

# Unity in Multiplicity: Shared Cultural Understandings on Marital Life in a Damascus Catholic and Muslim Court

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## Abstract

Family relations in Syria are governed by a plurality of personal status laws and courts. This plurality manifests itself on a variety of levels, including statutory, communal and individual. In this article, the author argues that, albeit this plurality, Syrian personal status law is also characterised by the prevalence of shared, gendered norms and views on marital life. Based on fieldwork conducted in a Catholic and a shar'iyya personal status courts in Damascus in 2009, the author examines the shared cultural understandings on marital relationships that were found in these courts, and as laid down – most importantly – in the respective Catholic and Muslim family laws. The article maintains that the patriarchal family model is preserved and reinforced by the various personal status laws and by the various actors which operated in the field of personal status law. Finally, two Catholic case studies are presented and analysed to demonstrate the importance and attachment to patriarchal gender norms in the Catholic first instance court of Damascus.

**Keywords:** Syria, personal status law, Eastern Catholic law, patriarchal family, marital obligations

## 1 Introduction

Personal status<sup>1</sup> or family law in Syria is characterised by legal plurality, as a multiplicity of personal status

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1. Personal status law is also commonly referred to as 'family law', for that reason I use the terms 'family law' and 'personal status law' interchangeably. The term 'statut personnel' originates from Medieval Europe and was used to denote rules and regulations concerning the status and capacity of persons, vis-à-vis the term 'statut réel', which referred to matters connected to property (see W.A. Bewes, 'The Theory of the Statutes', 4 *Journal of Comparative Legislation and International Law* 3, at 97-103 (1922)). The term 'personal status' (in Arabic: *ahwal al-shakhsiyya*) was only introduced in Arab legal writings in the late nineteenth century, most notably by Muhammad Qadri Pasha in Egypt (J.J. Nasir, *The Islamic Law of Personal Status* (2002), at 34 ff.; A.E.A. Sonbol, "'The Woman Follows the Nationality of Her Husband': Guardianship, Citizenship and Gender', 1 *Hawwa: Journal of Women of the Middle East and the Islamic World*, 86-117, at 89-90 (2003).

laws and courts are recognised to operate within the legal framework of the state. Consequently, family relations in Syria are governed by a variety of religiously based (to varying degrees) personal status laws and courts, creating a complex legal system of parallel and sometimes competing jurisdictions divided along communal lines. In this article, based on fieldwork research in Damascus, I will maintain that, albeit this plurality, Syrian personal status law is also characterised by the prevalence of shared cultural or moral norms and values about marriage, divorce, gender relations, and family relations, irrespective of the religious affiliation.

Numerous ethnographic studies have been published on Muslim family courts and other practices of personal status law in the Middle East and North Africa.<sup>2</sup> However, there is a lack of a more integrated, convergent understanding of Middle Eastern family law, *i.e.* studies that include both Muslim and non-Muslim (*e.g.* Christian) legal practices. Or, as Mariz Tadros puts it in her article on the 'othering' of non-Muslims in relation to personal status law in Egypt, 'There has been a conspicuous tendency in literature on family law in the Arab world to deal separately with Muslim and non-Muslim family legislation as if it affects two communities who inhabit two completely separate and isolated worlds where there is no convergence, engagement or interaction.'<sup>3</sup> I agree with Tadros' observation that family law in the Middle East has too often been regarded from a purely Islamic point of view; thereby also ignoring the laws and legal practices of non-Muslims in the region. That is why in this article, I will present a combined analysis of two types of jurisdictions, namely, Muslim

2. See, *e.g.*: L. Buskens, *Islamitisch recht en familiebetrekkingen in Marokko* (1999); J. Carlisle, 'Rules, Negotiation, Claims and Counter Claims: Judicial Discretion in a Damascus Shari'a Court' (unpublished PhD thesis, University of London, 2007); Z. Mir-Hosseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco* (2000); A. Moors, *Women, Property and Islam: Palestinian Experiences, 1920-1990* (1995); N. Shehada, *Justice without Drama. Enacting Family Law in Gaza City Shari'a Court* (2005); N. Sonneveld, *Khul' Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life* (2012); M. Voorhoeve, *Gender and Divorce in North Africa: Sharia, Custom and Personal Status Law in Tunisia* (forthcoming); L. Welchman, *Beyond the Code: Muslim Family Law and the Shari'a Judiciary in the Palestinian West Bank* (2000).

3. M. Tadros, 'The Non-Muslim "Other": Gender and Contestations of Hierarchy or Rights', 7 *Hawwa: Journal of Women of the Middle East and the Islamic World*, 111-143, at 111 (2009).

and Catholic personal status law in Syria, on the subject of marital relationships.

My research was conducted over a twelve-month period, 2008–2009, and included interviews,<sup>4</sup> recurrent informal interactions with (legal) experts (particularly lawyers) and court observations. Syria's political climate posed challenges in gaining access to the courts, court records and other relevant material. The possibility of conducting frequent court observations in the *shar'iyya*<sup>5</sup> courts of Damascus was limited due to various reasons, most importantly because I did not have the required clearance from the authorities.<sup>6</sup> However, through my lawyers' network, I gained access to three types of personal status courts, *i.e.* a *shar'iyya* court, a Catholic court, and a Greek Orthodox court.<sup>7</sup> In the period February until July 2009, I observed court cases in these three courts in Damascus. During my presence in these courts, I noticed that the same themes were constantly addressed: the ideal of marriage, the proper role of husbands and (in particular) wives, *i.e.* the husband as the provider and head of the household and so on. Regardless of their legal and religious differences, these personal status courts seemed to be united in their shared understandings on gender, family relations, social norms and behaviour.

In this article, I will focus on the cultural or patriarchal views and norms on marital relationships, family and gender, which were shared amongst the Syrian Muslim and Catholic communities. I will argue that in the Syrian family law context, the patriarchal family model is preserved and reinforced by the various personal status laws and by the various actors which operate in the field of personal status law. First, I will briefly outline the legal framework within which these laws and norms operate; followed by a discussion of the content of the Muslim personal status law with regard to the marital relationship. The second half of this article will focus on the Catholic personal status law, by providing some general observations about legal regulation of a Catholic marriage and the dissolution thereof. Finally, two Catholic case studies will be presented and analysed to demonstrate the importance and attachment to patriarchal gender norms in the Catholic first instance court of Damascus.

4. During my fieldwork, I spoke to a range of people, including lawyers, judges, women's rights activists, representatives of civil society groups, members of Parliament, diplomats and representatives of religious organisations.
5. I chose to leave the adjective *shar'iyya* in relation to the courts untranslated because I do not want to use the term 'Muslim' or 'Islamic' to denote this type of court. The *shar'iyya* courts are regarded as the general personal status courts because, even though the majority of their cases involve Muslims, they also have (limited) jurisdiction over non-Muslims. Besides, I do not want to label them as religious courts; *shar'iyya* judges are civil servants trained at secular law faculties, unlike the Christian courts, where priests act as judges.
6. Just before I finalised my research plans in the spring of 2007, the Minister of Justice had issued a regulation denying foreigners access to Syrian court rooms.
7. In Syria, court sessions are generally open to public.

## 2 Pluralistic Family Law in Syria

Syria is a multi-religious and multi-ethnic country, with a Muslim majority and several religious minorities, most notably various Christian denominations. There are no official statistics available on religion, but according to estimates, Sunni Muslims make up around 74 per cent of Syria's estimated 21 million population, around 16 per cent are non-Sunni Muslims, such as Druze, Shi'a and 'Alawi, and about 10 per cent of the population belongs to various Christian denominations.<sup>8</sup> The different religious communities have since long enjoyed the right to regulate and administer their family relations according to their respective religious laws. This situation of legal plurality was partly inherited from earlier, predecessor dynasties and rulers; in particular, the political and legal system of the Ottomans was foundational to Syria's legal system. The Islamic Ottoman Empire, like Syria today, was a multi-religious state. In addition to its Muslim subjects, the Empire had a significant number of non-Muslim subjects, *i.e.* *dhimmi* – a *dhimmi* is a non-Muslim living under Islamic rule. Non-Muslim Ottomans were guaranteed certain privileges under the so-called *millet* system.<sup>9</sup> The religious or confessional communities (*millets*) enjoyed the right to apply their own religious laws; also in matters of personal status, most importantly marriage and divorce.<sup>10</sup> In the nineteenth century (1839–1876), the Ottoman government introduced a series of far-reaching reforms (*Tanzimat*) to meet the challenges of social change. The Edict of Humayun, issued in 1856, stated that all Ottoman subjects were regarded equal before the law, in taxes, government positions, and military service, regardless of their religion. Hence, the Ottoman state introduced the concept of 'citizenship'<sup>11</sup> and with that –

8. In addition, a few Jewish and Yazidi families still live in Syria (see Central Intelligence Agency, *The World Fact Book* (online edition, 2013), at <[www.cia.gov/library/publications/the-world-factbook/geos/sy.html](http://www.cia.gov/library/publications/the-world-factbook/geos/sy.html)> (accessed 17 June 2013); *International Religious Freedom Report* (2012), available online at <[www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dclid=208412](http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dclid=208412)> (accessed 17 June 2013).
9. For an analysis of the concept 'millet' (including the *millet*-system), see M.H. van den Boogert, 'Millets: Past and Present', in A.N. Longva and A.S. Roald (eds.), *Religious Minorities in the Middle East: Domination, Self-Empowerment, Accommodation* (2012), 27–45.
10. However, this protected position came with certain conditions, such as payment of the poll-tax (*jizya*), prohibition to carry arms, living in segregated areas, and dress in distinctive style. In addition, *dhimmi*s could not testify against Muslims in court and they were excluded from high public offices (A.N. Longva, 'From the Dhimma to the Capitulations: Memory and Experience of Protection in Lebanon', in Longva and Roald, above n. 9, 47–69, at 49).
11. However, the formal nationality law was only passed in 1869 (see K.H. Karpat, 'Millets and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era', in B. Braude and B. Lewis (eds.), *Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society* (1982) 141–169, at 162–163).

at least on a national level – abolished the *millet* regime.<sup>12</sup> The separate status of Muslims and non-Muslims in family law matters, however, continued to exist, for the Edict of Humayun reaffirmed that the privileges granted to all the non-Muslim communities would be maintained.<sup>13</sup> In spite of the official abolishment of the *dhimmi* status, the *millet* system was never completely erased in all parts of the Empire.<sup>14</sup> Remnants of the Ottoman *millet* system can still be found in varying degrees in Egypt, Lebanon, Israel and Syria today.

The main law in Syria that regulates family relations today is the 1953 Syrian Law of Personal Status<sup>15</sup> (*qanun al-ahwal al-shakhsiyya*; hereafter SLPS); it is predominately based on Islamic legal sources, particularly Hanafi *fiqh* (Islamic jurisprudence).<sup>16</sup> The SLPS is the general law because it applies to *all* Syrians, irrespective of their religion (Article 306 SLPS).<sup>17</sup> This means that non-Muslims, for example, also have to refer to a *shar'iyya* court (*i.e.* the competent court to hear cases under the SLPS) for certain specified matters, including, most notably, the determination of paternity (*nasab*) and legal guardianship (*wilaya*).<sup>18</sup>

That said, conversely – or perhaps more importantly – Article 306 also stipulates that, following the subsequent two articles, the Druze community (Article 307), the Jewish community and the various Christian communities (Article 308) are exempted from numerous SLPS provisions and are allowed (instead) to apply their own laws, most importantly with regard to marriage and divorce.<sup>19</sup> In other words, the various Christian laws are considered special laws, as exemptions to the general law, *i.e.* the SLPS. Hence, family relations in Syria are governed by a multiplicity of personal status laws and courts that regulate matters of personal status, including

marriage, dower, dissolution of marriage, maintenance, child custody, and succession.<sup>20</sup>

The already complex situation of legal plurality is further complicated by the unequal position for Muslims and non-Muslims in matters of personal status. This affects especially the non-Muslim minorities, for example, in the event of an interreligious marriage or when one of the (usually Christian) spouses converts to Islam, for example, to obtain a divorce. When a spouse converts to Islam (the other way around is not possible), the SLPS becomes the applicable law and the *shar'iyya* courts are considered the competent courts.<sup>21</sup> This also means that when a non-Muslim father or mother converts to Islam, the religious identity of the converted parent automatically devolves upon the children. Consequently, the converted Muslim parent can demand full custody over the children. In the past, the *shar'iyya* courts have generally rewarded such requests in favour of the Muslim parent. Hence, the plurality in personal status does not entail equality of laws and jurisdictions of the different religious communities.<sup>22</sup> Rather, it is an imbalanced plurality, as the SLPS and the *shar'iyya* courts clearly have supremacy over the other laws and courts.<sup>23</sup>

### 3 Patriarchal Family Model

According to Wedeen, Syrian families are commonly patriarchal, meaning that (senior) men are the head of the family, with women and younger family members in a more subordinate role.<sup>24</sup> In my research, I showed that the patriarchal family model<sup>25</sup> was not only maintained in family relations but also laid down, in varying degrees, in Syria's family laws, similar to many Arab

12. R.H. Davidson, 'Tanzimat', in P. Bearman *et al.* (eds.), *Encyclopaedia of Islam*, Vol. X, 2nd edn (2000), 201-209; D.D. Grafton, *The Christians of Lebanon: Political Rights in Islamic Law* (2003), at 75.
13. Van den Boogert, above n. 9, at 35.
14. Karpat, above n. 11, at 165-166.
15. The SLPS, Law No. 59, was promulgated on 17 September 1953 and amended in 1975, 2003 and 2010.
16. See Explanatory Memorandum to the SLPS, M. 'Atari (ed.), *qanun al-ahwal al-shakhsiyya* (Law of Personal Status) (2006), at 5-13.
17. It is important to note that the SLPS does not make a distinction between Sunni and Twelver Shi'i, Isma'ili or 'Alawi Muslims. Interestingly, the situation is different in Lebanon, where each religious group has its own personal status law and courts, including the different Muslim communities. In other words, in Lebanon each religious community is equal to the other, and the personal status law for Sunni Muslims is just one of the fourteen laws (Tadros, above n. 3, at 114).
18. Art. 535-547 of the Law of Judicial Procedures (*qanun usul al-mahakimati*), Law No. 84/1953 with amendments, sets out the jurisdiction of the *shar'iyya* courts.
19. For a similar situation in Egypt, see M.S. Berger, *Sharia and Public Policy in Egyptian Family Law* (2005), at 27 *ff.* In Morocco, Algeria and Tunisia, on the other hand, this plurality in the legal system was abrogated (E.A. Mayer, 'Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws?', 49 *Middle East Journal* 3, 432-446, at 433 (1995)).

20. This latter matter, *i.e.* succession or inheritance, was only added in September 2010 with the amendment of Art. 308 SLPS. As of 2010, the specified matters falling under the jurisdiction of the Christian and Jewish communities over personal status matters (under Art. 308) now also extends to inheritance and bequests, whereas earlier this matter belonged to the competence of the *shar'iyya* courts.
21. M.S. Berger, 'The Legal System of Family Law in Syria', 49 *Bulletin d'Études Orientales*, 115-127, at 124-125 (1997).
22. For a more elaborate discussion (including examples) of this situation of, what I call, 'asymmetrical plurality' see the first two chapters of my PhD thesis (above n. \*).
23. For a similar situation in Egypt, see Berger (2005), above n. 19, at 46; and Tadros, above n. 3, at 126 *ff.* Georges observes similar legislative and legal practices in most Arab countries, including Syria, see N. Georges, *Le droit des minorités. Le cas de chrétiens en Orient arabe* (2012), at 289-294.
24. L. Wedeen, *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria* (1999), at 51.
25. Buskens defines the 'patriarchal family model' as follows: '[a] model for family life in which senior men are entitled to a dominant position over subordinate women and children. This male dominance, grounded in their position as husbands and fathers, is expressed in norms about gender, descent, obedience, sexuality, the use of space and freedom of movement, as well as the economy of the household' (L. Buskens, 'Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere', 10 *Islamic Law and Society* 1, 70-131, at 75, n. 5, 2003).

personal status laws.<sup>26</sup> The laws privilege men, in particular men from the patrilineal line, in numerous ways, *i.e.* in child custody, inheritance, divorce, choice of marriage partner, passing on religious identity and citizenship to children,<sup>27</sup> household division of labour, and authority and obedience in marriage. Certain matters are typically associated with Muslim family law (*e.g.* the dower and polygyny) or, on the contrary, Christian family law (*e.g.* the sacramental marriage and the prohibition of divorce); however, the underlying structures are generally the same. The patriarchal family model is enshrined in the various laws of personal status, both in the SLPS and the different Christian personal status laws,<sup>28</sup> and that contributes to the preservation and confirmation of that model in the Syrian legal context. For example, when we look at the marital relationship, we find that almost all laws oblige the husband to provide for his wife and children, and the wife, in return, is obliged to take care of the household and the children and obey her husband (see below).

### 3.1 Marriage According to the SLPS: Maintenance vs. Obedience

The SLPS starts with the definition of marriage; Article 1 reads as follows: ‘Marriage is a contract between a man and a woman, who is lawfully permitted to him, with the aim to establish a bond for a joint life and procreation.’<sup>29</sup> The marriage contract is an essential element in a Muslim marriage, for only a valid contract can generate legal effects, most importantly rights and duties for the two contracting parties.

Various studies on Muslim personal status laws emphasise the reciprocal nature of the marital bond, in that the husband’s main legal obligation is his liability to pay maintenance to his wife and that her main legal obligation, on the other hand, is to be obedient and sexually available to her husband.<sup>30</sup> This maintenance–obedience divide has been described as the ‘patriarchal gender contract’<sup>31</sup> or the ‘patriarchal bargain’<sup>32</sup> and has been laid down in various laws of personal status in the Arab

Muslim world.<sup>33</sup> It should be noted, however, that in the last decades several Arab states have changed their family laws with regard to the maintenance–obedience divide, most notably by leaving out the wife’s duty of obedience to her husband<sup>34</sup> but, at the same time, maintaining the husband’s obligation to provide maintenance for the wife.<sup>35</sup> Syria, however, always retained the maintenance–obedience divide; the SLPS views marriage as a relationship based on exchange of rights and duties: the husband will take care of the wife, in exchange for her cohabitation and obedience.

According to the SLPS, a husband’s ‘first’ financial obligation is to pay his wife a dower (*mahr*). When a wife receives the prompt dower, she is obliged to live with her husband, provided he prepares a suitable house for her (Article 66 SLPS).<sup>36</sup> Next to paying a dower, the husband has to pay his wife maintenance (*nafaqa*). This maintenance obligation include, most importantly, a marital home, clothing, food, and medical care (Article 71 SLPS). If a husband fails to provide maintenance to his wife, she can go to court and file a *nafaqa* claim against him, forcing him to fulfil his obligations (Article 71.2 SLPS).<sup>37</sup> A husband, on the other hand, is entitled to cease maintenance payments if the wife fails to keep her end of the ‘patriarchal bargain’, namely, obedience to him and in particular to cohabit with him. The financial obligations of the husband are inextricably bound up with her legal obligation to cohabit and obey him.

As mentioned earlier, I managed to get permission from one *shar‘iyya* judge (hereafter ‘judge Ibrahim’), presiding over one of the six *shar‘iyya* courts of Damascus proper, to sit in on his court sessions.<sup>38</sup> During my visits to Damascus’ main courthouse, which also housed judge Ibrahim’s court, the courtrooms, the halls and corridors were usually packed with court personnel, lawyers, litigants, witnesses and family members, including infants. Judges would go back and forth between the courtrooms and their offices; litigants (predominantly, in my observation, lower or middle-class women), witnesses and

26. See Van Eijk, above n. \*. V.M. Moghadam, ‘Engendering Citizenship, Feminizing Civil Society: The Case of the Middle East and North Africa’, 25 *Women & Politics* 1/2, 63-87, at 69 (2003).  
 27. Syrian mothers are unable, under the Nationality Law (Legislative Decree 276, 24 November 1969), to pass on their nationality to their children (see Van Eijk, above n. \*).  
 28. The Christian personal status laws in Syria are: the Greek Orthodox Personal Status Law (Law No. 23, 27 June 2004); the Syriac Orthodox Personal Status Law (Law No. 10, 6 April 2004); Armenian Orthodox Personal Status Law (number and date unknown); the Catholic Law of Personal Status (Law No. 31, 18 June 2006); the Evangelical (or Protestant) Law of Personal Status (1952, exact number and date unknown).  
 29. ‘Atari, above n. 16, at 20.  
 30. See, *e.g.*, Buskens (1999), above n. 2, at 185-190; N. Shehada, ‘House of Obedience: Social Norms, Individual Agency and Historical Contingency’, 5 *Journal of Middle Eastern Women’s Studies* 10, 24-49, at 28 ff. (2009); Sonneveld, above n. 2, at 17 ff.; J.E. Tucker, *Women, Family, and Gender in Islamic Law* (2008), at 50-56; L. Welchman, ‘A Husband’s Authority: Emerging Formulations in Muslim Family Laws’, 25 *International Journal of Law, Policy and the Family* 1, at 1-23 (2011).  
 31. V.M. Moghadam, *Women, Work and Economic Reform in the Middle East and North Africa* (1998).  
 32. D. Kandiyoti, ‘Bargaining with Patriarchy’, 2 *Gender and Society* 3, at 274-290 (1988).

33. V.M. Moghadam, ‘Patriarchy in Transition: Women and the Changing Family in the Middle East’, 35 *Journal of Comparative Family Studies* 2, 137-162, at 145 (2004); Tucker, above n. 30, at 73-74; Welchman (2011), above n. 30, at 10-11.  
 34. For example, Algeria (2005), Libya (1984), Morocco (2004), Tunisia (1993) and (South) Yemen (1974).  
 35. L. Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (2007), at 94-97.  
 36. A dower is generally divided into two parts, namely a prompt (*mahr mu’ajjal* or *mahr muqaddam*) and a deferred dower (*mahr mu’ajjal* or *mahr mu’akkhar*). The prompt dower ought to be paid upon conclusion of the marriage contract and the deferred part has to be paid when the marriage is terminated due to an irrevocable divorce or death (Arts. 55 and 56 SLPS).  
 37. According to the professional arbiters that were assigned to judge Ibrahim’s court (see below), the majority of the plaintiffs in judicial divorce (*tafriq*) cases were female and commonly complained about their husbands failing to provide maintenance for her and the children because he, for example, used alcohol or drugs (office judge Ibrahim, Damascus *shar‘iyya* court, 21 May 2009).  
 38. I sat in judge Ibrahim’s courtroom approximately twenty times (*i.e.* days), where I observed at least 40 cases. The majority of the cases presented to the court involved divorce cases, most of them initiated by women.

family members patiently waiting their turn, sometimes for hours.

During my presence in judge Ibrahim's court, I once observed a case where a husband tried to wiggle himself out of his dower payment obligation by trying to prove that 'valid seclusion' (*al-khalwa al-sahiha*) had not taken place, which means that the couple did not have the opportunity to consummate the marriage.<sup>39</sup> Consummation of the marriage (*dukhul*) can be a matter of importance in the dissolution of a marriage, for only after sexual intercourse do the judicial and financial consequences of the marriage become effective. For instance, when a husband claims he has divorced his wife before the marriage was consummated (see example above) and non-consummation is subsequently established by the court, the husband can be excused from paying his wife the full dower amount (Article 58 SLPS).

The issue of cohabitation is closely connected to the concept of disobedience (*nushuz*), for cohabitation implies sexual availability of the wife to her husband, which is an obligation upon her side. A wife may forfeit her right to maintenance if she works outside the house without her husband's consent (Article 73) or if she is considered disobedient (*nashiza*) to her husband. A wife can be considered disobedient if she leaves the conjugal home without a lawful reason or if she prevents her husband from entering the house (Article 75). Accordingly, if it is established that a wife is disobedient, she loses her right to maintenance, for as long as she is disobedient (Article 74). If the husband, however, did not live up to his part of the 'patriarchal bargain' because he did not yet pay the prompt dower or if he did not prepare a suitable marital home for her, she may refuse to cohabit with him (Article 72.2). In such an event, she is not considered disobedient and she will not lose her right to maintenance.<sup>40</sup>

Similar to the situation where a wife can take legal action against her husband when he fails to provide maintenance, a husband can take legal action against his rebellious wife. A husband can go to court and claim his wife is disobedient when she refuses to return to the conjugal home. In other words, he can file a so-called *mutaba'a* claim, which (in this context) I translate with the phrase 'marital obedience'.<sup>41</sup> The court may recognise a claim for marital obedience, *i.e.* his claim to be discharged from performance to pay, when the wife per-

sistently refuses to 'follow' her husband and return to the marital home.<sup>42</sup> The deterrent effect of an official court ruling declaring a woman disobedient may persuade her to return to the conjugal home, or even threatening to file such a claim can already compel a wife to return home.<sup>43</sup>

Interestingly, the issue of *mutaba'a* is mentioned in Article 308 SLPS as one of the specified matters falling under the jurisdiction of the Christian judges. In the following section, I will elaborate more on marital rights and duties, including the issue of marital obedience in the Catholic context.

### 3.2 Catholic Marriage: Marriage as a Sacrament

About 10 per cent of the population belongs to one of the Christian denominations. The various Christian communities of Syria can be divided into three groups: the largest group are the Orthodox Christians (est. 704,200 souls), the Catholic churches (est. 204,600 members), and the Protestants or Evangelicals (est. 20,100).<sup>44</sup> Nearly every denomination or group has its own family law, including, for example, the Greek Orthodox Personal Status Law (2004), the Syriac Orthodox Personal Status Law (2004), and the Catholic Law of Personal Status (2006). As stated earlier, following Article 308 of the SLPS, the Christian communities are competent to administer their own religious regulations in certain specified matters of personal status, most importantly, betrothal, marriage, marital obedience, wife's and children's maintenance, annulment and dissolution of marriage, nursing and inheritance. In my research, due to access and time restrictions, I focused on the Catholic community. Through a befriended lawyer, I gained access to the first instance court of Damascus, where I observed court cases from February till June 2009.<sup>45</sup>

The Catholic communities in Syria are governed by the Catholic Law of Personal Status<sup>46</sup> (hereafter CLPS), Law No. 31, promulgated on 18 June 2006.<sup>47</sup> The CLPS is, for the most part, based on the Code of Canons of the Eastern Churches, originally published in

39. When the court establishes that a couple spent a reasonable amount of time alone together, it is assumed they had sexual intercourse, and the marriage is considered consummated. For a more detailed analysis on the (non-)consummation of the marriage in the Syrian context, including examples, see Van Eijk, above n. \*, and Carlisle, above n. 2.

40. Vincent-Grosso shows in her study on judicial practices in Tunisia, where similar legal provisions on the subject of cohabitation apply, that it is very difficult for a Tunisian husband to prove his wife abandoned the marital home 'without justification', as the judges tended to give the wives the benefit of the doubt in these cases (S. Vincent-Grosso, 'Maktub: An Ethnography of Evidence in a Tunisian Divorce Court', in M. Voorhoeve (ed.), *Family Law in Islam. Divorce, Marriage and Women in the Muslim World* (2012) 171-198, at 189-191).

41. Although more literally it would come closer to the meaning of 'to follow', meaning that a wife has to 'follow' her husband.

42. M.F. Shaqfa, *sharh ahkam al-ahwal al-shakhsiyya: li-l-muslimin wa-l-nasara wa-l-yahud* (Explaining the Law of Personal Status: Muslims, Christians, and Jews) (1998), at 314-315.

43. Sonneveld, in her study on divorce practices in Egypt, argues that Cairene husbands often file an obedience (*ta'a*) claim in response to a judicial *khul'* divorce request filed by their wives, as a way of stalling the divorce proceedings or to 'redeem [their] shattered pride' (see above n. 2, at 125-128). During my presence in judge Ibrahim's court, I never came across a case which involved a *mutaba'a* claim but this does not – obviously – rule out the possibility that Damascene husbands employed the same strategy, *i.e.* file a claim for 'marital obedience', in response to, for example, a wife's *nafaqa* claim.

44. All the figures related to Christians cited here date back to 1995 and are cited in Y. Courbage and P. Fargues, *Christians and Jews under Islam* (1998), at 209.

45. The same befriended lawyer also opened the door to the Greek Orthodox court of Damascus, where I observed a few dozen court cases in the period April-June 2009.

46. In Arabic: *qanun al-ahwal al-shakhsiyya li-l-tawa'if al-kathulikhiyya*.

47. In addition to the CLPS, the Catholic courts also resort to Chapter VII 'Marriage' of the Code of Canons of the Eastern Churches in its entirety, *i.e.* Canons 776-866. These canons are added as a supplement (in Arabic) to the CLPS and have direct legal effect.

Latin as the *Codex Canonum Ecclesiarum Orientalium* (hereafter CCEO), issued by the late Pope John Paul II in 1990. The CCEO governs the ecclesial life of the Eastern Churches and covers various branches of the church, including the organisation of the church, the clergy, religious practices such as prayer, celebration of the Eucharist and other sacraments, most importantly (for this study), marriage.

Whereas the SLPS describes marriage as a contract between a man and a woman, the CCEO, on the other hand, considers a Christian marriage a sacrament (*sirr al-zawaj*):

‘By the marriage covenant, founded by the Creator and ordered by His laws, a man and woman by irrevocable personal consent establish between themselves a partnership of the whole of life; this covenant is by its very nature ordered to the good of the spouses and to the procreation and education of children’, and ‘By Christ’s institution, a valid marriage between baptized persons is by that very fact a sacrament in which the spouses are united by God [...]’. (Can. 776 §1 and 2 CCEO)<sup>48</sup>

A Christian marriage bond is deemed exclusive and permanent; after all Christ himself has reportedly said, ‘So then, they are no longer two but one flesh. Therefore what God has joined together, let not man separate.’<sup>49</sup> Because marriage is regarded as a union before God, dissolving such a union is considered problematic. In principle, all (Eastern) Churches prohibit divorce. Generally, however, the (non-Catholic) Orthodox Churches take a more lenient stand on divorce and remarriage, when compared to the Catholic Church. The Catholic Church regards ‘indissolubility’ as an essential property of marriage and therefore renounces the very word ‘divorce’ (*talaq*). A Catholic marriage can only be terminated through nullification of a marriage (*butlan al-zawaj*), meaning that the spouses have to prove that the marriage was invalid from the very beginning. The Catholic Church does accept annulment of a marriage but only in exceptional cases. Marriage nullification cases generally take a long time before a settlement is reached, which might provide an additional discouragement for a couple looking to divorce.<sup>50</sup>

The most common ground for contesting the validity of a marriage investigated by the court of Damascus was the claim that there was a defect of matrimonial consent (Can. 817-827). A defective consent implies that one or both parties do not have the necessary knowledge to choose marriage and understand the obligations resulting from the marriage consent. The spouses have to have the ability to understand and foresee and the willingness to take on the essential obligations resulting

from a marriage, such as the procreation of children, the husband’s obligation to provide maintenance and cohabitation of the wife.<sup>51</sup>

### 3.3 Marital Rights and Duties According to the CLPS

When we look at Catholic canon law, we see that the maintenance–obedience equation is also obviously laid down in the CLPS.<sup>52</sup> Article 38 of the CLPS states that all Eastern Catholics are subjected to the provisions of the CCEO pertaining to marriage and the dissolution thereof. According to the CCEO, the marriage covenant ‘is by its very nature ordered to the good of the spouses and to the procreation and education of children’ (Can. 776). Canon 777 reads ‘[o]ut of marriage arise equal rights and obligations between the spouses regarding what pertains to the partnership of conjugal life.’<sup>53</sup> But what exactly are these rights and obligations?

The CCEO does not provide a definition of ‘spousal rights and obligations’. According to Pospishil, they are determined by doctrinal writings and canonical jurisprudence.<sup>54</sup> Similar to the CCEO, the CLPS does not elaborate on the concept of marital obligations in general. It does, however, pay considerable attention to the issue of maintenance between the spouses (Articles 121-133). The husband has to provide financially for his wife and family from the time a valid marriage is concluded (Article 121). The maintenance (*nafaqa*) obligation includes food, clothing, housing and medical care (Articles 107-108 CLPS). The wife for her part is obliged to cohabit with her husband in the marital house (Article 125). If, however, she leaves the marital house without a valid reason, she is considered disobedient and she consequently loses her right to maintenance (Article 127). She is also considered disobedient when she prevents her husband from entering her house or when she refuses to move with him to a new house, provided she does so without any valid reason. A wife who has been found guilty of marital disobedience or abandonment cannot claim maintenance for as long as the period of abandonment continues (Article 128 CLPS). In exceptional cases, a disobedient wife can be ordered to pay maintenance to her husband to compensate for damages she caused by leaving the conjugal house, but only when the wife is well-off (Article 129 CLPS). Thus, under the CLPS, a Catholic wife’s right to marital maintenance is made conditional upon her behaviour and cohabitation.

48. The English translations of the CCEO are taken from Canon Law Society of America, *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation* (2001), at 295.

49. Matthew 19:6; *New King James Version*, 1982.

50. In the Damascus Catholic court, it generally took at least a year and a half to conclude a *butlan* case.

51. V.J. Pospishil, *Eastern Catholic Marriage Law: According to the Code of Canons of the Eastern Churches* (1991), at 337-339.

52. Similarly, the patriarchal family model is also visible in the other Christian personal status law. For example, the husband is required to provide maintenance for his wife and children (Arts. 33-35 Greek Orthodox PS Law; Art. 34 Syriac Orthodox PS Law; Art. 31 Protestant PS Law). In return, a Christian wife has to be obedient to her husband, which generally means that she is required to live with him and follow him wherever he chooses to live (Art. 22 Greek Orthodox PS Law; Arts. 47-48 Armenian Orthodox PS Law; Art. 33 Syriac Orthodox PS Law; Art. 32 Protestant PS Law).

53. Canon Law Society of America, above n. 48, at 296.

54. Pospishil, above n. 51, at 197.

### 3.4 Runaway Wives in the Catholic Court in Damascus

Similarly, the concept of marital obedience, *i.e.* obedience of the wife, is found in the SLPS and the CLPS alike. Akin to the SLPS, the Catholic law also ‘punishes’ a wife for leaving the marital home of her own accord: for when she leaves the house, she loses her right to *nafaqa* (Article 74 SLPS, Article 127 CLPS). Similar to proceedings at the *shar‘iyya* courts (see above), a Catholic husband can go to court to file a claim requiring the wife to return to the marital home, *i.e.* a claim for marital obedience (*da‘wa al-mutaba‘a*) (see also case study below). When the court receives such a claim, it will have to investigate whether the wife has in fact left the house and what the reasons for the abandonment (*hajar*) are.<sup>55</sup> A wife will be considered disobedient if she leaves the marital home without his consent or without informing him and she refuses to return (Article 127 CLPS). It is therefore important for the court to determine if the wife left the house voluntarily or if she was sent away by her husband. Questions that need answering are: Did the wife leave the house on her own initiative or was she ejected from the house by her husband? Was and/or is she willing to return to the house voluntarily? If not, why does she refuse to return to her husband’s house? Based on (witness) statements of the litigants, family members and neighbours, the court tried to establish a credible narrative so as to determine whether the wife left of her own or her husband’s accord (see below).

In Spring 2009, over the course of four months, I observed court hearings at the first instance court of the Catholic Church in Damascus. The court was housed in a building on the premises of the Melkite Greek *Zaytoun* church, tucked away in a calm spot amid the hustle and bustle of the Christian quarter of the old city. The Damascus’ Catholic court premises were a haven of peace, especially compared to its *shar‘iyya* counterpart.<sup>56</sup> During the court’s office hours, lawyers, litigants, and witnesses usually hovered around the courtroom or were waiting in the designated waiting room, chatting and drinking coffee with the clerk in his office, while waiting their turn to enter the court. The litigants and witnesses who frequented the court generally appeared to be from an urban, middle-to-upper-class background, which is not surprising as Christians in and around Damascus, as I was told, tend to belong to the middle-to-upper-classes.

55. See article written by Fr. Antoun, senior judge in the first instance and appeal of the Catholic court in Damascus: A. Moslih, ‘La legge sullo statuto personale delle confessioni cattoliche’, 4 *Il Regno Attualità*, 135-138, at 138, n. 1 (2008).

56. It has to be noted that this is probably also due to the fact that the Catholic judges are faced with a considerably lower number of cases, compared to colleagues working at the *shar‘iyya* courts, if only because the (total) number of Christians in Syria is much smaller (10 per cent of the total population vs. roughly 85 per cent Muslims).

During my presence in the court, I counted a total of 213 cases.<sup>57</sup> The majority of the cases brought to the court were, by far, nullification of marriage petitions (*butlan al-zawaj*). As mentioned earlier, the most common ground for contesting the validity of a marriage was the claim that there was a defect of matrimonial consent, which could mean that one or both parties did not have the necessary knowledge to choose marriage and understand the obligations resulting from a marriage. The inability to assume and fulfil marital obligations has to be proven in court by the petitioner, which were, in the Damascus Catholic court, usually the husbands.<sup>58</sup> Contrary to the *shar‘iyya* courts and the Greek Orthodox court of Damascus where the majority of the petitioners was predominantly female, this observation was also supported by acquainted lawyers.<sup>59</sup>

The most commonly heard claim filed by men in this regard was abandonment by the wife. An example of a case that involved a husband who claimed his wife had left the marital home is the following:

On a hot day in June, George<sup>60</sup> presented three witnesses to the Catholic court to support his claim that his wife Hind was disobedient and had abandoned him. The three witnesses were all male and appeared to be somewhere between the age of 35-45. Besides the litigants’ lawyers, Hind was also present. However, she had to step outside the courtroom as soon as the witness examinations began.

The court asked the first witness, a friend of George, to give his account on the reason why the couple was in disagreement with each other. He explained they were often at variance with each other and that Hind had left the conjugal house. The witness said George told him that his wife was disobedient (*nashiza*). He went on telling a tangled story about Hind being a woman of questionable morals. The judge was visibly annoyed with this garrulous witness; he cut him short and dictated to the clerk: ‘There are several reasons for the disagreement between the spouses but I do not know what the main reason is.’ The court asked whether the wife left the house of her own accord or whether the husband expelled her from the conjugal house. The witnesses related that Hind left the house and went to the village of Marmarita to stay with her

57. The 213 cases ranged from cause-list sittings where lawyers handed in documents or just came in to make an appointment for a next sessions, but also cases that involved, for example, lengthy witness testimonies. In addition, the majority of the 213 ‘cases’ include reappearing cases, meaning that I saw several cases at different stages of the proceedings.

58. Of the 86 cases in which I was able to determine the gender of the petitioner/respondent, the petitioner was male in 54 cases, and 32 times the petitioner was female. I have no explanation as to why more men filed a *butlan* petition vis-à-vis women. Possibly it was a question of money, as *butlan* proceedings are long and complicated. Litigants need a lawyer to assist and guide them through the lengthy and complex proceedings.

59. This corresponds to what has been observed in other Arab personal status courts, *i.e.* the majority of petitions filed at the *shar‘iyya* courts are initiated by women (see, *e.g.*, Buskens 1999, above n. 2; Carlisle 2007, above n. 2; Sonneveld 2012, above n. 2; Welchman 2000, above n. 2).

60. All names used in the cases studies are fictitious.

family. The judge asked him who told him this. He explained that he happened to be at their house when Hind phoned her husband to tell him she had gone to her family in Marmarita. Later she returned to the marital home, accompanied by a friend, to collect her belongings and other goods, such as cooking utensils. The judge inquired whether the wife fulfilled her marital duties (*wajibat zawjiyya*). The witness started rattling away about Hind and failed to give a direct answer to the court. Again the judge cut him short and asked him: 'He said she does not want children, is that true?' The witness answered by saying he did not know, George did not tell him anything about that. The questioning by the court continued but the answers did not seem to satisfy the court or the lawyers. Occasionally, the lawyers objected to the statements of the witness, leading to counter-objections against each other, much to the anger of the judge: 'I am in charge here, you talk to me, not to each other!' The second witness, a neighbour and friend of George, was able to give a more satisfying statement. The witness told the court that Hind had no respect for her husband. In answer to the court's question whether she deserted the conjugal house alone or with her husband, he replied that George told him that Hind had left the house alone. The judge asked whether he thought she wanted to continue with the marriage, he answered in the negative: 'No, of course not'. He added that her behaviour as a married woman was generally disrespectful. One evening he saw Hind out on the street with another man. He said that it was inappropriate for a married woman to be seen with another man in public. Furthermore, whenever George and Hind had an argument, she would leave the house, not to go her family but to outsiders. Again, the witness thought this was inappropriate because she should go to her family instead, who would help her to reconcile with her husband. He said he visited the couple only once; however, he saw her often – that is to say – he saw her out on the street. He was therefore not surprised to hear that George managed to obtain a performance claim for marital obedience (*tanfidh al-mutaba'a*). Finally, the judge asked whether – to his knowledge – the wife wanted to have children. The witness said she already had a child from a previous marriage. He thought she did not want to have more children. According to the witness, George tried to reconcile with Hind but she refused.<sup>61</sup>

According to these witnesses, Hind did not live up to the domestic ideal of a housewife because she (allegedly) deserted her husband and the conjugal house, and she 'mixed and mingled' with men in public. As marriage is considered the only place for licit sexual relations, a

wife's sexuality is obviously directly connected to that of her husband. One could say that Hind was expected to keep line with social decorum and behave modestly and self-effacingly and not embarrass her husband and family by mingling with unrelated men in public.

It is often claimed by Christians that Christian women have more freedom than Muslim women, and that they can interact more freely with the opposite sex because Christians are not as obsessed with sexuality as Muslims are.<sup>62</sup> Christian or Muslim, a woman's sexual virtue is closely connected to a man's masculinity, but there is a difference. Rabo sums it up as follows:

To generalize, the ideal for Christian men is to be able to protect their womenfolk and enable them to mix and mingle in public space. The ideal for Muslim men is to be able to protect their womenfolk from mixing and mingling in public space. The ability to both protect and control one's own womenfolk is a crucial aspect of Syrian masculinity.<sup>63</sup>

Even though Christian men generally allow and enable 'their women' to mix and mingle in public, some Christian female friends informed me, and as the case study of Hind demonstrates, that, in all honesty, they could not really mingle freely with unrelated men, even if they were Christian, for the eyes of the community were always watching (*i.e.* they feared it may lead to gossip). This case provides a good example of expression of norms and views on (im)proper spousal behaviour: ideas about improper spousal behaviour on account of the wife were clearly expressed by the witnesses, especially by the second witness. His moral assessment of Hind's conduct was clear: a married woman should not interact with unrelated men in public; when a couple has an argument, they should turn to their families for help in resolving their differences, and so on. The assessment of a person's character and/or behaviour is commonly based on daily interactions. The reputation of an individual or a family can be damaged, improved or reinforced through talk or gossip of neighbours, family or other community members.<sup>64</sup> Women are in a more vulnerable position than men when it comes to harmful talk.<sup>65</sup> To give an example, non-related men and women are not expected to interact unsupervised in public; for that reason, family members often control and restrict, especially unmarried, women's behaviour and mobility. Gender segregation is oftentimes regarded as something typical for Muslim communities, but, as became evident from the above-described case and my observations in general (*i.e.* other court cases and interactions with Christian informants), the same conventions apply to Christian communities. Fear of talk or gossip can be a

61. The third witness was also a neighbour; he lived in the same district (*hara*). He gave a rather brief testimony, mainly because he either could not answer the questions of the court or because his knowledge was only based on hearsay (case P, Catholic first-instance court, 15 June 2009, Damascus).

62. See A. Rabo, "'We Are Christians and We Are Equal Citizens': Perspectives on Particularity and Pluralism in Contemporary Syria', 23 *Islam and Christian-Muslim Relations* 1, 79-93, at 89-90 (2012).

63. *Id.*, at 90.

64. See, e.g., A. Meneley, *Tournaments of Value: Sociability and Hierarchy in a Yemeni Town* (1996).

65. M.E. Hegland, 'Gossip', in S. Joseph (ed.), *Encyclopedia of Women in Islamic Cultures*, Vol II (2005) 210-214.



powerful tool to ensure that men and women adhere to their expected gender roles. Under the watchful eye of family and community, individuals are expected to keep in line with social decorum: 'both men and women should behave with constraint and modesty'.<sup>66</sup>

### 3.5 Proper Spousal Behaviour: Is She a Good Housewife?

During *butlan* proceedings, witnesses were an important source of information for the Damascus Catholic court, for they clearly expressed whether or not a spouse (or both) lived up or fell short of expectations as a wife or husband. A negative assessment could be made on the basis of seemingly simple acts as serving coffee for guests, cooking or idling about at home. It should be noted, however, that the witnesses' – and with that the court's – assessment of the litigants' performance as husband or wife was usually strategically guided by their lawyers. They prepared their litigants and witnesses before they were interrogated by the court, making sure their clients came across as a good wife or husband. In order to prove to the court that the husband and/or wife did (or did not) understand or did not want to take on the essential obligations that result from a marriage (see above).

During these examinations, the court tried to get an idea of the seriousness of the disagreement (*khilaf*) between the spouses, the circumstances leading up to the marriage (*i.e.* the circumstances and length of courtship and betrothal), the wedding day, marital life itself and so on. The witnesses were asked to share their thoughts and opinions with the court, preferably illustrated by examples. In the examination of witnesses, considerable attention was given to the marital roles at stake. In case the wife was accused of not being a good housewife, the court asked whether she fulfilled her household duties and whether the witness could attest to her negligence (or diligence). For that reason, the witness' questioning usually focused on her role as a housewife. What did the witness see when he or she visited the marital house? Examples of domestic negligence heard in the Damascus court included the following: 'The house was not clean', 'She is always out', 'She does not cook, she buys food from the market', 'She does not serve coffee or tea' or 'She serves cold coffee.'

An example of a case in which views on what constituted as (im)proper spousal behaviour on account of the wife was evidently expressed in the following witness statements. In this court session, three witnesses were presented to the court by the petitioner, *i.e.* the husband (hereafter called Michel), who was in his late 30s. Michel was married to Sawsan, who was about fifteen years his junior.

The first witness was the mother of Michel, an elderly woman originally from Iraq. The court's first question (as usual) was what the witness thought the reason for the disagreement between the spouses was.

The witness said the problems started shortly after the marriage, Sawsan did not fulfil her household duties or her marital duties (*wajibat manziliyya wa wajibat zamjiyya*) and she always quarrelled in a loud voice, in the presence of the neighbours. The judge asked what the witness meant by marital duties, whether she referred to sexual relations between the spouses. She simply responded by saying that she (Sawsan) was not close to him. The court asked whether the wife had left the house without informing her husband. The witness answered in the affirmative and said Sawsan occasionally left the house at 9 a.m. only to return around midnight. She went on to say: 'Once she left the house and locked the door. When my son returned from work, he could not enter his house. He had to sleep at our [his parents] house. When I asked her why she had done that, she replied "It is my house!" While he pays everything for her! She just buys many things, we do not know where she gets the money from.' The witness continued by saying that the last time Sawsan left, she went with her father and youngest brother and took all her gold with her. The judge asked the witness whether she knew if the wife wanted to return to the conjugal home, she replied there had been several reconciliation sessions in church and in court. After the last reconciliation in court, Sawsan called the police<sup>67</sup> in the evening and told Michel she wanted to divorce him.

The second witness was an elderly man, the father of Michel. The court asked him for the reason of the disagreement. He answered that the first 20 days of the marriage Sawsan behaved exemplary but then she started to spread bad rumours about Michel and his family. According to the witness, Sawsan had absolutely no respect for her husband. Michel (his son) was a good man, a person with high moral character. She, on the other hand, was the opposite: she was an ill-natured woman. The lawyer of the husband agreed with the witness and added: 'He really is a very kind man, everyone likes Michel!' The judge continued to question the witness and asked if the wife fulfilled her household duties. He answered that she did not, because she did not cook nor clean: 'She does not know how to be a good wife – she serves cold coffee!' The judge asked who did the grocery shopping. The witness said his wife and his daughter usually did it, Sawsan rarely helped around the house. The court pursued the question of abandonment by the wife and asked whether she had left the house of her own accord. The witness replied in an ironic tone: 'Ah! She is a woman of importance!' After which he told the same story as his wife (the first witness), about how Sawsan had left the house, locked it (thereby shutting her husband out of the house) and forcing him to spend the night with his parents. The court asked whether there was a possibility of reconciliation (*musalaha*). The witness did

66. A. Rabo, *A Shop of One's Own: Independence and Reputation Among Traders in Aleppo* (2005), at 82.

67. I do not know the reason why Sawsan called the police.

not think there was much hope because Sawsan always said ‘I do not want to return’. She wanted to divorce him; she already started saying this after two-and-a-half months of marriage. Finally, Sawsan’s lawyer asked the witness about their engagement period, the witness explained that Michel’s family made inquiries about Sawsan before the wedding among her family members, in particular her mother and siblings. Everything seemed perfectly normal, she changed about ten days after the wedding.<sup>68</sup>

Leaving aside the likelihood that the witnesses were primed by the petitioner’s lawyer and the question whether or not the court was susceptible to their presentation of the facts,<sup>69</sup> the attachment to patriarchal gender roles, values and expectations of what is or is considered right and proper spousal behaviour clearly manifested itself during these witness statements. In my observation, witnesses presented to the Catholic court often held and expressed opinions on the moral character of the plaintiff/defendant, *e.g.* is he/she a good man/woman; husband/wife; father/mother, as we saw both in the case of George & Hind and the case of Michel & Sawsan.

## 4 Conclusion

It has become evident that family relations in Syria are not solely governed by laws of personal status issued by the Syrian government. The state may regulate matters of personal status through legislation and courts; however, this does not exclude the existence and influence of norms produced by non-state ‘normative systems’, such as culturally shared norms. The interaction between various social, legal and religious norms (codified and uncoded) in the field of Syrian family law cannot be underestimated. Ideas about morality and proper or improper gender comportment in family and marital relationships shaped and influenced legal discourses and practices. Besides, legislative norms were oftentimes not narrowly defined (*e.g.* provisions concerning ‘spousal rights and obligations’ in the CCEO and CLPS) and thus left ample room for interpretation by the courts, which also invites the incorporation of cultural or patriarchal norms into legal proceedings. This does not mean that state law norms were necessarily different from those non-statutory norms, for in fact some of these latter norms were also laid down in the various Syrian personal status laws.

In this article, I have also demonstrated that the patriarchal family model is enshrined in Syria’s personal status

laws, Muslim and Catholic alike, and with that contributed to the preservation and confirmation of that model in the Syrian legal context. Furthermore, in my observation, views and opinions on, for example, social and marital propriety, obedience of women and upholding the family honour, were continuously expressed by individuals in the different courtrooms and played an important role in, most importantly, the assessment of spousal behaviour of the parties involved. Participants of the legal process, *i.e.* judges, litigants, lawyers, witnesses and other ‘visitors’ to the courts, expressed or emphasised (intentionally or unintentionally) the importance or commonality of these various norms and values, for example, in their testimonies as litigants and witnesses, as was demonstrated in the Catholic case studies. It was during witness statements in particular where patriarchal norms and views on marital life came to the fore. In my opinion, it was the patriarchal family model that determined the gender roles in Syrian society; it was perhaps more powerful than the legal or religious norms, specific to the different ethnic and religious communities.

68. The third witness was a woman in her 40s, she was Michel’s sister. Generally, she told the same story as her parents. This latter witness statement was wrapped up rather quickly, most likely because her statements corresponded with the former two. Case S, Catholic first-instance court, 4 May 2009, Damascus.

69. Since my fieldwork ended about two months later, I could not follow up on the outcome of this case.