elites that fail to take social realities into

consideration.[233] By ignoring widespread popular sentiment, such elites underestimate

popular opposition, and oftentimes doom their reforms to failure. This disconnect

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[230] *See* Deniz Kandiyoti, *End of Empire: Islam, Nationalism and Women in Turkey, in* WOMEN, ISLAM AND THE STATE, *supra* note 51, for a discussion of Turkey's "state-sponsored 'feminism'"; *see also* Najmabadi, in relation to state-controlled women's initiatives in Iran (Najmabadi, *supra* note 121). Margot Badran also notes that the role of the Egyptian state in regard to gender reform has been contradictory at best. She writes that, "[t]he state has through different phases generated contradictory discourses and policies. It characteristically imposed its own agenda and in so doing attempted to define the 'woman question' to suit its own political ends. Thus we have seen that while the state has promoted new roles for women for pragmatic and ideological purposes, it has also upheld imbalanced gender relations and male authority out of political expediency. In the state-building, liberal, socialist and *infitah* capitalist periods, there have been shifts in rhetoric and emphasis. But while the terms of discourse shift a substratum of basic gender inequality is retained which does not ultimately challenge patriarchal relations nor the state's own power bases. Because of the state's own ambiguities, official discourses on the 'woman question' have often been discourses of deception" (Badran, *supra* note 51, at 228).
[231] *See* Najmabadi's discussion of the Women's Organization of Iran, which was run by the sister of Mohammad Reza Shah, and which centralized all women's activities and served as a vehicle for projecting an image of the shah to the international community as a champion of women's rights (Najmabadi, *supra* note 121). Similarly, Suzanne Mubarak, as head of the NCW, long served as a figurehead for women's initiatives in Egypt, as well as a link to the Mubarak regime.
[232] *See* Badran, *supra* note 51, discussing 'Jihan's law.'
[233] Benjamin F. Soares, *The Attempt to Reform Family Law in Mali*, 49 DIE WELT DES ISLAMS 398 (2009).

becomes particularly evident during the implementation phase, for as we have seen, when

those responsible for enforcing the law aren't invested in reform, implementation

becomes problematic.[234]

Sumita Mukherjee highlights the problems associated with top-down reform in

her study of the 1929 passage of the Sarda Act by the Legislative Assembly of India.[235]

The law, which set the minimum age of marriage for girls at 14, was spearheaded by a

rising generation of Indian political elites using their newfound power to pass legislation

addressing social concerns. Arguments against the reform focused on several areas of

concern: (1) that legislation passed in advance of public opinion doesn't work; (2) that

law is too intrusive and ineffective to foster genuine change; (3) that such legislation

exemplified government interference in a religious sacrament, which shouldn't be subject

to penal law; (4) that reform should come through other, more direct and personal means;

and (5) that social legislation has "no effect whatever on the people"[236] since the majority

are unaware of the law, and wouldn't feel compelled to comply if they were (or would

find ways to circumvent it).

In the end the Sarda Act passed, in part due to the ability of legislators, who

despite being perceived as an unrepresentative body of elites, were still able to frame

their arguments in an understanding of local culture. Yet Mukherjee concludes that nearly

eighty years after the passage of the Sarda Act child marriage remains a common social

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[234] Miller and Barbaret speak to this difficulty in their discussion of the problematic implementation and enforcement of domestic violence laws. Their study revealed that law enforcement officers routinely circumvented policies that originated from outside the police profession, and were seen as not in conformity with their underlying beliefs (Miller & Barbaret, *supra* note 205).

[235] Sumita Mukherjee, *Using the Legislative Assembly for Social Reform: The Sarda Act of 1929*, 26 S. ASIA RESEARCH 219 (2006).

[236] Mukherjee (quoting Justice P.R. Das, *Legislative Assembly Debates*, 1929: 1283) (*Id.* at 227).

practice in Indian society, which indicates that despite the appearance of success at the

national legislative level, the attitudes underlying the practice have remained largely

unaffected.

### *Reform from outside*

Mukherjee's study highlights a further complication in regard to reform efforts

undertaken within the developing world. Reformers attempting to affect change within

such contexts are often forced to defend against accusations of inauthenticity and cultural

imperialism. Whether social elites or members of marginalized communities, such

individuals are often viewed as introducing threats to society from outside. This may be

particularly the case when calls for reform are framed in the language of human rights

and international law, discourses which are often viewed as culturally imperialist and

incompatible with local identity and culture.[237]

Such notions are succinctly expressed in the term *gharbzadegi*, coined by Jalal

Al-e Ahmad, and translated by Najmabadi to mean "westoxication" or

"weststruckness."[238] This is a concept used by Iranian oppositionists (both Islamist and

secular) that came to embrace rejection of a centuries-long modernization project through

the demonization of anything perceived of as having been imported from the West. In yet

another form of resistance, militant Islamists have employed class resentments against

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[237] Soares, *supra* note 233.
[238] Najmabadi, *supra* note 121, at 64.

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reformers belonging to the privileged local elite who are perceived of as slavishly aping the West.[239]

Resistance to change based on calls for cultural authenticity is particularly relevant to the discussion of gender equality. Women have long served to uphold the "myth of the nation," both as reproducers and symbols of the national community and culture.[240] To further complicate matters, the place of women and the family was often one of the few areas of relative autonomy left to colonial societies, which led to the placement of women at the center of cultural resistance to colonial domination and dependence on the West.[241] Within such a context women have served as symbols both of the progressive aspirations of secularist elites and calls for cultural authenticity (expressed largely in Islamic terms).[242] While on the one hand, "nationalist reformers and leaders have often used women to imagine their communities as modern" by integrating them into political processes,[243] on the other hand women have also come to serve as the "touchstone of Western cultural contamination."[244]

These tensions often result in reliance on indigenous systems - often in the form of customary and/or religious law - as a means to resist change viewed as alien.[245] Narula highlights the difficulties posed by the use of newer, externally-introduced legal institutions to combat practices that are supported by parallel normative systems with

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[239] Kandiyoti, *Beyond Beijing: Obstacles and Prospects for the Middle East*, in MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

[240] LISTER, *supra* note 7, at 51.

[241] DENIZ KANDIYOTI, WOMEN, ISLAM AND THE STATE, *supra* note 51.

[242] *Id.*

[243] Joseph, *Gendering Citizenship*, *supra* note 57, at 6.

[244] Kandiyoti, *End of Empire*, *supra* note 230, at 32.

[245] Sally Engle Merry, *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)*, 26 POL. & LEGAL ANTH. REV. 55 (2003); Vedna Jivan and Christine Forster, *Challenging Conventions: In Pursuit of Greater Legislative Compliance with CEDAW in the Pacific* 10 MELB. J. OF INT'L. L. 655 (2009).

longer histories and greater popular support.[246] Within the context of women and citizenship, it must be noted that many post-colonial states adopted full suffrage from the outset as part of the importation of an international citizenship model rather than the evolution of a local one.[247] The wholesale importation of foreign law and practice that has not had the chance to develop organically is bound to run into problems when it comes to acceptance and applicability. But to fluently speak the languages of both international human rights law and local normative systems, to successfully bridge those two worlds such that local communities are willing to embrace change and understand it as locally relevant rather than simply dictated from outside, is a daunting task.

Reforms imposed from either above or outside may result in backlash, whereby communities, perceiving a threat to their way of life, their worldview, or their positions of privilege, not only resist reforms but push back against previous gains. Calls for change, viewed as threats, may have the effect of mobilizing previously silent populations, resulting in reactionary movements and entrenchment of the practices in question.[248] Such challenges are often framed in emotionally charged terms and invoke religion, tradition and culture as tools to ward off the threats.[249]

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[246] Narula speaks of India's caste system as a system of law (defined as a set of rules backed by sanction - in this case religious sanction), which is both more efficient and has a longer history than the constitutional legal system introduced by the British. Thus it becomes a question of competing cultures - between the constitutional language of equality and the rule of law, and a 3,000 year-old religiously-backed caste system to which all players, from claimants to enforcers, belong, and which commands the loyalty of those with power and influence (Narula, *supra* note 205).

[247] Charrad, *supra* note 128.

[248] GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?, (University of Chicago Press 1991).

[249] It should also be noted, however, that backlash may actually be used to propel change. For example, according to Klarman, it was in fact the *backlash* against Brown v. Board of Education (rather than the decision itself) that spurred the greatest gains of the Civil Rights movement. The imposition of school desegregation by the Supreme Court was perceived by many southerners as aggressive interference into an arena where the federal government did not belong, and thus helped to crystallize previously scattered resistance to racial change. It brought the issue of race front and center, as politicians swung to the right in

## SELECTING TACTICS FOR SOCIAL REFORM

While most scholars agree that law matters to some extent in the quest for social reform, the difficulty lies in figuring out *how* it matters.[250] In this section we will explore where law may find its place in social reform efforts, and amongst what other tools.

In any discussion of social reform and the tactics employed to achieve it, it is important to pause to consider the goals of the particular reform movement. How success is defined will be key to understanding whether the tactics employed in fact fit the bill. Does successful reform lie in the creation or amendment of legislation, full stop? If so, women's equal access to citizenship status should be considered sufficient. Or, noting the bureaucratic hurdles and barriers to enjoyment of citizenship rights, does successful reform instead depend on improved implementation and enforcement of existing policy? If so, targeted education and awareness-raising among implementers will be included in any strategy for change. Alternatively, is social mobilization the ultimate goal? If the active involvement of affected individuals in the processes of demanding change is the aim, then tactics will necessarily focus on group action among marginalized communities.

Clearly, few point to the writing or reform of legislation in isolation as a sign of success.[251] Even advocates of a legal-centric approach to social reform recognize that a

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order to please their constituencies and thereby retain power. Klarman theorizes that it was in fact the brutality with which southern law enforcement responded, and the widespread televising of the violent suppression of peaceful protest, that drew previously indifferent northern whites to the civil rights cause, thereby creating the social and political pressure necessary for the passage of further progressive legislation and a shift in race relations (Klarman, *supra* note 198).

[250] Michael W. McCann & Helena Silverstein, *Rethinking Laws 'Allurments': A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold, eds., Oxford University Press 1997).

[251] Handler notes the tension between expectations of tangible versus symbolic rewards. He argues that in some situations symbolic victories are important in and of themselves, particularly when there is no hope of

change in law does not necessarily correlate to attitudinal or behavioral change. Scheingold's alternative, his resistance to the lure of the "myth of rights," is for reformers to engage in what he terms a "politics of rights."[252] Such an approach situates the authoritative declaration of a right as the beginning of a political process, and encourages reformers to think of rights "not as accomplished social facts or moral imperatives, but rather as authoritatively articulated goals of public policy and political resources . . . in the hands of those seeking change."[253] As such, rights are not perceived of as ends in themselves, or even as a direct means toward achieving social change, but rather as political tools and sources of leverage for mobilization and increased bargaining power for marginalized groups. It is the *indirect* effects of legal tactics - delaying tactics, publicity and the raising of public awareness, shaming of governments and institutions, and an increase in costs to institutions that force them to change their behaviors - that matter most to social change.[254] While the direct effects of reform activity through the law can help groups to gain access to decision-making processes, the indirect effects serve to "raise consciousness, diminish quiescence, cue expectations, and change the national agenda."[255]

This notion of the indirect benefit of engagement with the law lies at the heart of mobilization theory – the idea that it is through participation in legal processes rather than the strict recognition of particular rights that the more important change happens.

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practical implementation or where the hope is that redistribution of resources will follow in time. Mere changes in law serve to legitimate aspirations and values, and can raise consciousness about broader issues even when they are impossible to implement (HANDLER, *supra* note 195).

[252] SCHEINGOLD, *supra* note 199.

[253] *Id.* at 6.

[254] HANDLER, *supra* note 195.

[255] *Id.* at 223.

According to mobilization theorists, participation in the legal process (whether through the courts or through legislative lobbying efforts) affords a variety of opportunities to marginalized communities, beginning with a vocabulary within which to articulate social claims as rights. According to Scheingold "the declaration of rights politicizes needs by changing the way people think about their discontents," transforming them from individual to social problems and introducing the notion that their solutions are not solely a matter of individual responsibility.[256] The legitimation of claims as entitlements cues expectations, and contributes to the formation of political aspirations and group mobilization.[257] Thus, rights discourse and litigation contribute to movement formation and provide a framework for attacking discrimination.[258] Furthermore, participation may have an empowering effect on marginalized communities,[259] and the organization required to sustain legal advocacy efforts can lead to improvement in their strategic position.[260] By strategically employing "rights without illusions,"[261] by recognizing the limitations of law while also acknowledging its ability to shape discourse, mobilize marginalized groups and provide some form of legitimacy, reformers may be able to reap

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[256] SCHEINGOLD, *supra* note 199.

[257] Hunt, *supra* note 191. *See also* Helena Silverstein's discussion of the existence of a "culture of rights," which allows for marginalized communities to capitalize on perceptions of entitlement as a means to nurture political mobilization (Helena Silverstein, *The Symbolic Life of Law: The Instrumental and the Constitutive in Scheingold's 'The Politics of Rights,'* 16 INTL. J. FOR THE SEMIOTICS OF L. 407 (2003)).

[258] Silverstein, *supra* note 257.

[259] Michael W. McCann, *Reform Litigation on Trial*, 17 L. & SOC. INQUIRY 715 (1992). Here we may also see echoes of Mary Dietz's concept of active citizenship, seen as a good in itself, and a continuous engagement in the debate that forms the heart of participatory government.

[260] Galanter, *supra* note 215.

[261] Hunt, *supra* note 191.

some of its benefits without falling prey to the misplaced belief that law can solve social problems and promote change on its own.[262]

Group mobilization is even more central to Brown-Nagin's concept of social change. In her estimation, law can only play a secondary role to consciousness-raising activities meant to shift public opinion and obtain a critical mass of support. Without this shift in attitude and the resulting political pressure, seemingly progressive laws and judicial decisions not only have little practical impact, but fail to address the underlying forms of discrimination at the heart of the social problems under debate. Thus we are called to revisit Kostiner's third category of activists, those who ascribe to a "cultural schema" of reform. If injustice is rooted less in laws than in people's unconscious assumptions and ingrained cultural biases, then change efforts must take the form of a long-term commitment to a process of (re)education. Kostiner's cultural reformers stress that shifts in cultural attitudes can't be legally mandated, and thus law cannot serve as a strategy for change.

However, Kostiner doesn't conceive of the three schemas observed in her study (instrumental, political and cultural) as existing in isolation from one another. While she suggests that they may be viewed on a continuum (progressing from the satisfaction of immediate concrete needs, to the mobilization of marginalized groups, and finally to the (re)formation of cultural attitudes), she also acknowledges that individuals slip in and out

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[262] Silverstein highlights this possibility in her discussion of McCann's study of pay equity activists, who "invoked rights discourse to define their concerns and frame their demands," while at the same time recognizing its limitations, particularly as concerned its "inherently 'male' construction." As such, they used the language of rights while at the same time seeking to reconstruct them to be more inclusive (Silverstein, *supra* note 257, referencing MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (University of Chicago Press 1994).

of the different schemas depending on the needs of the moment.  And as a result,

conceptions of the importance of law also shift as the situation demands.

This need for flexibility is echoed in a UNICEF report on efforts to combat the

practice of female genital mutilation/cutting (FGM/C) in five African countries

(including Egypt).[263] According to the report findings, efforts to convince communities to

abandon the practice of FGM/C only succeed through a combination of national

government policy and commitment and targeted, participatory community-based

programs that address the complex social dynamics associated with the practice and

allow for community discussion challenging established gender relations and the

assumptions and behaviors surrounding them. The communities that successfully

abandoned FGM/C did so only after considerable public debate surrounding the social

expectations underlying the practice, and only by means of a public and community-wide

affirmation of their commitment to cease the practice. The process involved a wide

spectrum of community members actively engaged in conversation and typically took

several years to complete. It is important to note that in communities where reform

efforts were based largely on criminalization and awareness-raising in regard to the legal

consequences attached to FGM/C, rather than on shifting the social values underlying it,

the practice was not abandoned, but merely driven underground, where it conceivably

presents an even greater danger.[264] The report's authors had this to say about the legal

aspect of campaigns aimed at the reform of ingrained social practices: (1) in order to

reduce resistance, legal reform must not be introduced too early in the process, before

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[263] UNICEF/Innocenti Research Centre, *The Dynamics of Social Change: Towards the Abandonment of Female Genital Mutilation/Cutting in Five African Countries* (2010).
[264] *Id.*

other strategies; yet (2) legislation is still seen as an important tool because it signals a change in expectations on the part of the government; (3) punitive measures will not be enforced if support for the practice is high; (4) the expected loss of social rewards for failing to comply with social norms attached to a practice are far more persuasive motivators than legal sanctions; (5) legal reform only works if it forms part of a broader human rights reform process involving entire communities, and focused on educational, administrative and social measures.[265]

## GENDER REFORM IN THE MENA REGION

Gender equality activists in the Middle East and North Africa have taken the debate regarding the utility of various tools for change to heart, and have experimented with a wide variety of approaches. Their efforts have met with mixed results in terms of both policy reform and attitudinal and behavioral change. This section will outline a number of tactics used by women's rights activists throughout the region to affect gender reform.

### Action research

According to Lina Abou-Habib of the Center for Research and Training on Development, the foundation of any campaign to reform laws and shift attitudes is research. In 2001 the Machreq/Maghreb Gender Linking and Information Project (MACMAG/GLIP) identified citizenship as a key area of concern for women's activists in the region, yet noted that advocacy efforts were hindered by a lack of data in regard to the existing laws and their

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[265] *Id.*

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impact on women.[266] Research contributes to reform in a variety of ways. It provides a

quantitative and qualitative data source for NGOs and policy-makers to use as an

advocacy tool, highlighting both the scope and character of a problem. By focusing a

good part of its research efforts on collecting individual stories, CRTD was able not only

to personalize the effects of discriminatory legislation, but it was also in a position to

empower its interviewees, many of whom went on to become spokespersons for the

reform effort. Furthermore, the data collected provided material for the media to feed on

and leverage to challenge myths, and gave the reformers an edge over politicians who

were less likely to fully understand the scope and implications of nationality legislation.

Armed with an in-depth understanding of the situation, and having mobilized the interest

of the research participants, the reformers were then able to bring their battle to the

public. Abou-Habib notes that, "[n]ationality has now become a big issue, a political

issue, a media issue. When we started, it was a marginal issue. The research has

transformed this completely."[267]


**Networking & organizing for political action**

Based on their survey findings, CTRD and their regional partners were able to create

solid proposals for legal reform. This stage involved providing venues to bring together

political figures and media representatives from all the surveyed countries in order to

discuss the research findings and devise collective plans of action. This took place on

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[266] Abou-Habib, *supra* note 145.
[267] Kelly Haggart, *Research Leads to Rights Breakthrough for Arab Women*, INTERNATIONAL
DEVELOPMENT RESEARCH CENTRE (September 2009),
http://publicwebsite.idrc.ca/EN/Resources/Publications/Pages/ArticleDetails.aspx?PublicationID=435
(quoting Lina Abou Habib).

both the regional and national level, with the various campaigns sharing personnel, participants, information, training and strategies. On the national level the Egyptian women's rights organization ADEW sponsored a conference entitled "Women and Law: Legal and Constitutional Rights," which served as a springboard for debate, networking and coalition- and strategy-formation among community development associations, policy-makers, media representatives and interested members of the public. The reformers again highlighted the personal stories of women affected by discriminatory nationality laws as a way to garner public support and reach the hearts of policy-makers.[268] The use of the media was instrumental to this process, as a means to bring political visibility to a social issue that had been long concealed. In addition to print and television, advocates in Lebanon used online media and communication technologies to draw on the support of the Lebanese diaspora, engaging Lebanese living abroad in long-distance lobbying efforts and inviting them to join in direct action efforts through solidaristic cyber sit-ins.[269]

In the realm of networking, Yasemin Nuhoglu Sohsal notes that organizing strategies have increasingly acquired a transnational character.[270] Women's movements in MENA have in the past been hampered by the lack of a regional framework or a formal network, as local groups have remained isolated in their efforts to address issues that are in fact common across national borders. Ziai highlights the utility of transnational networks as a means of keeping women's rights on the agenda and developing a common

[268] Sakr, *supra* note 162.
[269] Haggart, *supra* note 267.
[270] Yasemin Nuhoglu Sohsal, Citizenship and Identity: Living in Diasporas in Post-War Europe, in 8TH ANNUAL ERS/LSE LECTURE, LONDON SCHOOL OF ECONOMICS & POLITICAL SCIENCE (May 20, 1999).

advocacy strategy.[271] Maryam Elahi calls for the fusion of local women's rights

organizations and broader international human rights organizations, and views

international conferences as a means to publicize reform issues, shame governments into

making good on their promises, build networks, disseminate information and organize

broad protest efforts.[272] Lister highlights in particular the success of the Fourth World

Conference for Women in Beijing, calling it a "milestone in the development of an

internationalist feminist citizenship praxis which is now being built upon."[273] Some see

such spaces as providing opportunities for the exercise of 'global citizenship,'[274] and an

arena for women's participation that is in some ways divorced from the obstacles to

participation they may face within their own national contexts. Lister in fact argues that

by some accounts women are actually having a greater impact on the international than

the national level.[275] Whether one accepts this assertion or not, it is clear that women,

both in the MENA region and around the world, are becoming more and more active in

the growing phenomenon of international civil society.

A further benefit of participation in international gatherings such as the Beijing

conference can be found in the mobilization of local civil society organizations as they

prepared to present findings relevant to the situation of women in their own national and

regional contexts. This has the effect of bringing together what are often disparate and

isolated reform efforts. In concert with this trend, part of MACMAG/GLIP's regional

networking strategy was to bring local NGOs together to build their capacity to fight

[271] Ziai, *supra* note 122.
[272] Maryam Elahi, *International Human Rights Organizations and Advocacy for Change*, in MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.
[273] Lister, *supra* note 7, at 203.
[274] *Id.* at 196.
[275] *Id.*

gender discrimination within their own communities. They created training tools and materials for NGOs to use in their awareness-raising and reform campaigns and encouraged the women involved as interviewees in the initial research project to form collective interest groups on a local level. At the same time, they formed part of a pan-Arab advocacy campaign providing logistical, informational and tactical support to local initiatives.

**Legal advocacy and education**

Despite disagreement over its centrality to successful social reform, it is clear that law has a role to play. Gender equality movements in MENA have focused on the law in a variety of ways. On the one hand reform efforts throughout the region have focused on applying pressure on governments to write or amend laws that restrict women's ability to act as citizens on an equal footing with men. This involves efforts to revise such things as criminal codes that afford less weight to women's testimony than to men's. As mentioned previously, much women's rights advocacy has been centered on updating personal status codes on the premise that gender equality cannot be realized until women are afforded equal decision-making power within the family. Yet another tactic has been an assault on nationality laws that paint men as the sole (or primary) avenue to citizenship.

One creative example of an effort aimed at producing change through law can be found in the Collectif Maghreb Egalite. An association of women's organizations formed in North Africa in the mid 1990s, the Collectif's aim was to develop strategies to counteract the invocation of religion and tradition as justifications for discriminatory laws. The group drafted and publicized an alternative personal status code (the

Egalitarian Code) in an attempt to ensure compliance of *shari'a*-based laws controlling women's lives with norms espoused in international human rights instruments.[276] While the Egalitarian Code has not come to fruition, it does present an intriguing example of a transnational effort to arrive at creative legal solutions to the problems facing women.

Gender reform advocates are increasingly coming to the conclusion that while law reform may be central to the drive for gender equality, it does little good to amend legislation to grant women rights if the beneficiaries are themselves unaware of these rights or how to claim them. Thus we see the evolution of projects such as Women Living Under Muslim Laws (WLUML), which seeks cross-cultural discussion of the diverse laws and legal systems in the Muslim world and the development of practical strategies for increasing women's critical understanding of the laws influencing their autonomy.[277] WLUML documents gaps between formal law and social practice, examines variances in legal interpretation and schools of jurisprudence within national contexts as well as the intermeshing of legal and cultural patriarchy, and highlights the hypocrisy of governments that make public commitments to instruments such as CEDAW while failing to modify discriminatory personal status laws. On a national level, legally-centered efforts by the Egyptian Center for Women's Rights (ECWR) Legal Empowerment and Aid Program focuses in part on conducting legal rights trainings, publication of simplified information on important laws for women, direct assistance to women involved with the legal system, and a planned monitoring center to track

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[276] Ziai, *supra* note 122.

[277] Seema Kazi, *Muslim Law and Women Living Under Muslim Laws*, in MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

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women's experiences with the legal system.[278] These two projects serve as examples of efforts to not only understand the impact of law on women's lives, but also to draw individual women into the conversation and to give them the tools to make the law work for them.

**Shifting attitudes and behavior through awareness-raising**

In order that women are able to claim their rights, they must not only be aware of those rights, but must also have an understanding of themselves as autonomous individuals with the capacity to demand application of the law. Such awareness and understanding is heavily influenced by an increasingly accessible transnational media. Even without concerted efforts on the part of reform advocates, women the world over are more and more finding themselves exposed to alternative images of female modes of acting and being. This undeniably has an impact not only on how women view themselves, but also on how society as a whole views them.[279] This of course can have a variety of effects, as on the one hand women may be inspired by alternative visions of womanhood and women's participation, while on the other hand exposure to the media influences of dominant cultures can produce backlash and lead to accusations of cultural inauthenticity and a retreat to 'traditional' forms of being and behaving. Yet it is undeniable that the increasing forms, reach and speed of the modern media has rendered it an important tool for reform advocates. From the days of dissemination of feminist ideologies through a women's press with limited reach, women's rights organizations have graduated to the

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[278] Rasha Dewedar, *The Untold Story of Egyptian Women's Rights*, COMMON GROUND NEWS SERVICE (April 8, 2010), http://www.commongroundnews.org/article.php?id=27573&lan=en&sp=0.
[279] FREEDOM HOUSE, *supra* note 113.

use of television, radio, print and online media as part of broad-based public awareness campaigns. Television and radio become particularly important information-dissemination tools when one considers literacy rates among populations of concern, specifically poor urban and rural women with little access to formal education. The use of such awareness-raising tools serves to spark debate in kitchens and coffee shops as well as parliamentary halls, and thus does more to promote shifts in general public opinion than the imposition of legal reforms by the learned few in spheres of influence far removed from people's daily lives.

Awareness-raising takes a variety of forms and can be targeted at specific stakeholders to achieve particular goals. While general media campaigns are useful in sparking debate and garnering broad support, other tools may be geared to more specific audiences. In the rush to influence policy makers, gender equality advocates have increasingly turned to documentary filmmaking as a means to tell the individual and immediate stories of women and families negatively impacted by discriminatory policy and procedures. Testimonies from living, breathing Egyptian women from a variety of backgrounds were used in the nationality law campaign in order to bring the practical impact of laws prohibiting women from passing nationality to their children into sharp focus and into the consciousness of policy makers who might not otherwise have come face to face with such realities. Handler characterizes this tactic as the strategic selection of issues with what he calls the highest "outrage quotient," and notes that it can be a very effective strategy in shifting public opinion.[280]

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[280] HANDLER, *supra* note 195, at 92.

Smaller scale person-to-person initiatives focused on specific communities have also been shown to have significant practical effect. Similar to the programs mentioned previously in the UNICEF study, Dewedar highlights a campaign in Egypt's rural Minya governorate by the Better Life Association for Comprehensive Development that focused on combating violence against women and FGM/C. Volunteers conducted meetings and home visits to discuss the practice of FGM/C, and probably most crucially, helped to identify alternative income for the midwives and barbers who made a good portion of their living by providing FGM/C services. By engaging individuals in conversation about the social practices that negatively impact their lives, and by presenting alternative ways of understanding them, activists were able to alter the community's social consciousness and thereby change its behavior. [281]

Yet even where women are aware of their rights and are themselves willing to act upon them, there can be no change without the cooperation of those in power. Thus a woman may go to court to assert her right to divorce only to find herself confronted with a judge who discourages or blocks her from doing so. This highlights the need to raise awareness not only among women themselves, but also among the elites and implementers who may facilitate or block access and the exercise of rights. And so we note that change to the law is one step in the process, awareness of rights among the affected population another, yet even these taken together are not sufficient to achieve social change. For legal reforms to come to fruition, there must be a concerted effort to

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[281] Dewedar notes that between 2004 and 2007, 1363 of the 1500 girls at risk of FGM within this particular governorate did not end up undergoing the procedure (Dewedar, *supra* note 278).

target attitude and behavior shift among officials at all levels of the implementing process.

**Promoting women as decision-makers**

Other efforts to bring about gender equality focus on achieving greater female presence in decision-making bodies and the development of public policy.[282] This refers not only to representative political bodies, but to all sites of decision-making.[283] The idea underlying such calls is that the incorporation of women not only introduces a perspective that has traditionally been excluded from public debate, but also provides women with the opportunity to exercise the judgment required for political action and a space in which to imagine themselves in positions of authority and influence. It is argued that the presence of women challenges not only decision-makers themselves, but also the frameworks within which they work and the male bias existing in political theory and institutions.[284] Such a step would require that states create the institutional conditions for women to share in decision-making responsibility.[285] This is far from the current reality in much of the world let alone the MENA region, where we note for example that in Morocco and Jordan women are expressly barred from serving as magistrates delivering verdicts on matters related to personal status.[286]

While the inclusion of women in positions with decision-making power is a goal to be applauded, such arguments are too often focused on representative bodies alone,

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[282] LISTER, *supra* note 7.

[283] VOET, *supra* note 18.

[284] *Id.*

[285] *Id.*

[286] CRTD, *supra* note 93.

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and fail to take into consideration non-political sectors where important decisions are made, as well as mid- and field-level positions. As previously noted, successful implementation of reform requires the presence of reform-minded individuals not only at the policy drafting level, but also at the field level, where implementation is either encouraged or stymied by individuals with broad discretionary power. Furthermore, calls for gender quotas in representational bodies (Egypt's included) have often been manipulated by political regimes as a means to install members of their own parties, who are often more loyal to the party line than to the genuine interests of women.

**Woman-centered interpretations of Islamic law**

Any discussion of women's rights in the MENA region must engage with Islam as a distinct and deeply felt influence in women's lives. Kandiyoti goes so far as to say that Islam is the "sole paradigm" within which to discuss the issues.[287] One critique within Muslim feminist circles that has garnered increasing attention is the lack of women as interpreters of scripture. Seema Kazi notes a tradition of "male monopoly over (mis)interpretation" of religious texts in Muslim societies,[288] while Nimat Hafez Barazangi writes that women's right to exercise authority within their own lives is compromised by the fact that they rely on others' interpretations of scripture.[289] She draws a parallel within institutional Islam between the mediation of women's relationship to the state and that of their relationship to God, one exercised by male relatives and one by imams and other religious authorities. Many argue that if women living in the Muslim

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[287] Kandiyoti, *End of Empire*, *supra* note 230, at 43.

[288] Kazi, *supra* note 277, at 141-142.

[289] Nimat Hafez Barazangi, *Muslim Women's Higher Learning as a Human Right: The Action Plan, in* MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

world are ever to see positive change they must gain access to the discourse that shapes interpretation of the religious law that governs their everyday lives. Afkhami and Friedl note that Muslim women are in fact increasingly claiming the right to interpret law and religious texts themselves, in the hopes of finding justifications within Islam for individual freedom and women's rights.[290] Barazangi argues that before introducing Muslim women to concepts from outside the realm of Islamic belief they must "realize their own part in understanding Islam," which she sees as the only way to achieve real and participatory change in the Muslim world. Her answer is the granting of women's full access to Islamic higher learning as their best opportunity to effect change.[291]

To this effect, Homa Hoodfar highlights efforts by activists in Iran to achieve change through woman-centered interpretations of Islam and the political concept of "Islamic justice."[292] Firstly, they focused strategically on the family code, since women commonly experience it as relegating them to second-class status, rendering it a realm that would resonate with a broad base of potential supporters and beneficiaries. Secondly, Hoodfar notes that by framing their challenge to the family code in the language of Islam and Islamic law principles, Iranian women have been able to turn their issues into hotly debated political issues and push legislative bodies and Islamic ideologues into defensive positions. By distinguishing Islam and Muslim tradition from man-made interpretation, gender reform advocates have created a political space within which to challenge the law. In order to bring about such change, women have worked in informal, decentralized groups to lobby the public rather than the government through the publicizing of cases of

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[290] MAHNAZ AFKHAMI & ERIKA FRIEDL, MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.
[291] Barazangi, *supra* note 289, at 45.
[292] Hoodfar, *supra* note 133.

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"legal injustice" done to women in the areas of divorce and custody in the Islamic family court. They have made their message accessible to the public by using a simple writing style and by telling the personal stories of women with little overt political commentary. And significantly, they have backed up their arguments with religious texts, which has allowed them to draw in women who might otherwise perceive a contradiction between their religiosity and the desire to improve their social and legal position. By appealing to as broad a base as possible, advocates are able to draw more people into the conversation, thus applying greater pressure to the government.

The use of such tactics led to the successful passage of a wages for housework law in Iran in 1992. By arguing that women, like all other Muslims, are entitled to the fruit of their labor on the grounds that Islam is against exploitation, activists were able to undercut conservative theological opposition. By backing their argument up with sound Islamic law reasoning and garnering popular support, they were able to lobby successfully for a change to the law. Hoodfar notes that even given imperfect implementation the law provides women with a better bargaining position; it has symbolic value in that it stresses that women's labor should not be taken for granted. Furthermore, she argues that given the position of *shari'a* as the single greatest impediment to women's full citizenship, the significance of these women's achievement "rests in their contesting the monopoly of male theological interpretation and producing a women-centered view of what are to be understood as Muslim women's rights and legal status."[293]

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[293] *Id.* at 312.

**Reform begins at home?**

Soraya Altorki sees the fight for gender equality as a very personal process, beginning with change in the family and extending to society as a whole. In her view, "as women successfully renegotiate their rights and status in the family, their success will inevitably become part of the national agenda as more men of the younger generation accede to women's demands at home for more effective authority. As the relationship begins to equalize in the family, it will begin to have an effect on other domains."[294] While there is much to be said for this personalized approach (similar to the approach taken by Kostiner's cultural activists), one is left to wonder how Altorki's initial step of successful renegotiation of rights within the family is meant to happen. As we have seen, personal status laws have remained stubbornly resistant to liberalization throughout the MENA region, leaving women with little institutional support in their attempt to assert their rights within the family. Furthermore, it is clear from UNICEF's study of successful FGM/C abandonment programs that individuals are unlikely to shift their behavior unless they are provided with alternative means of receiving the social rewards attached to particular practices. This involves a community-wide conversation about the values underlying certain behaviors. Thus, while Altorki is not wrong in noting that social change is as much about shifting personal beliefs and behaviors as it is about amending laws and institutional procedures, it seems that the best way forward is via a targeting of shared community values using a combination of individual reflection, community dialogue, and public commitment to change (including through the law).

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[294] Soraya Altorki, *The Concept and Practice of Citizenship in Saudi Arabia, in* GENDER AND CITIZENSHIP IN THE MIDDLE EAST, *supra* note 57, at 235.

**GENDER REFORM IN EGYPT**

While it is firmly ensconced within the MENA region, and faces many of the challenges outlined above, Egypt of course boasts its own personal history of gender reform. Margot Badran writes of the emergence of a feminist discourse in the 19th century writings of privileged urban women who gained exposure through expanded education and the broadening of contacts with women of other social and national backgrounds.[295] This discourse expanded with the emergence of a distinct women's press and was focused around the dual poles of Islam and nationalism. Egyptian feminists began to question whether in fact patriarchal constraints were religiously based, as they had been led to believe, and argued for increased emphasis on *ijtihad* (independent inquiry into the sources of religion) as a framework for feminist discourse. Thus feminist arguments were increasingly grounded in the notion that women had for too long been deprived of the legitimate rights accorded to them by Islam, and centered around the reclamation of those rights as a prerequisite for the advancement of the nation as a whole.

Egyptian feminist writings reached a more mainstream audience beginning in the early 20th century as they began to be published in the progressive nationalist party newspaper, and feminist ideologies were increasingly expressed within a broader nationalist discourse. The 1919-22 revolution saw a temporary unity between feminist and nationalist positions and the encouragement of women's participation in the public realm. However Badran notes that in the end male nationalist leaders failed to make good on their promises to integrate women into public life.[296] Still, feminists began to focus

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[295] Badran, *supra* note 51.
[296] *Id.*

more on a demand for access to public space (through rights to education, employment and worship in mosques) as well as reform of the personal status law. Access to employment (in certain types of jobs) proved the easiest to justify as it coincided with the state's nation-building priorities, while amendments to the personal status law remained merely aspirational for decades to come.[297] The 1952 revolution spurred efforts to change fundamentally the role of women through the introduction of legislation dealing with women's political, social and economic rights and responsibilities.[298] Reformers argued that laws must change as the needs and conditions of society shift, and since women were now contributing to public opinion they should be give the opportunity to fully participate in the political arena.[299] A combination of reformist trends among prominent Al-Azhar trained theologians (viewed as the highest authority in Islamic theology and jurisprudence) and direct feminist action including a sit-in at Parliament and a hunger strike, led to the granting of political rights to women (including the vote) in the 1956 Constitution. This was followed by a series of laws promoting increased legal and social equality.[300]

Yet despite these gains, just fifteen years later the amended 1971 Constitution signaled a return to more conservative cultural definitions as the revolutionary phase initiated with the Free Officers Movement in 1952 drew to a close.[301] While the new constitution did spell out a policy of non-discrimination, it also firmly and explicitly established *shari'a* as the source of all legislation and reference point for women's roles,

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[297] *Id.*
[298] Fawzy, *supra* note 123.
[299] Badran, *supra* note 51.
[300] Tallawy, *supra* note 119.
[301] Hatem, *supra* note 80.

and affirmed the state's pursuit of a "balance and accord between a women's duties towards her family on the one hand and towards her work in society and her equality with man in the political, social and cultural spheres on the other without violating the laws of the Islamic Shari'ah"[302]

The ambivalence of the Egyptian state and society toward gender reform can be observed in the controversy sparked by a 1979 presidential decree relating to the personal status law. The decree was hailed by some as a progressive move, and included an expansion of women's ability to initiate divorce, additional protections for women in divorce, as well as controls on polygyny. It came to be called popularly 'Jihan's Law' after the President's wife, Jihan Sadat, who was an outspoken proponent of the reforms contained in the decree. The law sparked intense opposition, mostly based on its perceived contravention of *shari'a*, and in 1985 it was cancelled by the Supreme Constitutional Court. In one regard Jihan's Law highlights the difficulties inherent in law promulgated from above (and arguably outside), as critics used what they saw as the intervention of the president's wife in the formulation of law to reject the law itself, though it undeniably brought benefits to women.[303] However, even upon the law's cancellation the battle was far from over. Within two months feminists responded with a collective political action, and as a result a new law was passed restoring most of the benefits contained in the original decree. While internal disagreement within Egypt could have seen the issue bounced back and forth endlessly, some have argued that the ultimate success on the part of feminist activists was related in part to pressure on the Egyptian

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[302] Badran, *supra* note 51, at 223.
[303] Fawzy, *supra* note 123.

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government provided by international attention to gender issues garnered by the upcoming Third UN Forum on Women, which took place in Narobi in 1985.

2000 saw another controversial victory for gender reform advocates in Egypt, with the passage of the '*khul* law,' which afforded a woman the right to file for no-fault divorce (*khul*) without the consent of her husband, whereas previously her only justification for filing for divorce was if she could prove serious injury. Access to *khul* was considered a significant breakthrough for women, though many have pointed out that the law as written is flawed in that it requires the woman to surrender all property given to her by her husband (including her dowry), which makes it largely inaccessible to poor women and those without the resources to support themselves after divorce.[304]

As with the 1979 Presidential decree, the '*khul* law' was the cause of much public debate. Fawzy notes that it caused a general sense of unease, based on a concern that it would have a destabilizing effect on the Egyptian family. Opponents often relied upon arguments that the timing for such reform was not right, that Egyptian society was not ready for such changes to gender relationships, that women were not yet mature enough to make good use of such rights, and that placing them in women's hands would lead to the destruction of their families.[305] Much of the debate centered around who should have the authority to make decisions affecting the family, the husband or the courts. This is in addition to the many objections on religious grounds put forward by those who saw the law as in direct contravention of *shari'a*. While the NDP's official party position was in support of the law, it found itself at odds with many of its individual members in the

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[304] *Id.*
[305] *Id.*

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People's Assembly, who were at that time facing upcoming elections and wanted to appear as defenders of religion, a position that invariably garners constituent support in a country where the majority of the population is religiously conservative.[306]

Yet despite considerable opposition (and some concessions in regard to the final wording), gender reform advocates did win a significant battle with the passage of the law. Freedom House attributes successful gender reform efforts in Egypt through the years (and the *khul* law in particular) in large part to the work of an active civil society and a relatively effective women's rights movement that has been working for decades to affect change in the law and improvements in women's access to justice and citizenship rights.[307] Passage of the *khul* law has also been attributed in part to the international embarrassment faced by the Egyptian government in regard to personal status law as it existed at the time, as well as to the state's desire to avoid what had become a significant number of personal status cases brought before the courts by women challenging existing law.[308]

Still others note, however, that though the *khul* reform was in fact the work of many years and various individuals and groups, it would not have passed through parliament without the endorsement of the National Council for Women and its head, Suzanne Mubarak, who exercised her considerable political leverage with the NDP to bring it to fruition. This highlights a serious challenge faced by feminists in post-uprising Egypt. While the NCW has played a central role in reforms affecting women, it is a controversial body and faces scathing criticism by many both within and outside the

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[306] *Id.*
[307] FREEDOM HOUSE, *supra* note 113.
[308] Fawzy, *supra* note 123.

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women's rights field. This is largely to do with its perceived co-optation into the state

apparatus (personified by Suzanne Mubarak's relation to her husband, the former

president).[309] Many view the NCW as a puppet of the Mubarak regime, which creates a

two-fold problem for any reforms advanced by the organization. On the one hand,

feminists criticize the NCW as being a tool in the government's agenda of slow, partial,

face-saving reform, as well as a means to boost the image of its members and of the

regime itself. Governmental constraint of NGO activity focusing on women's rights is a

complaint of many activists, and strict registration requirements subject such

organizations to the hegemonic position of the NCW, and what many see as its

government-approved agenda of half measures.[310] To that effect, since the fall of the

Mubarak regime some have called for the reformation of the NCW as an elected body

that would more accurately represent Egyptian women.[311] On the other hand, opponents

of gender equality efforts have fixed their sights on dissolving the NCW entirely and

dismantling what have been popularly termed "Suzanne's laws," most of which relate to

the status of women, and which Islamist opponents assert to be in contradiction of *shari'a*

law.[312] Women's rights activists have noted with alarm various issuances of post-uprising

decrees relating to family laws, which have been accompanied by inflammatory claims

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[309] The NCW is a governmental institution, established by presidential decree in 2000 with the aim of "raising the profile of and empowering Egyptian women." Its mandate includes the proposal of policies aimed at enhancing the status of women and increasing women's participation in the development of the nation, as well as monitoring and evaluation of law and policy implementation pertaining to women. The council was spearheaded by Suzanne Mubarak from its inception until the fall of the Mubarak regime in 2011. (National Council for Women, *supra* note 144; Steven Viney, *The embattled new National Council for Women*, AL MASRY AL YOUM, ENGLISH EDITION (March 18, 2012), http://www.egyptindependent.com/node/718906.

[310] FREEDOM HOUSE, *supra* note 113.

[311] Viney, *supra* note 309.

[312] Hoda Elsadda, *Women's Rights Activism in Post-Jan25 Egypt: Combating the Shadow of the First Lady Syndrome in the Arab World*, 3 MIDDLE EAST L. & GOVERNANCE 84 (2011); Viney, *supra* note 309.

that such laws are the sole work of Suzanne Mubarak and the NCW.[313] By associating

progressive family laws (and women's rights issues in general) with a corrupt and

discredited regime motivated only to serve the interests of elites, such actors attempt to

capitalize on anti-Mubarak sentiment as a means to turn back the clock on gender

reform.[314] As problematic as Suzanne Mubarak's involvement has been, however, it

cannot be denied that her close association with the former regime played a role in its

promulgation of legislation benefitting women. Without her at the helm, it is as yet

unclear how effective the NCW will be in its continued efforts to lobby for women's

rights.[315]

　　　　Thus we can see that despite the progress made so far, gender reform advocates in

Egypt find themselves facing an uphill battle. Obstacles to change include general

political and economic conditions throughout the country that restrict the freedoms of all

citizens, regardless of gender; a patriarchal social environment; rising religious

extremism; a lack of implementation mechanisms; limited female influence at the

national and community levels; lack of state support for calls for greater participation of

women in the political system; and the association of progressive gender legislation with

the former First Lady.[316] Fawzy characterizes deeply ingrained societal images of

women, which many women have themselves come to adopt, as the most fundamental

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[313] Viney notes that this association is in part due to the fact that the NCW often did claim full responsibility for reforms that were in fact the work of many years and numerous women's rights organizations. He also points out that though the *khul* law is often advanced as an example of the NCW's influence, the law was actually passed by the People's Assembly a month before the council's founding (Viney, *supra* note 309).

[314] Elsadda, *supra* note 312.

[315] Viney, *supra* note 309.

[316] FREEDOM HOUSE, *supra* note 113; Elsadda, *supra* note 312.

obstacle to attempts to develop the position of women in Egypt.[317] When the resistance to change comes from women themselves, it becomes incredibly difficult to dislodge. Yet even where women do make public demands for a greater share in the national conversation, ingrained societal notions of women's proper place arise to resist them. This has become evident in the wake of Egypt's recent political uprising. Though women played an active and highly visible role in the public demonstrations that led to the ousting of President Mubarak in early 2011, the violent response to their public stand just a few months later on International Women's Day indicates how far they have yet to go. And despite their presence on the front lines of protest, they have been excluded almost entirely from the official bodies tasked with remaking Egypt's political future. Given such realities, it is clear that there is much work to be done not only to retain and garner future legal gains, but also to dismantle the attitudes that lie at the heart of gender discrimination in Egypt.

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[317] Fawzy, *supra* note 123.

# CHAPTER 4

## EGYPT'S NATIONALITY LAW REFORM THROUGH THE EYES OF THE REFORMERS

As a means to uncover the broader goals of the reformers involved in the nationality law campaign, and to understand the place of law reform within the context of the Egyptian gender equality movement, I interviewed seven women's rights activists. All were women, and they ranged in age from the mid-twenties to mid-sixties. Four were personally involved with the nationality law campaign from its earliest stages, one was tangentially involved as the campaign gained momentum, and the remaining two were not directly involved but represent women's rights organizations that either played a direct role or are involved in the struggle for gender equality in Egypt. My goal through the interviews was to understand the reformers' views on social change and how it is best achieved, and how this understanding impacts their tactical choices in confronting gender inequality. I sought to understand what role they ascribed to law in their efforts for reform, and to place the use of law amongst other tactics used to effect change. The following is my analysis of those conversations.

### Who are the reformers?

The success of any reform movement is dependent in part on the profile and position of those calling for reform. The linking of feminist movements in the MENA region with an 'enlightened' indigenous middle class[318] has ramifications, both positive and negative, for chances of success, as members of such groups ride a fine line between insider and

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[318] KANDIYOTI, WOMEN, ISLAM AND THE STATE, *supra* note 51.

outsider in Middle Eastern societies. On the one hand educated middle class women have access to institutions and centers of power that allow them to influence policy more effectively than their poorer and less educated counterparts. They are more likely to speak the language of international human rights and to be able to connect with and draw on the support of international institutions. They are more familiar with the tools necessary to influence change, such as the media, and are more conversant in their language and idioms. These factors render them not only more able to influence change, but also grant them a privileged position within the movement. As Brown-Nagin notes, this power allows them to dominate and shape the discourse of change.[319] Sharifah Tahir sees this phenomenon at work in the Middle East, where she notes that decision making within women's movements is typically concentrated in a small core group, resulting in the marginalization of diverse concerns.[320] She argues that women's groups must broaden their leadership in order to make it more representational of different sectors of society and their various interests. Furthermore, while their position of privilege may enhance such women's ability to shape and affect change, it also isolates them from the majority, which as we have seen in our discussion of reform from outside, has the potential to sabotage their efforts if they are viewed as culturally inauthentic.

The activists interviewed for this study certainly fit the educated elite profile. All had obtained at the very least a Bachelors Degree (two had completed a PhD) and had been employed for years outside the home in a variety of fields, from development consultancy to research to medicine to economics. All had at one point or another

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[319] Brown-Nagin, *supra* note 202.
[320] Sharifah Tahir, *Leadership Development for Young Women: A Model, in* MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

traveled outside of Egypt, some for employment reasons, but most as part of their

graduate or postgraduate studies.[321] All spoke English and were highly conversant in the

language of international human and women's rights. Some of the interviewees were

young and new to the field of social activism while others had been involved in social

reform efforts for years as volunteers, consultants, trainers, community advisors, and

researchers. All were either founding members of, or professionally employed by, local

civil society organizations working on behalf of women's rights.[322]

Two of the interviewees were personally invested in the nationality law campaign

in that they had married foreigners prior to 2004 and had children who had been denied

Egyptian nationality. In some regard this lends credence to the argument that motherhood

is often the vehicle for women's political citizenship. Yet while both women noted the

difficulties faced by their children in terms of access to education, employment and travel

as well as alienation from a country they felt was their own,[323] both also came to this

particular campaign from a broader feminist frame of mind as activists and members of

feminist civil society groups. One of the two said that throughout the campaign, "I always

introduced myself as an activist and a victim as well," while the other noted that being

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[321] Two had spent a significant amount of time in Saudi Arabia, one in France, one in the U.S., one in the U.K., and one split between the Netherlands, the U.K. and Sudan.

[322] This includes the Association for the Development and Enhancement of Women (ADEW), the New Woman Foundation, the Egyptian Center for Women's Rights, the Forum for Women in Development, and Nazra for Feminist Studies.

[323] One had this to say regarding the obstacles she and her children faced: "I encountered with all this everyday in bits and pieces . . . the sky was the limit. Out of the blue, problems arose . . . For example if we were traveling within Egypt [my children] were always dealt with as foreigners . . . in the buses when my children had to get out their Austrian passports . . .We had to pay the school fees in hard currency, and triple the Egyptians. The same with the health issues as well. Everything, they were charged as foreigners. So there were problems unexpected, out of the blue . . . Nobody could name the problems, the range of the problems . . . It's nothing theoretical. It's a problem that affects daily life . . . I was raising them as being Egyptians . . . because they are Egyptians, I simply wanted them to feel Egyptian. But it turned out that they're NOT Egyptians, by law."

personally affected by the issue lent her words a certain authenticity when it came to her public advocacy work. She did note, however, the need to incorporate a number of different perspectives among the advocates, as those who are personally affected can also be perceived of as working only in their own self-interest, rather than for the wider public good. This reflects a common characterization of women as focused on the particular rather than the broader conversations more closely associated with public political discourse.

It should also be noted that, as one woman pointed out, the campaigners were careful to frame calls for reform to the nationality law in terms of the right of women to pass their nationality to their children rather than the right of the children to nationality, which is often the way such arguments are articulated. By framing the issue thus, they pulled the focus away from the family and placed it squarely on the woman as an individual with her own rights as a citizen. It is plain to see how such an argument fits neatly into international human rights discourses, but it is also evident that by choosing to frame their argument in terms of women's rights as individuals, the reformers isolated themselves from a socio-political tradition that privileges the family over the individual, and within which individual rights are often viewed with suspicion.

Another element of the reformer profiles that may have served to set them apart from mainstream Egyptian socio-political discourse is their secularist bent. According to Azza Karam there are three strains of feminist action for gender reform in Egypt.[324] The 'Islamist' strain functions through the recognition and rectifying of oppression of women

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[324] Azza M. Karam, *Women, Islamisms, and State: Dynamics of Power and Contemporary Feminisms in Egypt, in* MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 119.

through recourse to Islamic principles. Alternatively, 'Muslim' feminists argue for the applicability of human rights principles within an Islamic cultural context, and call for the reinterpretation of *shari'a* in light of modern needs. Secular feminists ground their arguments solidly within the language of international human rights and reject religion as a basis for forming agendas on women's emancipation. All of the reformers interviewed for this study fall solidly within the secular feminist camp, articulating their arguments for gender equality through an international human rights vocabulary. Understanding the context within which they were operating, they did formulate religiously-based counterarguments to support their calls for reform, but this was largely in response to the resistance of Islamists, and did not form a central element of the reform campaign. It is certainly possible to argue that had they made greater efforts to incorporate religious justifications for the change they sought, they might have succeeded in drawing in a broader base of the Egyptian public, thus granting them the opportunity to more profoundly impact underlying attitudes and behaviors.

**Defining social change**

When asked to define social change in their own words, the participants provided a variety of perspectives. One highlighted the all-encompassing nature of social change, noting that economics and politics in addition to personal and psychological issues are all tied to the social realm and therefore are implicated in social change. Seen from such a wide perspective, she noted that as a social reform advocate, "you don't stop anywhere." Others focused on the shifting of behaviors and attitudes and highlighted the democratic nature of social change, in that attitude shifts can only be achieved through democratic

means in consultation with members of the society at large and drawing them into decision-making processes. Working under this assumption, one woman was adamant that, "for me it's working with the people, never working for the people." Yet others focused on notions of personal liberty, stating that social change comes through the granting of space to individuals to do as they wish rather than as society dictates, and of the capacity of individuals to know what they want and to express their desires. One interviewee focused on the need for more just economic policies and the reduction of difference between citizens. In her estimation, equality will be impossible to achieve without radical change resulting in a complete overhaul of existing economic and political structures. Still another made a distinction between social and political change, observing that social change was impossible to achieve in pre-uprising Egypt, where change was not pursued for purposes of the public interest, but rather in the interest of the regime. This type of change is what she terms 'political change,' while the possibility of 'social change' has only been opened up since the Egyptian uprising as activists and NGOs have gained greater access to the national political conversation.

**The means of achieving change**

An individual's definition of social change will of course have an impact on what means she will use to achieve it. The women interviewed focused on a variety of methods, many of which were predicated on being in tune with the public at large. This begins with understanding the reality of a social problem and how those affected by it perceive it and its impact on their lives. One participant noted that "whatever I offer has to be applicable" to the lives of women and must take into consideration both whether the

problem in question is in actuality a concern for them, as well as the realities of what is and is not negotiable. Such notions are predicated on achieving and maintaining ties to large and diverse groups of individuals, and on the avoidance of restricting oneself to an elite perspective. After ascertaining the issues of concern to members of the society, one may then focus on awareness-raising and mobilizing. One interviewee based her methods for social change on the people's right to organize and to engage with their right to expression. Much like supporters of participatory citizenship models and mobilization theorists, she notes that, "[w]hen people organize around something they get stronger and stronger. Their voices, sooner or later, come out. They join with others, and they become a movement." It is only through such processes that people discover their potential and social change becomes possible.

The role of civil society in this process of mobilization was a common theme amongst the interviewees. One perceived of civil society as playing a "structural role in empowering and developing society, and developing people to be active subjects." She highlighted the role of such organizations in developing citizens not only in terms of their formal rights to vote, but in regard to more active citizenship and the running of society as a whole. One of the central obstacles to this approach in Egypt is of course the tight state control of civil society, which circumscribes its role and its ability to reach out to the broader population.

Running through many of the conversations was the theme of inter-agency collaboration, or lack thereof. One participant highlighted the need for civil society organizations to network, such that they may speak with a united voice on issues of concern to women. Many praised the nationality law reform campaign for what they saw

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as unprecedented collaboration between agencies working on the problem from different angles. The combined voices of so many agencies (as well as the individual citizens they were able to mobilize) was perceived of as having a positive impact on the eventual outcome of the campaign. The interaction between NGOs and the government was viewed in different ways, with one interviewee stressing both the need for NGO participation in international conferences as a means to publicize national struggles and pressure the government to act, as well as the need for increased cooperation between the government and NGOs, particularly in post-uprising Egypt, where she sees a government increasingly responsive to internal actors.

For those who view gender inequality as one among many forms of social inequality, the struggle for change requires a broad strategy aimed at inclusive development in the social, political and economic realms. One interviewee stated that:

> You will never reach real gender equality unless you have a society which believes in equality on all levels and among all different groups – religious equality, gender equality, income equality, these kind of things. I don't really distinguish gender equality alone. It will never be realized in a society which is filled with all kinds of inequalities.

As such, her approach is focused on radical broad-based change predicated on the mass involvement of the citizenry in demanding reform in all sectors.

Finally there are those who took the practical approach of adapting strategies to the particular situation at hand. One woman noted that the means to achieve change will depend on the particular issue in question, the context within which the reformer is working as well as the target group. For this reason, she notes that there is no one strategy that applies to every situation and reformers must remain attuned to the particular

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circumstances attached to each issue, as well as to their audiences, and tailor their strategies accordingly.

**The role of law in movements for social change**

Opinions about the centrality of law to social change varied among the study participants. One located law as the central element of any effective social movement, particularly in a national context such as that of Egypt, with its large population and prevalence of poverty and illiteracy. She noted that awareness-raising campaigns reach only the well-educated, whereas the power of law is felt by all citizens. Furthermore, if an individual finds that the laws are not being properly implemented, she has access to the courts as a means to pressure implementers to fulfill their duties according to the law. Another interviewee highlighted the impact of law on behavior, noting that societies can develop a culture of adherence to law, which shapes broader patterns of rule-abiding behavior as well as content-specific behavior, as laws governing particular arenas are adapted. One woman expressed hope for a shift in the role of law in post-uprising Egypt, saying that, "[i]n the past, before the revolution the law pushed the changing of the culture. But I hope after the revolution it will be the other way." She did note, however, that the challenges presented by traditional culture and Islamic fundamentalism may necessitate that in the realms of women's and human rights law remain as the primary instigator of change for a while yet.

The current political situation looms large in the minds of Egyptian social reform advocates, who see great potential for the reshaping of Egyptian society along more egalitarian lines. One interviewee sees the need for ensuring the protection of women's

rights in the new constitution, noting that such a guarantee would facilitate the reform of other laws along anti-discriminatory lines. This would require the inclusion of women in the constitution-drafting process, a demand that has been heard with frequency in the past year, but which seems to be falling largely on deaf ears.

While they concede that law must play a role, most of the women interviewed, adhering largely to Scheingold's "politics of rights" approach, saw it as merely a starting point. A typical attitude is expressed by one participant who noted that "we don't want to depend on the law only. We need also to raise awareness and to change the attitudes and the culture, besides changing the law. The law pushes hard, but it's not enough." There is a common understanding that though Egypt has seen progress in the form of increasingly gender-equal legislation, women here are still largely oppressed. One woman made the point that "[women] are even oppressing themselves . . . by being unaware of these things." Thus while legislative reform may go far in institutionalizing equality, in order to achieve substantive equality there is also a great deal of policy and cultural change that needs to be addressed.[325] Cultural shifts are required among the general populace as well as implementing institutions in order for shifts in law to come to practical fruition, as a law "can be forgotten or be disregarded and denied, because it does not come across how we live or how we accept that we want things to happen."

Just one interviewee expressed frustration with what she sees as an "obsess[ion] with the idea that law can change women's lives." To her mind, law is not central, but is

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[325] This includes addressing the interweaving of different forms of oppression. One interviewee observed the impact of poverty on the nationality question in the case of poor women who are married off by their families to men from Gulf countries. Such women often end up abandoned with children for whom they are unable to procure citizenship, since they often have no documentation to prove either their marriages or the parentage of their children.

only one among many tools for change, to be employed or not as the situation calls for it.

Another noted that while it will be important to ground future gender reform efforts in a

constitution guaranteeing gender equality, as things stand in post-uprising Egypt law is in

fact of little use. According to her, "the tool for change right now is the people in the

streets," and efforts for change should be focused on meeting with local popular

committees to understand their demands and push for them to be included in the agenda.

Seen from a gender reform perspective, women's rights activists should focus on

incorporating feminist demands into the broader revolution agenda and the reshaping of

Egyptian social and political culture.


**Why nationality law?**

I was interested to know why activists focused on reforming the nationality law and how

they saw this particular campaign contributing to broader efforts to affect gender equality

in Egypt. One stated simply that "our goal is that women in Egypt have all [their] rights

from all the fields. The full citizenship." Another noted that in fact they didn't choose the

nationality law specifically, but it was one among many problems that they felt needed

addressing; while some devoted their energies to tackling this particular issue, others

focused their efforts in other areas. The fight to amend the nationality law was seen as

part of a larger struggle against gender discrimination throughout the Egyptian legal

system. One activist (a doctor by training) noted that when analyzing the various

activities of gender reformers in Egypt at the time it turned out that most were working

on issues related to the control of women's sexuality (reproductive rights, domestic

violence, nationality law). She notes that while the focus on the various discriminatory

elements of Egyptian law were not necessarily planned to coincide, they were all "very much entangled, and pushing on here and there and the different points of intersection actually helped to shake [the discriminatory elements of the legal system]."

The nationality law provided perhaps an easy target for women's rights activists, insofar as it was an overt and easily discernible example of blatant inequality, written in clear terms into the law. Simply put by one of the interviewees, "you can't have a law that so rudely discriminates this way." Another noted that by focusing on the nationality law reformers were able to tackle inequality head on, for "if I am a citizen I have to have the same rights men have," including the right to confer nationality. Furthermore, it presented an easier challenge to overcome than family law, which touches more on daily interactions within the family, has the potential to negatively impact men as it removes their right to exercise control over their wives, and is heavily entwined with elements of *shari'a*. The nationality law had fewer of these barriers to contend with, and thus presented itself as an easier sell. This follows a common logic, which, as noted in our earlier discussion of the limitations of law as a tool for change, some theorists regard as a pitfall of legal-centric approaches to social reform. Scheingold, for example, sees the targeting of the most obvious forms of legal discrimination as distracting from more useful, but longer-term, battles against underlying social attitudes. By spending their capital on reforming what is clearly a discriminatory law, the activists perhaps missed out on the opportunity to affect broader change had they adopted something other than a legal approach.

While it may certainly be argued that the reformers misspent limited resources on superficial legal reform, there are of course other ways of looking at their decision to

target the nationality law. Some reasoned that if they could succeed in gaining reform in this regard, it would open the door to further reform, for "[i]f something gets solved it paves the way to the other laws." One reformer regarded nationality law as a good topic for women's rights advocates at that particular historical moment, as they were concurrently working to pressure the government to remove its reservations to CEDAW, one of which included the right of women to pass their nationality to their children. She reasoned that if they could succeed at getting the law amended it would be a "real crack in the wall of reservations," which might contribute to changing broader perceptions based on a public shift in the government's position.

In the end, the study participants saw a need to address the nationality law because:

> When there [is] a gap in any field it means that there are no equal rights for women in Egypt. So we have to bridge all these gaps in the law… when we got some change on the legal level, it helps to bridge these gaps. Especially with the tradition and the culture of the people here. The people in Egypt think that woman has not all the rights that man has. So we have to change this traditional culture through the law, through education, through the media.

**What tactics did they employ?**

It is clear from the above conversation that while Egyptian women's rights activists do view law as an important element of gender reform, it is not the only tool they have at their disposal. The tactics used to achieve reform - whether to the nationality law or within the broader arena of the patriarchal structure of gender relations and institutions - are many and varied. I will highlight below some of the tactics employed by activists leading up to the 2004 reform.

### Being Prepared

As discussed previously, activists involved in nationality law reform in the MENA region as a whole embarked on extensive research projects in order to prepare their arguments. Their Egyptian counterparts were no exception. One interviewee in particular stressed the importance of preparation, noting that "there comes a point where you feel prepared, when you've done your homework, that then you can also broadcast it." Solid preparation to her means crafting responses ahead of time for any possible challenge that might come your way, "[b]ecause you get attacked. Of course, because you're coming with new thinking. And anything that is taking away some authority from patriarchy is definitely going to be attacked. So unless you really are solid, and have solid arguments, and you've done your homework" you're in trouble. This is particularly the case with religious arguments. But once you have satisfied yourself that you are prepared with counterarguments, it is time to take your case to the public.

### Raising Awareness

It is at this point that we move into the realm of awareness-raising. The goal of awareness-raising tactics is to "enlarge the audience and make the problem appear to be affecting the society [at large]." One interviewee broke this down into two component parts. The first group that needed to see the issue of women and nationality as a problem were women themselves. By raising the awareness of the affected population, she notes, you encourage them to "start to demand that they are [] not second class citizens. Because they were made to believe as well that that's not available, and then people really don't know what their rights are, or how far they could go. So you raise their awareness so that

they also start to pick up [the call]." Secondly, by publicizing the fact that Egypt was not living up to its responsibilities as a signatory to the CEDAW Convention, and by playing to public sensitivities about the loss of Egypt's role as the undisputed regional leader (in noting that Tunisia had already solved this particular problem by granting women the right to confer nationality) activists were able to shame the government into acting. Another activist highlighted the importance of targeting men as well, beginning with members of NGOs before moving on to enlist the help of male legal experts, and ending in Parliament. The theory behind such lobbying was that by turning nationality into a human rights and development issue, activists could convince the men in Parliament that the law as it stood negatively affected not only women but children and society as a whole. It is interesting, however, to note that none of the women interviewed spoke of the need to educate the average male population. Rather, their focus was entirely on strategically-placed men who held some sort of position of influence in the realm of law and policy. And while their efforts paid off in the end in terms of passage of Law 154/2004, it is difficult not to see this as a shortcoming of the reform efforts when taking into consideration broader goals relating to the shifting of societal attitudes and behavior.

The campaigners employed a variety of media formats to convey their message to both decision makers and the public at large – from reports and conferences aimed at the former to print, radio and television spots targeting the latter. Film was also highlighted as a useful awareness-raising tool by a number of participants. The New Woman Foundation went so far as to commission a documentary for screening at conferences and awareness-raising events. Entitled The Nationality is My and My Family's Right, it presented arguments of leading women's rights activists and legal experts, as well as

testimonials of a range of women of different backgrounds and a famous film director who was himself denied Egyptian nationality as a result of being born to an Egyptian woman and a non-Egyptian man. The film format is able to speak more directly to the audience, requires less of a time commitment, and is accessible to the illiterate, thus rendering it a more useful tool for widespread awareness-raising than the written word.

However, the single most cited awareness-raising tool by those interviewed were the testimonials given by women whose families had suffered as a result of discriminatory nationality legislation. These 'tribunals' included women of a variety of backgrounds - urban and rural, wealthy and poor, educated and not - and highlighted the practical repercussions of a law that the majority of the population (ordinary citizens and legislators alike) had not thought twice about. By opening up a space for women to speak about their struggles, activists were able to empower the affected population and demonstrate that what people typically think of as "feminist" issues are not the concern only of intellectuals. Moreover, by putting a human face to an abstract problem they were able to educate politicians who would otherwise have remained ignorant of the practical consequences of this particular law. In the words of one study participant: "[a]nd so you merge two different worlds. It's an eye-opener for the two sides. For the very small community members up to the policy makers who did not even know that [it's] such a big problem." While the use of personal testimonials seems to have had a visceral effect on those who heard them, I would argue that the reformers perhaps didn't do enough to fully involve these particular women in the reform process. By reducing them in effect to symbols of the campaign, the reformers missed out on an opportunity to more deeply engage with the people on whose behalf they were advocating. Had they focused more on

drawing these women and their various communities into conversations about the underlying causes of the problems they faced, they would have opened the door wider to the sorts of attitude and behavior change that are the ultimate goal of gender equality activists the world over.

*Networking (locally, regionally & globally)*

All of the study participants spoke of the central importance of international conferences to the nationality law effort. The campaign took many years to reach its goal, and the momentum required to keep it going was maintained in part thanks to the participation of many of the advocates in such conferences. The participants and/or the organizations they work for took part in the NGO forums and shadow reporting procedures linked to the International Conference for Population and Development (Cairo, 1994) and the Third World Conference on Women (Beijing, 1995). While many individuals and NGOs had been working on the nationality law issue prior to 1994, one woman notes that:

> The ICPD was really a milestone for us. It gave us an impetus. That was the first time that a door opened that was new to us, which was the international arena . . . it put us in the limelight. And there was also a certain type of awareness that happened among the women's NGOs. Like never before, and never after . . . all the feminist groups were uniting, and there was no rivalry . . . we were eager for Egypt's chance to offer the best papers, the best preparation, because it was international . . . we were all doing this in the name of Egypt.

Through presenting at ICPD activists brought the nationality law issue front and center, allowing them to "make it a public issue" on the national, regional and international levels. By raising it in an international arena they were able to bring the full brunt of international pressure to bear on the Egyptian government, and the media coverage by local press of an international conference held in Cairo presented a golden

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opportunity for raising awareness at home. Additionally, the airing of this issue allowed

them to join forces with organizations in other countries facing similar problems. As one

interviewee noted, success in one country can be replicated in others in the region, thus

one of the reformer strategies came to be collective campaigns for change in

collaboration with feminist movements throughout the Arab world.

One participant observed that while the intense momentum of the preparatory

stage for ICPD diminished once the conference was over, by that point the nationality

law issue had gained enough exposure that others picked up the call, a fresh crop of

donors stepped in with funding, and the audience continued to grow. Furthermore, ICPD

was followed up immediately the next year by the Beijing conference, which required

further preparation and presentation of country reports, and where one activist claimed

the nationality issue became "crystallized." Another noted that the Egyptian government:

> Tried to push us back home after ICPD was finished. The National Committee
> for Population and Development they tried to dissolve . . . They weren't lucky
> because Beijing was coming the next year. And we continued, the same
> committees that were formed for ICPD worked on Beijing. And they began to
> feel really the dangerous thing of having NGOs working together . . . so that was
> a real turning point for NGOs.

Clearly the opportunity to network with other organizations in the region fighting

similar battles and the garnering of support from international agencies were enormous

benefits of participation in international conferences. But the cooperation such

opportunities fostered between Egyptian women's rights NGOs was an equally, if not

more, important benefit. One woman who had been active in social and political reform

movements since the early 1970s noted that at one point early in her experience there had

been an "escalation of women's activism to the point of where we were about to have a

women's movement . . . we were a group of different groups; we came together to

organize and have an association. [But it didn't work], so we were dispersed in different

civil society organizations." Another recalls that as early as the late 1980s a couple of

women's rights groups were researching the right to nationality, but because of what she

called a "gentlewoman's agreement" between civil society organizations at the time, if

one group was working on a particular topic, others would direct their energies

elsewhere. She attributes the shifting of this trend as far as nationality law is concerned to

the formation of the CEDAW Coalition in 1998, which was tasked with drafting an NGO

shadow report analyzing the Egyptian government's progress in implementing the

CEDAW convention. A portion of the report was devoted to outlining gender

discrimination in Egyptian law, including the nationality law. And the collaboration of

individuals and organizations required to do the research and draft the report again drew

them together in the pursuit of a single goal. All of the abovementioned efforts proved

useful in that they united different groups, and in one activist's words, "we began to see

each other and see potential for our cooperation." One of the most useful lessons drawn

from the success of the nationality law campaign is that it demonstrated to the various

(and at times oppositional) women's rights organizations that "hypothetically we can

work [together], hypothetically we can do something and have it be done and

accomplished."


### *Drawing in support from different sectors*

The importance of networking and the development of broad-based support in social

reform efforts extends beyond just the NGO world. One interviewee attributed the

success of the nationality law campaign in part to the fact that activists were able to draw

in contributors from a variety of sectors to bring their expertise to bear, and to address the issue from a variety of angles. She highlighted the importance of knowing your allies, and of having different allies for every aspect of a campaign, be it legal, economic, social, political or religious. Additionally, to involve a broad base of individuals from different sectors can render your argument more convincing. As one of the two interviewees who was married to a foreigner, she noted that this was particularly the case for her as a leader in the campaign because by enlisting the assistance of experts in a variety of fields she was able to discount potential accusations that she was turning her own problems into a campaign to amend the law. By broadening the base of supporters they were able to frame the nationality law amendment as a common cause with positive repercussions for more than just a select few.

One sectoral approach addressed the content of the law directly through lobbying efforts aimed at raising awareness of the problems faced by women and their children among decision makers in the Ministries of Interior, Education and Health, whose sectors were the most affected. Some devoted themselves to identifying elements within the government that were seen to be supporters of women's rights, and lobbying them specifically. Activists held roundtables with members of Parliament as a means to gain insider support, and in 2001 a conference on nationality law and the legal and constitutional rights of Egyptian women was held to court the favor of high-ranking government officials. The endorsement of Suzanne Mubarak was a key element in attracting the participation of top-level decision makers. Part of the lobbying effort involved presenting lawmakers with a proposed amendment to the law. For this, NGOs

enlisted highly respected lawyers to draft the language of a new nationality law.[326] One

activist, speaking of the legal experts who were drafted into the reform campaign, again

noted the importance of drawing on the expertise of those from a variety of fields when

she said:

> This is why it's very important to have real lawyers, because we cannot talk
> about this, we can only listen to them and get to know more. But at the end it's
> their business, so they were the ones who really had the legal paper on this, on
> the whole dimension of how the history was, how to change it, and how they
> would also go about to implement this change.

Another of the legal tactics used was recourse to the courts. The Egyptian Center

for Women's Rights focused attention on providing legal aid to women fighting in court

to get the Egyptian nationality for their children. Their main target was to reach the High

Constitutional Court, in the hopes that the nationality law would be deemed

unconstitutional, thus forcing the government's hand. While no nationality-based claim

reached that level, there were other gender discrimination-based cases that either did, or

else made such a stir in the media that they could not be ignored.[327] Various NGOs

continued bringing cases to court even after the passage of the new law on behalf of

women married to Palestinians, whose children continued to be denied nationality until

2011.

Again we must note that throughout the interviews there was very little mention

of religion as a framework for reform. The reformer dialogue is framed largely in the

language of human and citizens' rights and the role of law, economics and culture in the

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[326] Though it must be noted that Dr. Fouad Riad had drafted a law granting women the right to pass
nationality to their children as early as the 1970s.

[327] Including the case of Hend El Hendawy, a young woman who had a child as a result of an illegitimate
relationship with a young Egyptian actor. He confirmed the relationship, but denied paternity. According to
one of the study participants, her family's public support of her and the way in which those demonizing her
in public framed their arguments provoked many people to support her.

oppression of women. Religion was mentioned largely in passing as one among many arguments against reform for which counterarguments must be prepared. It is clear that the activists perceive of conservative Islam and legislation grounded in *shari'a* as obstacles to women's equality, and it was taken for granted that religious-based arguments would be put forward to try to halt their progress. But the one interviewee who spoke at any length about the role of religion in the nationality law campaign ventured only to say, "[w]e had to look into religion as a matter of debate, and see is this something that could help us? Is this something that they could use against us?" Yet it seemed to be only a defensive tactic, and not a framework for reform. She seemed satisfied that the reformers were able to formulate arguments proving that a woman's right to pass nationality to her children was in no way prohibited by Islam, and that was the end of it. I would venture to say that while in the end they succeeded in satisfying the religiously based objections enough to secure passage of the amendment, if the ultimate goal of Egyptian women's rights activists is to achieve attitudinal and behavioral change among the population at large, religion will have to play a more significant role in their future reform efforts, particularly as Islamists gain a greater foothold in the Egyptian political landscape.

**Did they succeed?**

When asked if they felt they could point to the nationality law reform campaign as a success the majority of those interviewed answered yes. They succeeded in galvanizing enough support to force the government to amend a law that was clearly discriminatory against women. In doing so they helped, if only slightly, to redefine what it means to be a

citizen and to bear a citizen's rights in Egypt. One woman went so far as to say that she feels that only seven years later the general public is taking the law as it currently stands for granted. The ability of women to pass their nationality to their children has become so second nature that the vast majority don't realize that this right they take for granted took well over a decade and a concerted and coordinated effort to achieve.

What many seem to have taken away from their experience of the campaign is a sense of satisfaction and empowerment in that they succeeded in creating change. As one woman noted: "[i]t was just also some sort of feeling that 'we did it.' I mean we did change the law. You did succeed. The movement can succeed." And most spoke of the ten years preceding the law's amendment as a sort of heyday of collaboration between Egyptian women's rights NGOs, and point to the passage of the law as both a personal and a collective achievement. They point to the automatic conferral of nationality from woman to child and the release of pressure on such women in terms of the fees they no longer have to pay as the tangible benefits of their years of effort. Most focused on these practical gains when speaking of success. Only one spoke of the increased sense of belonging for the children of Egyptian women and foreign men as a positive outcome of the reform, as well as the release of women from the guilt many held in relation to the effects of their choice to marry a foreigner. Yet despite most being clear in their perception of the nationality law reform as part of a broader gender equality agenda, only one made reference to the broader effects of the amendment, noting that:

> I think it has affected the culture of the people. Because when you see the revolution after 25 January you can see a lot of women inside Tahrir Square. And this cannot happen before. I think this is a sign of the gender change in the culture of the people. When we saw women stayed in the square beside men in the night . . . no one pushed her outside the square. It's a big indicator to the change. I think when we got the change in the law and when we pushed for the shadow report and when we go to

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workshops everywhere, all this raises awareness, and changes the stereotype of women inside the mind of the man and also the woman.

Despite the overwhelming sense of having achieved their goal, it is clear that these activists do not perceive of their success as being unqualified. One participant stated unequivocally, "[w]e did not solve it a hundred percent." The exclusion of the children of Egyptian women and Palestinian men loomed large in their minds, as did the fact that Egyptian women are still barred from passing their nationality to their foreign husbands in a way that does not hold true for Egyptian men married to foreign women. Clearly there were compromises made, and there remains much work to be done. Some took this as something of a defeat, as the woman who stated that, "I still believe the nationality law is anti-constitutional." The inability of women married to Palestinian men to confer their nationality on their children is still a form of discrimination against women, because in the end "there is no difference between an Egyptian woman marrying a Palestinian and one marrying a British [man]." If it is about the ability of all Egyptian women, regardless of their choice of spouse, to exercise a right on equal terms with Egyptian men, then the law failed to eliminate the discrimination it set out to combat. Yet most of the women, though recognizing the amendment as flawed and incomplete (whether in text or in application), view their efforts as successful, and simply note the need to continue to fight for full and unqualified equality. Some have focused their efforts on ensuring that the nationality law amendment is properly applied to all those affected, and thus continue to push for the inclusion of the children of Palestinian men. Others have moved on to fighting for women's ability to pass their nationality to their husbands. One noted that attention has shifted to other areas out of necessity. She says that one must:

> Take a break, let them swallow it. And then don't wait for long, but move on afterwards. But then the way it happened in Egypt, there were other problems, so we . . . didn't move this on for the husbands . . . Of course it's a discrepancy, but we have other problems, other fronts to fight, so it's not one of the priorities . . . it definitely needs some more work, just not now. First we solve the others that are really most affecting women.

### *Problems of implementation*

Despite indications in the literature that the amended law has faced difficulties in the implementation stage, the majority of the activists interviewed saw little problem with its application. Some noted that while acquisition of nationality was not automatic for those born before the amendment, most who have applied for nationality have gotten it (barring of course the children of Palestinian men). One observed that those who face difficulties still have recourse to the courts, and that the precedent built by the number of cases being tried in court will invariably make nationality easier to acquire with time. When asked, most had not heard of the stipulation noted in some of the literature that those born before the amendment had a year within which to lodge their applications, or they would lose the right to acquire nationality permanently. While everyone expressed concern regarding the exclusion of Palestinians, only one interviewee noted that there may be difficulties of application broader than that. In her opinion the discretionary power granted to the Minister of Interior to approve or deny applications for nationality meant that "the law had its hands cut." She makes note of broader issues when she says:

> All laws, if you don't make it easy to implement them, some people will benefit and some people will not benefit. Because if you have to do too much effort, maybe you can't. So that's why I say when they say we changed the laws for women – yes, changing the law is very important. But it's not enough.

She sees problems of implementation related to most of Egypt's progressive laws in the realm of gender equality, from the *khul* to the nationality law, and particularly as relates

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to the barriers to poor women benefitting. Another interviewee raised the issue of the association of gender equality laws with Suzanne Mubarak and the Mubarak regime. Laws "hijacked" by the former regime have lost credibility since the fall of Hosni Mubarak, with the result that they are more difficult to implement.

As noted by Freedom House, "The challenge in the years to come will be to adopt the institutional and policy framework necessary to make the amended child law and other such reforms enforceable. Proper implementation will also require sensitive and consistent awareness-raising and activism at the community level, as only social changes can make beneficial laws a reality in people's lives."[328]

### *Recognizing women as full and active members of society*

If the goal of a gender equality movement is the recognition of women as full and active members of society, how does the nationality law campaign contribute? If viewed through a purely statistical lens, the reform must be considered at least a partial success. Since July 2004, countless children of Egyptian women and foreign men have been granted Egyptian nationality. And for such children born since then there will never be a question regarding their citizenship status. These benefits cannot be denied. It must also be acknowledged that the passage of the reform was at the very least a symbolic victory for women's rights activists. By recognizing women as sources of Egyptian citizenship on an equal footing with men (at least as far as their children are concerned) Law 154/2004 takes a step toward positioning women as full and equal members of the national political community.

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[328] Freedom House, *supra* note 173.

Golia is of the opinion that the benefits stop there, for though "The new law wins points for symbolic value by extending the blood right to women, [] it does little to let them define the society in which they belong."[329] And it also cannot be denied that social perceptions persist that the children of Egyptian women and foreign men are not real Egyptians. In a 2011 study of perceptions of identity among half-Egyptians, Sandra Fernandez noted that even seven years after the passage of Law 154/2004:

> The claim that having an Egyptian father is what makes one Egyptian is widely made by Egyptians. [One woman interviewed] cites it as the reason why her Egyptian friends tell her she will never be Egyptian regardless of citizenship, knowledge of social nuances, and exceptional language ability. Nationality for her was meant to end all the questions; she had Egyptian nationality and that made her Egyptian. Every day for her is yet another obstacle course in which she needs to prove to Egyptians that she is not foreign.[330]

Perhaps it is simply a question of time – seven years is a drop in the bucket of the hundreds (if not thousands) of years of Arab tradition wherein belonging in the kin, religious and political community derived exclusively from the father's line. Pronouncement of the law clearly does not automatically affect social perceptions. One can hope, however, that nationality granted through the mother's line will come to be assumed, as the practice of acquisition at birth becomes a foregone conclusion. Then, perhaps, we might see a slow shift in perceptions. But as noted in the reaction of those men who heckled the International Women's Day demonstrators with chants of "you are not Egyptian!" this shift is a long way off.

Looking at the reform through the lens of women's active citizenship participation, we come away with yet another picture. It is largely women's activism that brought the amendment to fruition. For more than a decade women's rights agencies

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[329] Golia, *supra* note 176.
[330] Fernandez, *supra* note 202, at 87.

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[329] Golia, *supra* note 176.
[330] Fernandez, *supra* note 202, at 87.

researched, lobbied, raised awareness, and gathered support in an organized and collaborative effort to affect change. The fact that they succeeded in securing an amendment to a discriminatory law has had a profound effect, not only on the legal landscape of Egypt, but also on the women's rights community and the individual women involved in the campaign. Many of the women interviewed spoke of the personal satisfaction and sense of empowerment they got from having succeeded in changing a law based in centuries-old patriarchal modes of thinking. One woman said, "it taught us if you really fight for something, you can get what you want," while another noted that their experience taught them that advocacy efforts can actually succeed. In the context of a political and social system that discourages women from actively engaging with the public sphere, this is no mean feat. As an exercise in political engagement, the nationality law campaign must be viewed as a success, for as one woman noted: "It brought us also more acquainted with the public arena, how it functions, what the role of NGOs is . . . what the others are doing, what their mandates [are], what the international agreements are. So it was more of a practical experience, and also a morale booster." She went on to note that her experience with the nationality law campaign encouraged her to continue to push for change in other realms.

**Moving Forward**

While the nationality law campaign does demonstrate the power and possibility of women's citizenship participation in Egypt, where it falls short is in its failure to enlist the participation of a broad base of Egyptian society. Certainly awareness-raising was one of the reformers' strategies, and played a role in the campaign's ultimate success. Yet

it is difficult not to view the campaign as being focused within a small elite sector of

Egyptian society. Both the activists themselves and the targets of their efforts belonged

largely to an elite and educated class. To truly transform the social assumptions, attitudes

and behaviors underlying discriminatory legislation and practice, reformers will have to

focus their efforts more on engaging with a broader base of the Egyptian public,

including not only politicians and other elites, but also field level decision-makers and

average Egyptians. One activist observed when asked what she would have done

differently:

> I think we need to find some ways to get the people on the street contacted in our
> advocacy. Not only the NGOs. We need some strategies to make it on the
> popular level . . . Because our advocacy for the nationality law [] need[ed] about
> 20 years . . . And if we need 20 years to change everything it will be a big
> problem. So we need to be faster, and we need masses, a movement of masses
> beside these demands. And this is part of women's issues here in Egypt. Still
> women's rights is not a public issue. Till now it's a women's issue. And we need
> to transfer it to be a public issue.

# CONCLUSION

Having spent some time now exploring the intersections of law, citizenship, gender-based discrimination and social reform movements, we find that the women interviewed for this study embody many of the complexities of the gender equality struggle, at both the international and the regional level. As educated members of the middle class, they have a certain level of access to decision makers and thus are positioned to affect change. Being conversant in the language and ideologies of international human and women's rights, they chose to frame their reform arguments in terms of women's rights as individuals, which alienated them somewhat from a cultural context where rights have traditionally been framed in terms of the family, and where the institutional and cultural support for the claiming of individual rights is lacking. They exhibit a largely secularist frame of mind, which further isolates them from a system based in no small part on reference to religious law and a population heavily influenced by religion. While they certainly recognized the need to raise public awareness on a large scale, and while some spoke of the need to mobilize the masses, they fell short of this more expansive goal. All of these elements present challenges to substantive and sustained gender reform within the Egyptian context.

It is clear that the reformers interviewed for this study have a sophisticated and varied understanding of social change and the means to achieve it. While some place great faith in the law as the ultimate guarantor of women's rights and others view substantive social change as coming mainly through broad and sustained dialogue with average citizens, most recognized the complex and dynamic interplay of law, awareness-

raising, economic equality and women's active participation in society and politics as necessary for true and lasting change.

Evaluating the success of their efforts is not a simple task, and one can only come away from such an exercise with the impression that their success was mixed. On the one hand they achieved exactly the goal they had set out to achieve – they persuaded the Egyptian state to acknowledge women as bearers of nationality. In a context where women have traditionally been viewed as less than full members of the political community, and as less than men in nearly every way, this is no small feat. But as we have seen, when reformers place excessive emphasis on the power of law to affect social change they miss out on the opportunity to address broader, more systemic issues of inequality and injustice. By pinning their hopes on the power of law to bring change, they fail to directly address the attitude and behavior shift necessary for true, substantive, lasting change.

At the same time, it could be argued that the nationality law campaign exemplified exactly the indirect benefits so lauded by mobilization theorists. In the process of fighting to amend the nationality law, the reformers exercised active, participatory citizenship in mobilizing themselves, raising public awareness, and in effect forcing their government to make good on its domestic and international promises. In so doing they created strong links - between issues, between sectors of society, between civil society organizations working toward similar goals, between women from different backgrounds, between local, regional and international efforts and organizations – that may serve to promote further reform if properly nurtured. They were rightfully proud of the collaboration between women's rights NGOs, which reached unprecedented levels

during the campaign, and if harnessed, could result in further significant reforms. And finally, their achievement resonated on both a personal and collective level, as they realized their power as citizens to affect change within the national community.

The nationality law campaign is less successful when one considers the barriers to implementation, which highlight ingrained social attitudes that require more than legal reform to shift. The discretionary power granted to the Ministry of Interior and field-level implementing authorities suggests that the right to confer nationality on their children is not one that will be granted to Egyptian women across the board. And as one interviewee pointed out, aren't Egyptian women simply Egyptian women - with all the rights resulting from their status as citizens - regardless of whom they choose to marry? If this were truly conceived of as a right of all citizens, there would be no question of discretionary application of the law.

The fact that the reformers' efforts stopped largely at the passage of the law suggests that while they did in the abstract conceive of it as part and parcel of a broader struggle for gender equality, they still viewed the reform of the law as something of an end in itself. I would argue that if they failed anywhere, it was here – in prioritizing the writing of legislation over the mobilization process preceding it and the sustained capitalization on that mobilization long after the amendment of the law. For their efforts to bring about the broader goal they desire – the shifting of gender relations in Egypt to reflect full equality between men and women as equal members of society – there are a number of things they could have done differently. While they did focus on recruiting women to the cause from a broad spectrum of Egyptian society, this was largely in the service of providing the personal testimonials that demonstrated the law's widespread

impact and served as a means to influence policy makers. Their efforts at awareness-raising seem to have been directly largely at elite members of Egyptian society, those with the power to write law. This reflects a belief that change occurs at the top, and that law is the primary determinant of attitudinal and behavioral change. Yet the attitudes of the masses - be they field-level decision makers or the men shouting "You are not Egyptian!" at women gathered in Tahrir Square - are ultimately going to have the greatest affect on women's daily lives. By focusing their efforts on amending legislation at the macro level, and failing to address attitudes and behaviors on the micro level or to engage a broad base of Egyptian women in that process, reformers forgo half the battle.

In the end we are left with the following question: has the passage of Law 154/2004 better positioned women to take their place as full and active members of Egyptian society? Has it better positioned them to participate as citizens? While it would be easy to postulate that it has not, the question is not in fact a simple one to answer. Achievements such as the nationality law reform are only part of the picture. They create expectations, and with time perhaps the notion of women as bearers of nationality will become second nature. What remains to be seen is whether that attitude will form part of a broader perception of women as full and equal citizens, with the freedom to participate as they wish and within a framework which allows them to do so. While the promulgation of progressive legislation may not necessarily precipitate the mobilization of women to active participation, in this case it was certainly made possible by such mobilization. And perhaps these activists' successes will inspire others to attempt similar reforms in other arenas, or to adapt the lessons of the nationality law campaign such that

the next campaign is more ambitious yet, and tackles gender discrimination on more than just the level of legislative reform.

Mary Dietz describes active citizenship as a means, not an end, as a continuous engagement with the community rather than an avenue to the securing of rights. The active citizen doesn't stop once the goal has been achieved because not only is the goal but one small element of the larger objective, but what lies at the heart of citizenship is the engagement in the process of participation itself. The reformers interviewed for this study are prime examples of active citizens, fully engaged with the struggle to better their society. By fighting to secure the recognition of women's equal citizenship rights they demonstrated their own citizenship power and achieved substantive gains for women in the process. The next step is to engage the very women on whose behalf they have been fighting to take up their own versions of active citizenship.