

ARTICLE

Between Church and State: The Challenges of Reforming the Church Courts and Family Law in the Greek Orthodox Patriarchate of Jerusalem

Dörthe Engelcke 

Research Group on Family and Succession Law in Islamic Countries, Max Planck Institute for Comparative and International Private Law, Hamburg, Germany
Email: engelcke@mpipriv.de

Abstract

In most Middle Eastern jurisdictions, the applicable family law is determined based on the religious affiliation of the parties involved. Whereas Jordanian Islamic family law has last been reformed in 2001, 2010, and 2019, and the law that regulates the shari'a courts has been amended several times since 1972, the family laws of Christian communities and the church courts have largely been exempted from this reform dynamic. Based on semi-structured interviews as well as the review of written sources, this article investigates why it is difficult to reform the church courts and even more difficult to reform the family laws of Christian communities, using the Greek Orthodox community in Jordan as a case study. I argue that conflicts within the Greek Orthodox Patriarchate of Jerusalem and the fact that the jurisdiction of the patriarchate over family law transcends Jordanian state boundaries have made state-led reform challenging and presented obstacles for Jordanian Christians lobbying for change.

Keywords: Byzantine Family Code; Christian communities; church courts; Jordan; personal status law

In Middle Eastern jurisdictions, family law or personal status law (*qānūn al-aḥwāl al-shakhṣiyya*) regulates practices like marriage, divorce, custody, guardianship, paternity, and often wills and intestate succession. In most Muslim-majority countries there is no unified family law that applies to the population as a whole; instead, family law is categorized in terms of religion.¹ Thus, Christian and Muslim communities apply different laws.²

In Jordan, the legal system is divided into religious, regular, and special courts.³ Family law is adjudicated by religious courts, which are divided into shari'a courts and church courts.⁴ Shari'a courts have jurisdiction over Muslim citizens in matters of family law, whereas different church courts adjudicate family law cases for their respective

¹ In around one-third of all countries worldwide the applicable personal status law is determined based on the religious and sometimes the confessional affiliation of the parties involved. See Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt, and India* (Cambridge, UK: Cambridge University Press, 2013), 3.

² Succession law also is sometimes split along religious lines, as in Syria, whereas in other cases, like in Jordan, Egypt, and Palestine, Islamic inheritance law is applied to the entire population as a whole—i.e., including Christians as well.

³ See Article 99 of the Jordanian Constitution, available at “Constitution of the Hashemite Kingdom of Jordan,” refworld.org (UNHCR), <https://www.refworld.org/docid/3ae6b53310.html> (accessed 28 February 2022).

⁴ See Article 104 of the Jordanian Constitution.

communities.⁵ The Jordanian government has recognized eleven Christian communities that have the right to establish their own church courts and to apply their own family laws.⁶

Since the 2000s, Islamic family law has been reformed three times, in 2001, 2010, and 2019.⁷ However, the personal status laws of Christian communities have largely been exempted from this reform dynamic.⁸ The Byzantine Family Code (*Qanun al-ʿAʿila al-Bizanti*) that the Greek Orthodox community applies has not been reformed at all since the creation of the Hashemite Kingdom of Jordan in 1946, and it is unclear when the last reform took place.⁹ This is despite the fact that Jordanian Christians have expressed the need for reform, criticizing their respective laws for being outdated and discriminatory and the church courts for being unaccountable.¹⁰

The law that regulates the Jordanian shariʿa courts has been reformed several times since 1972.¹¹ By contrast, the 2014 Law for Christian Councils (*Qanun Majalis al-Tawaʿif al-Masihyya*), that is, the law that regulates the church courts, was the first major government-led reform of the church courts since the promulgation of the 1938 Law for the Councils of Non-Muslim Communities (*Qanun Majalis al-Tawaʿif al-Diniyya Ghayr al-Muslima*).¹²

Why is it seemingly more difficult to reform the personal status laws of Christian communities and the church courts than Islamic family law and the shariʿa courts?¹³ Why do

⁵ See Articles 103 and 105 of the Jordanian Constitution.

⁶ See the appendix of “Qanun Majalis al-Tawaʿif al-Masihyya,” Law no. 28 of 2014, *al-Jarida al-Rasmiyya* [Jordan], no. 5299 (1 September 2014), 5140–51. Hereafter this law will be referred to as the 2014 law.

⁷ For an analysis of the Islamic family law reform process, see Dörthe Engelcke, *Reforming Family Law: Social and Political Change in Jordan and Morocco* (Cambridge, UK: Cambridge University Press, 2019).

⁸ All Christian communities that are in communion with Rome underwent a minor reform in 2015. See “Apostolic Letter *Moto Proprio* of the Supreme Pontiff Francis by which the Canons of the Code of Canon Law Pertaining to Cases Regarding the Nullity of Marriage are Reformed” [The Holy See] (15 August 2015).

⁹ Legal practitioners and members of the church, including church court judges and the Archbishop of Amman, were unable to answer how old the law is. According to the cover of the copy of the law used in the Greek Orthodox courts, the law was issued during the British Mandate of Palestine in 1930. On the cover it is stated that the compilation (*taʿlif*) was prepared by a man called Malnabadus Kravokyros and translated from Greek to Arabic by George Saksak. The history of the law remains unclear, but what can be said is that since the issuance of the Arabic translation in 1930 this law has not been reformed. The legal sources of the Byzantine Family Code are not well studied either. The law is based on Roman law but also borrows some terminology of Islamic law. The Byzantine Family Code contains norms regarding family law, but it also contains rules regarding the jurisdiction of courts and legislative prerogatives.

¹⁰ These issues were frequently mentioned by all lawyers interviewed who work in the church courts. Regarding terminology, I use the term “church courts” rather than “Christian councils.” The church courts are regulated by the 2014 law, which, like its predecessor from 1938, refers to “councils” (*majālis*), but Article 3, paragraph 1 of the 2014 law stipulates that the term “councils of Christian communities” (*majālis al-tawaʿif al-Masihyya*) means courts (sing.: *maḥkama*) for the purpose of the 2014 law. Since the church courts are the functional equivalents of the shariʿa courts (*maḥākim al-shariʿa*), I use the term “court” rather than “council” to avoid confusion.

¹¹ “Qanun Tashkil al-Mahakim al-Shariʿiyya,” Law no. 19 of 1972, *al-Jarida al-Rasmiyya* [Jordan], no. 2357 (1 January 1972). Regarding the reform, see Engelcke, *Reforming Family Law*, 66–69.

¹² See “Qanun Majalis al-Tawaʿif al-Diniyya Ghayr al-Muslima wa-Taʿdilatihi,” Law no. 22 of 1938, *al-Jarida al-Rasmiyya* [Transjordan], no. 594 (2 April 1938), 205 ff. Hereafter this law will be referred to as the 1938 law. A minor reform of the 1938 law took place in 1977 (Law no. 38 of 1977, *al-Jarida al-Rasmiyya* [Jordan], no. 2730 (20 September 1977)). The 1938 law had recognized the right of non-Muslim communities to establish a court, but it did not specify who had the right to nominate the members. The 1977 amendment stipulates that the spiritual head of the community has this right. See Jihad Shweihat, *La constitution des tribunaux ecclésiastiques selon la législation jordanienne* (Rome: 1992), 50.

¹³ Similarly, the Greek Catholic archimandrite Bassam Shahatit asked whether it is indeed possible to further reform the ecclesiastical law (*loi ecclésiastique*) in Jordan; Bassam Shahatit, “Le mariage selon le statut personnel en Jordanie” (Mémoire de licence, Faculté de Droit Canonique, Université La Sagesse, June 2008), 4. I do not use the term “Christian family law” but instead refer to the family laws applied by Christian communities or, in the case of the Greek Orthodox community, to the Byzantine Family Code, as this is its actual title. The term “Christian family law” suggests that Christian family law is actually a separate category and that the sources of the law can be traced back entirely to Christian scripture. It overlooks how these laws were shaped by Islamic law and developed in reaction to the growing body of Islamic law during the Abbasid Caliphate. See Lev E. Weitz,

we observe changes, albeit limited, in the organization of the church courts, but do not observe changes made to the substantive law of Greek Orthodox Christians in Jordan?

The questions are of particular importance because systems in which different family laws apply to different groups in the population have been shown to be especially prone to gender inequality and to the absence of the rule of law, often with detrimental outcomes in particular for women and children born out of wedlock.¹⁴ Even though this is true both for Islamic personal status law and the personal status laws of Christian communities, little attention has been paid to the latter.¹⁵

This article uses the regulation of family law in Jordan—where different bodies of family law apply to different religious and confessional groups—as a case study to investigate these questions.¹⁶ It mainly focuses on the Greek Orthodox (*al-Rum al-Urthudhuks*) community, the country's oldest and largest Christian community.¹⁷ I argue that the reform of the personal status laws of Christian communities and the regulation of the church courts have been hampered because the jurisdiction of the Greek Orthodox Patriarchate of Jerusalem over family law transcends the boundaries of the Jordanian state and because of conflicts within the patriarchate itself. This has made both advocacy efforts that aim to put pressure on the Greek Orthodox Patriarch to initiate reform and state-led reform more difficult.

First, the jurisdiction of the Jordanian state is limited because the church courts are both national and transnational organizations: church court structures and state boundaries do not match. Christian communities enjoy normative autonomy and can largely determine the norms of their respective family laws without state interference. These norms are, furthermore, adopted outside of the kingdom, in this case in Jerusalem. Thus, the state is not the lawmaker when it comes to the personal status laws of Christian communities, and moreover it has limited means to initiate or influence the reform of substantive family law.

Second, the lack of jurisdiction on the part of the Jordanian state when it comes to the reform of the personal status laws of Christian communities and the transnational character of the church courts also have made it more difficult for Christian Jordanians to lobby for change. Advocacy groups typically address their demands to the state, but in this case the state is not the lawmaker. Women's groups in Jordan who lobby for the reform of the Islamic family law target the state and lobby within an established process centered on stakeholders, the government, and parliament, but no comparable structure or process exists for the reform of the personal status laws of Christian communities. Aggravating the situation are two factors: first, there are no established reform processes for the personal status laws of Christian communities. The Byzantine Family Code has not been reformed for a long period of time. To judicial practitioners it is often unclear what possible avenues for change could look like. To reform a law that is applied in Jordan, Palestine, and Israel, coordination between actors in all three territories is necessary. Second, the church is a hierarchical organization, and the clergy and the community are divided on the issue of reform. The church lacks internal democracy and is the site of an ongoing conflict between the upper echelon of

Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam (Philadelphia: University of Pennsylvania Press, 2015).

¹⁴ See, for example, Michael Karayanni, "Tainted Liberalism: Israel's Palestinian-Arab Millets," *Constellations* 23, no. 1 (2016): 71–83.

¹⁵ There are a few exceptions that focus mainly on Copts in Egypt and on Christian communities in Syria. For Egypt, see, for example, Monika Lindbekk, "Between the Power of the State and the Guardianship of the Church: Orthodox Copts Seeking Divorce," in *Eugen Ehrlich's Sociology of Law*, ed. Knut Papendorf, Stefan Machura, and Anne Hellum (Zurich: LIT Verlag, 2014), 179–208. For Syria, see Esther van Eijk, *Family Law in Syria: Patriarchy, Pluralism and Personal Status Codes* (London: I. B. Tauris, 2016).

¹⁶ Sally Engle Merry calls this system "pluralistic in the juristic sense." See Sally E. Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 871.

¹⁷ In 2011 the number of Christians in Jordan was estimated to be 2.2 percent of the total population. See Pew Research Center, "Global Christianity: A Report on the Size and Distribution of the World's Christian Population," Pew Forum on Religion and Public Life, December 2011, p. 76, <https://assets.pewresearch.org/wp-content/uploads/sites/11/2011/12/Christianity-fullreport-web.pdf>.

the church, which is dominated by ethnic Greeks, and the lower-ranking Arab clergy and the Arab congregation about resources, political positioning, and representation.¹⁸

Third, the reform of the 2014 law was easier because, unlike in the case of the substantive laws of Christian communities, the state does have jurisdiction when it comes to the organization of the church courts, and there is an established process of reform that allowed actors to lobby for reform. Despite not affecting the substantive laws applied in the church courts, the 2014 reform—by demonstrating that change was indeed possible—encouraged women’s groups as well as legal practitioners, who began to organize and advocate for substantive family law reform. It remains to be seen whether this invigorated advocacy will manage to overcome the two aforementioned barriers that remain in place in the case of substantive law.

Triangulating different data sources and methods, this article is based on fifty semi-structured interviews that were conducted in Jordan during various fieldwork stays between September 2016 and October 2019.¹⁹ The interviews were conducted with lawyers who work in the church courts, church court judges, members of parliament, academics, and members of organizations that advocate for reform of the church courts and of the personal status laws applied by Christian communities.²⁰ Field research also included participant observation of public events organized by actors who campaign for legal change and the examination of various written sources, including laws, administrative provisions, minutes of parliamentary debates, and statements prepared by civil society organizations.

State Law Pluralism, Jurisdiction, and Territory

The organization of family law in Jordan presents an example of “state law pluralism” that is sometimes referred to as “weak pluralism.”²¹ State law pluralism means that the state issues or recognizes different bodies of law for different religious or ethnic groups in the population.²² State law pluralism can, as is the case in Jordan, entail normative recognition, a situation where the state recognizes different bodies of law for different groups of the population; and institutional recognition, where the institutions of another law, the church courts, are incorporated into the structures of the state.²³ Within that system, Christian communities enjoy a great degree of normative autonomy, which refers to communities’ ability to determine the norms of their respective family laws. They also, albeit to a lesser extent, enjoy institutional autonomy, meaning the right to determine how their courts are organized and function.

The churches, around which the communities recognized in Jordan are built, are organized according to patriarchates that transcend state boundaries. State law pluralism in

¹⁸ For a good analysis of this conflict see Anna Hager, “The Orthodox Issue in Jordan: The Struggle for an Arab and Orthodox Identity,” *Studies in World Christianity* 24, no. 3 (2018): 212–33. The Greek Orthodox Patriarchate has only three Arab bishops. These are Souhel Mahamre, Bishop Philoumenos (his Greek name), and Christophoros Hanna Kamal Atallah. See Anna Hager, “Die Christen in Jordanien nach 2011,” *Ostkirchliche Studien* 69, no. 1 (2020): 103–16.

¹⁹ Triangulation refers to the use of empirical evidence that is derived from different methods and different types of data to improve the validity of inferences drawn. See Gary King, Robert O. Keohane, and Sidney Verba, “The Importance of Research Design,” in *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, ed. Henry E. Brady and David Collier (Lanham, MD: Rowman & Littlefield, 2010), 111–23.

²⁰ Interviewees who can be easily identified by their position are cited by name. All others are referred to by position or occupation only.

²¹ The term *state law pluralism* can be traced back to Woodman; Gordon R. Woodman, “The Idea of Legal Pluralism,” in *Legal Pluralism in the Arab World*, ed. Baudouin Dupret, Maurits Berger, and Laila al-Zwaini (Boston: Kluwer Law International, 1999), 3–19.

²² For a critical review of the concept of state law pluralism see Yüksel Sezgin, “Theorizing Formal Pluralism: Quantification of Legal Pluralism for Spatio-Temporal Analysis,” *Journal of Legal Pluralism and Unofficial Law* 36, no. 50 (2004): 102–3.

²³ Woodman, “Idea of Legal Pluralism,” 3–19.

Jordan results in a situation in which territory, jurisdiction, and sovereignty do not align in matters where family law is applied by Christian communities. This runs counter to Max Weber's heuristic model of the state, according to which these three elements match. Departing from a European state model, the state for Weber is a political organization that claims authority over all people living in a given territory and not only over particular groups of people. It is a hierarchical organization that exercises a monopoly over lawmaking within its given territory.²⁴ In a situation of state law pluralism, the state often concedes parts of its sovereignty. In the Jordanian case, it accords sovereignty to the different churches to operate their own courts and to determine their own norms. The conceding of parts of its sovereignty constitutes a sovereign act. In theory, the state could withdraw some or all of these concessions. In practice, once sovereignty has been ceded it is difficult to take it back.

The history of state law pluralism needs to be kept in mind here.²⁵ During the 19th century, non-Muslim communities in the Ottoman Empire enjoyed a certain degree of legal autonomy.²⁶ The Ottomans aimed to achieve greater state sovereignty when they issued the Ottoman Law of Family Rights (OLFR) in 1917, which organized the personal status of Muslims, Christians, and Jews. However, the British mandate authorities decided to apply the OLFR only to Muslims.²⁷ The British institutionalized the church courts and thereby the normative and institutional autonomy of Christian communities in family law matters, considerably altering the modes of autonomy that had been in place under the Ottomans in the process. The institutionalization of the church courts also cemented the idea that religious authorities, in this case the clergy, should play an important role in the issuing and application of family law. Communal privileges were linked to a specific type of state law pluralism. Therefore, Christian clergy view changes in the religious court system with suspicion because changes in state law pluralism potentially mean a change in the community's status. At the same time, legal reform was no longer a mere state affair but intervention in a religious minority issue that required approval by the clergy.²⁸

Today, it seems that a moment of systemic change is required to initiate a revocation of state-sanctioned normative and institutional autonomy. During moments of systemic change fundamental questions regarding the organization of the state and state-society relations can be renegotiated. The achievement of formal independence by former British and French colonies in the 1940s, 1950s, and 1960s constituted such a moment of systemic change. In Egypt and Morocco, for example, religious courts were abolished after these countries achieved formal independence.²⁹ However, without such a moment of systemic change, it is unlikely that states initiate reforms that fundamentally reorganize the legal system. The Jordanian state has little appetite to retake its sovereignty. Such an act would go against the leadership of all churches in Jordan and could, on the international level, be read as an attack on religious freedom. This is a particularly thorny issue as Jordan is dependent on economic aid from Western countries with populations that are in their majority Christian.³⁰

²⁴ See Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*, 5th rev. ed., reprint (Tübingen, Germany: Mohr Siebeck, 2002). This conception of sovereignty was enshrined by the 1648 Peace of Westphalia. See Daniel Philpott, "Sovereignty: An Introduction and Brief History," *Journal of International Affairs* 48, no. 2 (1995): 359–60.

²⁵ Space does not permit a lengthy account of this history here. Please see chapter 2 of Engelcke, *Reforming Family Law*.

²⁶ See Benjamin Braude, "Foundation Myths of the Millet System," in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier, 1982), 69–89.

²⁷ Lynn Welchman, *Beyond the Code: Muslim Family Law and the Shari'a Judiciary in the Palestinian West Bank* (Hague: Kluwer Law International, 2000), 43.

²⁸ Engelcke, *Reforming Family Law*, 227.

²⁹ For Egypt, see Sezgin, *Human Rights*. For Morocco see chapter 2 of Engelcke, *Reforming Family Law*.

³⁰ Jordan is the second-largest bilateral recipient of economic and military aid from the United States behind Israel. See Andrew Miller, Seth Binder, Louisa Keeler, *President Trump's FY21 Budget: Examining U.S. Assistance to the*

The way family law is institutionalized in Jordan means that there are several sovereign actors when it comes to jurisdiction in family law matters: the Jordanian state has jurisdiction in matters of Islamic family law over Muslim Jordanians, and the eleven officially recognized non-Muslim communities have jurisdiction over their community members. The Greek Orthodox Patriarchate of Jerusalem has jurisdiction over family law matters pertaining to Jordanian Greek Orthodox Christians. The patriarchate's sovereignty, its "ecclesiastical sovereignty," extends beyond Jordan's state boundaries, encompassing the regulation of family law for Greek Orthodox Christians in Jordan, Israel, and Palestine. Ecclesiastical sovereignty is a form of legitimate authority.³¹ It means that the patriarch in Jerusalem, the head of the Greek Orthodox Patriarchate, has the authority to determine relatively independently the norms of the Byzantine Family Code which those countries that belong to the patriarchate apply. Hence, territory, sovereignty, and jurisdiction do not map onto one another in the case of the Byzantine Family Code.

Despite the state not having jurisdiction in matters of the Byzantine Family Code, jurisdiction and territory are often thought of together by Jordanian Christians who advocate for amendments to the Byzantine Family Code. The Weberian state is often the framework within which people conceive of legal reform and the organization of the church courts. Therefore, Christians who lobby for change sometimes address the state when they seek intervention in the area of family law, at times not fully realizing that the state is not the lawmaker when it comes to the Byzantine Family Code and, at other times, demanding that the state reclaim the sovereignty it has conceded. As Brian Z. Tamanaha states, "the fact that we have tended to view law as a monopoly of the state is a testimony to the success of the state-building project and the ideological views which supported it, a project which got underway in the late medieval period."³² One result of the Weberian mindset is that state law pluralism is often perceived to be "profoundly defective" and unnatural, something that needs to be overcome by the parties subject to state law pluralism.³³ In the Jordanian case, members of parliament saw the reform of the church courts in 2014 as a way to achieve Jordanian sovereignty, by nationalizing and Arabizing the church courts.³⁴

Christians in Jordan

In 1921 the British mandate of Transjordan was established. At that time about 10 percent of the population was Christian.³⁵ Since then the number of Christians has decreased. However, there are no official Jordanian statistics that provide exact figures about the religious composition of Jordanian society. Based on census data and national representative surveys, the Pew Research Center estimated that the number of Christians in 2011 was around 140,000, which translates to 2.2 percent of the total population.³⁶ Of these, 90,000 were assumed to be Orthodox, 30,000 Catholic, and 20,000 Protestant.³⁷ In Israel the number of Orthodox Christians is estimated at 30,000, and in Palestine it is 50,000.³⁸ Thus, in 2011 roughly

Middle East and North Africa in the Shadow of Covid-19, Project on Middle East Democracy, June 2020, p. 10, https://pomed.org/wp-content/uploads/2020/06/POMED_FY21BudgetReport.pdf#page=49.

³¹ Daniel Philpott, "Sovereignty," 354. Philpott sees sovereignty as "purely a matter of legitimate authority."

³² Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30, no. 3 (2008): 379.

³³ John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24, no. 1 (1986): 7.

³⁴ Achieving greater state sovereignty has been a driving force of legal reform in many postcolonial societies. For Egypt, see, for example, Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge, UK: Cambridge University Press, 1997), 63. Sezgin notes that the memorandum explaining the abolition of the communal courts in Egypt had a "strong 'Weberian' tone"; Sezgin, *Human Rights*, 33.

³⁵ Chatelard, "The Constitution of Christian Communal Boundaries and Spheres in Jordan," *Journal of Church and State* 52, no. 3 (2010): 476.

³⁶ See Pew Research Center, "Global Christianity," 76.

³⁷ *Ibid.*, 84.

³⁸ *Ibid.*, 85.

170,000 Christians were Greek Orthodox and under the jurisdiction of the Greek Orthodox Patriarchate that comprises Jordan, Israel, and Palestine.³⁹

Despite their small numbers, Christians in Jordan play an important political and socio-economic role. A quota system reserves nine seats of the lower house of parliament for Christians.⁴⁰ As an unofficial rule, every government has at least one Christian minister. Christians also are present in many key industries, including banks, business and trading, insurance, and car dealerships.⁴¹ The important role Christians play in the political and economic life of the kingdom accounts for the self-confidence of the community. In general, Christians emphasize that they see themselves as full Jordanian citizens and not as “a minority.”

The situation of Christians in Jordan also is shaped by regional developments, and in particular the wars in Syria and Iraq. After the so-called Islamic State conquered Mosul and the north of Iraq in 2014, 8,000 Iraqi Christians fled to Jordan. Jordan also has been in the focus of the Islamic State. In December 2017, for example, the Jordanian army prevented several attacks.⁴² In general, Christians in Jordan see the monarchy as a guarantor of their safety. The Jordanian monarchy has been carefully establishing itself as a counterweight to religious extremism and a promoter of interreligious dialogue. In 2004 King Abdullah II issued the Amman Message (*Risalat ‘Amman*), which called for religious tolerance and unity among Muslims.⁴³ Jordanian Christians see the king as genuinely interested in preserving a plural religious society. The monarchy’s emphasis on religious tolerance also is motivated by two strategic considerations. Jordan uses its image as a bastion of religious tolerance to generate Western support. The dilemma Christians face is that the Jordanian state is a source of effective protection in an insecure regional, and increasingly national, landscape, while it also is a source of legal discrimination, as the next section shows.

Grievances and Demands for Reform

Greek Orthodox Christians’ grievances are numerous. They concern legislation issued by the Jordanian government as well as laws issued by the Greek Orthodox Patriarchate of Jerusalem. Greek Orthodox Christians share grievances with other Christian denominations with regard to discrimination by state law, although the laws of every Christian community vary slightly when it comes to provisions like divorce or custody. Denominational affiliation can thus be decisive when determining the rights attainable to women (and men).⁴⁴ As in the Muslim case, discrimination affects Christian women and men differently, but in contrast to Muslims the source of Christians’ legal discrimination are the different churches as well as the state.

Grievances regarding state law concern several issues. Interreligious marriage is allowed only in one direction: a Muslim man may marry a non-Muslim Christian or Jewish woman, but a Muslim woman cannot enter a valid marriage with a non-Muslim man.⁴⁵ Furthermore, conversion from Christianity to Islam is possible, but not vice versa, as this would constitute an act of apostasy. This rule has created intercommunity tensions, especially when

³⁹ The overwhelming majority of Orthodox Christians in Jordan, Israel, and Palestine are Greek Orthodox. However, the small number of Coptic Christians, Armenians, and Syriac Orthodox Christians also would be subsumed in the Orthodox category. Therefore the figure of 170,000 Greek Orthodox Christians is likely to be a little lower.

⁴⁰ See Fiona McCallum, “Christian Political Participation in the Arab world,” *Islam and Christian-Muslim Relations*, 23, no. 1 (2012): 3–18.

⁴¹ Hager, “Die Christen in Jordanien nach 2011,” 105–6.

⁴² *Ibid.*, 105.

⁴³ “Amman Message,” accessed 2 March 2022, <https://ammanmessage.com>.

⁴⁴ Mariz Tadros, “The Non-Muslim ‘Other’: Gender and Contestations of Hierarchy of Rights,” *HAWWA*, no. 7 (2009): 111–43.

⁴⁵ See Article 28, paragraphs a and b, of the 2019 Islamic Personal Status Law. “Qanun al-Ahwal al-Shakhsiyya,” *al-Jarida al-Rasmiyya* [Jordan], no. 5578 (2 June 2019), 3181–225 (hereafter, the 2019 Islamic Personal Status Law).

conversion from Christianity to Islam is used to avoid application of the personal status laws of Christian communities.⁴⁶ Adoption (*tabanni*) is allowed according to the various family laws of Christian communities, but Christians cannot apply their provisions as adoption is considered a violation of public policy. According to the Jordanian constitution, Islam is the religion of the state. Therefore, public policy is conceived of in relation to classical interpretations of Islamic law that do not allow for adoption.⁴⁷

With respect to the Byzantine Family Code, grievances concern numerous issues. A coalition built around the Amman chapter of the Young Women's Christian Association (YWCA), which came to be a central actor regarding advocacy efforts for reform of the Byzantine Family Code, as will be explained, asked for an overall review of the personal status laws of Christian communities. The demands were summarized in a position paper that was distributed during a public event held at the YWCA's offices in Amman on 30 March 2019.⁴⁸

The coalition asked that mechanisms be put in place to determine the amount of maintenance (*nafaqa*) to guarantee a decent life (*ḥayāt karīma*) for children in the case of parental separation or divorce. Currently, the court does not apply a system to assess the financial needs of children, which means that judgments regarding the awarded amount of maintenance vary greatly.

The custody provisions of the Byzantine Family Code are vague and unclear. The law stipulates that in the case of divorce, children stay with the innocent party.⁴⁹ However, the law also stipulates that, as a rule, children stay with their father as he has guardianship over them. In exceptional cases because of their young age or because they need their mother's care, children can stay with their mother until they reach the age of seven.⁵⁰ The law further stipulates that the court assesses the circumstances and decides based on those circumstances where the children should stay.⁵¹ Using Islamic family law as a point of reference, the coalition asked that women have custody of their children until the age of fifteen, in accordance with the Islamic personal status law, to realize the best interests of the child (*maṣlaḥat al-ṭifl*).⁵² The coalition also asked that early marriage be declared illegal. Currently, the official legal marriage age according to the Byzantine Family Code is twelve for girls and fourteen for boys.⁵³

The position paper does not touch on many other grievances members of the YWCA, lawyers, and members of the community have articulated during interviews.⁵⁴ The focus on child custody and maintenance as a starting point was a strategic choice. It is an issue many Christians can relate to, and it is seen as one of the "easier" issues to reform and could thus serve as a catalyst for change.

The Organization and Jurisdiction of the Church Courts

The following discussion demonstrates that church courts enjoy a greater degree of normative than institutional autonomy, which makes it easier for the state to

⁴⁶ See Salim al-Sways, "Waraqa Qanuniyya hawla Mashakil Masihiyya fi al-Urdun," *Majallat Sawt al-Ard al-Muqaddasa* (1994): 50–59.

⁴⁷ Dörthe Engelcke, "Establishing Filiation (Nasab) and the Placement of Destitute Children into New Families: What Role Does the State Play?" *Journal of Law and Religion* 34, no. 3 (2019): 408–32.

⁴⁸ The position paper is titled, "al-Tawsiyat li-l-Halqa al-Niqashiyya: Qanun al-Ahwal al-Shakhsiyya li-l-Masihiyyin Waqī'a wa-Tahaddiyat," 30 March 2019, on file with author.

⁴⁹ See Article 244 of the Byzantine Family Code.

⁵⁰ *Ibid.*, Article 243.

⁵¹ *Ibid.*, Article 245.

⁵² According to the Islamic personal status law, women, as a rule, have custody over their children until the age of fifteen. At that age, children can decide whether they want to stay with their mother or father. See 2019 Islamic Personal Status Law, Article 173.

⁵³ See Byzantine Family Code, Article 30, paragraph 2.

⁵⁴ These include, among others, unequal access to divorce for men and women and the fact that women lose their right to maintenance if they are considered "disobedient" to their husbands.

regulate the jurisdiction and organization of church courts than to amend the substantive family law of Christian communities. This section applies to all church courts operating in Jordan, whereas the next section focuses specifically on the Greek Orthodox courts.

The legal system in Jordan is divided into regular courts (*maḥākīm nizāmiyya*), religious courts (*maḥākīm dīniyya*), and special courts (*maḥākīm khāṣṣa*).⁵⁵ Regular courts have jurisdiction over all people in regular and criminal matters (Article 102) whereas family law is adjudicated by religious courts, which are divided into shari‘a courts and courts of other religious communities (Article 104). Until 2014, the jurisdiction of the church courts in Jordan was regulated by the 1938 law for the councils of non-Muslim communities. The main elements of the 1938 law are outlined in the text that follows. The 1938 law regulated the status of all officially recognized Christian communities, and many aspects of the 1938 law were preserved in the 2014 law; the issuance of the 2014 law will be discussed in a later section.

Regarding normative autonomy, the 1938 law stipulated that non-Muslim religious communities have jurisdiction to adjudicate cases that arise between their members with respect to all issues relating to personal status law, the same way that shari‘a courts adjudicate such matters for Muslim citizens.⁵⁶ The government thereby tried to balance the rights of the religious courts (church and shari‘a courts) in Jordan. However, inheritance was and remains exempted from the legal autonomy of the Christian communities, and Christian communities are obliged to apply national Islamic inheritance law.⁵⁷ The normative autonomy of Christian communities can be restricted only as compelled by considerations of public policy (*nizām al-‘āmm*).⁵⁸

The 1938 law also regulates when the religious or regular courts have jurisdiction. It is clear that the 1938 law makes the regular courts the default courts. In cases of mixed marriages between a Christian and a Muslim, the regular courts have jurisdiction unless all of the concerned parties accept the jurisdiction of the shari‘a courts.⁵⁹ Where the Christian community has no church court, members of that community fall under the jurisdiction of the regular courts.⁶⁰ If the parties belong to more than one Christian community (for example Greek Orthodox and Roman Catholic), they can agree to have their case heard by either court. However, if the two parties cannot agree, then the regular courts have jurisdiction.⁶¹ In such cases the applicable law would be the law of the community that contracted the marriage. In Jordan, Islamic family law is never applied in cases in which both parties are Christian.⁶²

Regarding the organization of the courts, Article 3 of the 1938 law stipulated that the president and the members of the church courts are appointed and dismissed by a decision of the council of ministers after they are nominated by the spiritual leader of their community. The decision then must be confirmed by royal decree.⁶³ Thus, although the community is free to choose its judges, the selection has to be confirmed by the government and the

⁵⁵ See Articles 99 and 2011 of the Jordanian Constitution.

⁵⁶ See Article 5 of the 1938 law.

⁵⁷ See Article 12 of the 1938 law. In Jordan, Egypt, Iraq, and Palestine Christian communities apply the national Islamic inheritance laws, whereas in other countries, such as Syria, Lebanon, and Iran, Christians enjoy normative autonomy in inheritance matters.

⁵⁸ See Dörthe Engelcke, “Establishing Filiation (Nasab),” 425–26.

⁵⁹ 1938 law, Article 7.

⁶⁰ *Ibid.*, Article 9.

⁶¹ *Ibid.*, Article 10.

⁶² The exception, as stated above, is inheritance. In Egypt, by contrast, in cases in which the parties belong to different confessional groups, Islamic family law is applied. See Nathalie Bernard-Maugiron, “Divorce and Remarriage of Orthodox Copts in Egypt: The 2008 State Council Ruling and the Amendment of the 1938 Personal Status Regulations,” *Islamic Law and Society* 18, no. 3–4 (2011): 359–60.

⁶³ 2014 law, Article 3.

king. Moreover, church courts also depend on the state for the enforcement of their judgments. The enforcement directorate (*dā'irat al-tanfidh*) enforces judgments issued by the regular courts as well as the church courts.⁶⁴ Thus the institutional autonomy of church courts is limited when it comes to the staffing of their courts as well as the enforcement of their judgments.

The Jurisdiction of the Greek Orthodox Patriarchate of Jerusalem

Greek Orthodox Christians in Jordan belong to the Greek Orthodox Patriarchate of Jerusalem.⁶⁵ The organization of the patriarchate showcases (a) the tensions experienced by church courts as both national and transnational organizations; (b) the great degree of ecclesiastical sovereignty the Greek Orthodox Patriarchate enjoys; and (c) the central role of the patriarch, currently Patriarch Theophilos III, in the organization of the church courts. The jurisdiction of the Greek Orthodox Patriarchate of Jerusalem encompasses Israel, Jordan, and Palestine.⁶⁶ In Jordan the Greek Orthodox courts are located in a building adjacent to the Greek Orthodox Church in Abdali, Amman.

The patriarchate is, among others, regulated by the Jordanian Law for the Holy Greek Orthodox Patriarchate (*Qanun Baṭriyarkiyya al-Rum al-Urthudhuks al-Muqaddasiyya*) of 1958. However, the law is only selectively applied.⁶⁷ During the 1948 war, Jordan had occupied the West Bank, including East Jerusalem. The West Bank was formally annexed by Jordan in 1950.⁶⁸ Therefore, when the 1958 law was issued, East Jerusalem was under Jordanian jurisdiction. This remained the case until 1967, when Israel occupied East Jerusalem.⁶⁹

The Law for the Holy Greek Orthodox Patriarchate regulates the appointment of the patriarch. According to Article 23, once a new patriarch is elected by the members of the Holy Synod, the Jordanian prime minister is notified and a royal decree is issued to confirm the election.⁷⁰ Like the appointment of church court judges, the appointment of a patriarch needs to be formally sanctioned by the Jordanian government and the king, both of which tend to be mere formalities. Article 24 stipulates the conditions that a patriarch (*muṭrān*) and a bishop (*usqif*) have to meet. The patriarch as well as the bishops must have Jordanian nationality and know Arabic; further, they are required to be expert in terms of the “*sharā'i*” of the Orthodox Church, its origins and its methods of implementation” (*al-sharā'i al-kanasiyya al-Urthūdhukiyya wa-uṣūluhā wa-turuq tanfidhihā*), three conditions that are often not met in practice.⁷¹ These conditions demonstrate the Jordanian government’s intent to nationalize and Arabize the patriarchate.

⁶⁴ 1938 law, Article 14; 2014 law, Article 22. This also is the case in Lebanon. See Morgan Clarke, *Islam and Law in Lebanon: Sharia within and without the State* (Cambridge, UK: Cambridge University Press, 2018), 49.

⁶⁵ There are six Greek Orthodox courts of first instance in the Greek Orthodox Patriarchate of Jerusalem. They are located in Akko, Jerusalem, Nazareth, Amman, Gaza, and Jaffa.

⁶⁶ The dominion of the patriarchate also includes the Sinai Peninsula, with the exception of St. Catherine’s Monastery in the Sinai. See Itamar Katz and Ruth Kark, “The Greek Orthodox Patriarchate of Jerusalem and Its Congregation: Dissent over Real Estate,” *International Journal of Middle East Studies* 37, no. 4 (2005): 514.

⁶⁷ See “Qanun Baṭriyarkiyya al-Rum al-Urthudhuks al-Muqaddasiyya,” Law no. 27 of 1958, *al-Jarida al-Rasmiyya* [Jordan], no. 1385 (1 June 1958), 556–64. Hereafter this law will be referred to as the 1958 law. For the background of the law, see Katz and Kark, “Greek Orthodox Patriarchate of Jerusalem,” 520. See also Moussa Abou Ramadan, “La loi applicable à la minorité Roum Orthodoxe de l’état d’Israël,” *Proche-Orient Chrétien* 50 (2000): 105–41. In 2005, the Jordanian government withheld government accreditation for Theophilos III if the 1958 law was not implemented; Hager, “Orthodox Issue in Jordan,” 226.

⁶⁸ Philip Robins, *A History of Jordan* (Cambridge, UK: Cambridge University Press, 2004), 71–73.

⁶⁹ For the status of the 1958 law post-1967, see Abou Ramadan, “La loi applicable,” 128–29.

⁷⁰ The Israeli government also must approve the election results. See Michael Karayanni, “Multiculturalism as Covering: On the Accommodation of Minority Religions in Israel,” *American Journal of Comparative Law* 66, no. 4 (2018): 848.

⁷¹ See Article 24 of the 1958 law.

The Greek Orthodox Patriarchate of Jerusalem is an autocephalous (i.e., a self-governing) church.⁷² This means that the church can, for example, elect its own bishops, and it enjoys canonical independence. According to Article 345 of the Byzantine Family Code every patriarchate enjoys legal authority (*quwwa qānūniyya*), which means that every patriarchate can determine the family laws independently. Thus the Greek Orthodox Patriarchate, headed by the patriarch, enjoys “ecclesiastical sovereignty” and can determine the rules of the Byzantine Family Code autonomously.

All the Greek Orthodox courts within the Greek Orthodox Patriarchate of Jerusalem apply the Byzantine Family Code. In the past, the church has not been responsive when members of the community have addressed the patriarch seeking family law reform. In a statement by the Arab Orthodox Clergy for Revival (*al-Iklirus al-Urthudhuksi al-‘Arabi al-Nahdawi*), which was signed at the Orthodox Club in Amman on 25 July 2014, members of the community called, among other things, for the drafting of a law to organize the church courts and for modernizing the personal status law.⁷³ In his reprint of the Byzantine Family Code, Ya‘qub al-Far, a well-known Christian lawyer, explains that he (and others) have appealed to the Greek Orthodox patriarch in Jerusalem several times to amend the Byzantine Family Law, but that it seems the patriarch has no interest in doing so.⁷⁴

The history, legal sources, and evolution of the law are not well known to members of the Greek Orthodox community, judges, or the leadership of the church. None of the church court judges I interviewed could state how old the law is. Archbishop Christophoros Hanna Kamal Atallah, the Greek Orthodox bishop in Amman, merely stated that “it is very old.”⁷⁵ There is no memory of how reform happened in the past, which makes it more difficult for people to imagine how reform would happen in the future.

The patriarchate is organized hierarchically, with the patriarch enjoying extensive prerogatives. The Holy Synod of the patriarchate (*Majma‘ al-Batriyarkīyya al-Muqaddas*), the governing body of the patriarchate, is composed of the patriarch, who presides over it, the bishops, and the archimandrites of the Greek Orthodox Patriarchate of Jerusalem. All eighteen members are appointed by the patriarch.⁷⁶ The patriarch has the right to change any member of the Holy Synod if he considers this to be in the “interest” of the patriarchate, which is not further defined.⁷⁷

Regarding the organization of the church courts, Article 332 of the Byzantine Family Code stipulates that a church court of the patriarchate functions as a court of first instance (*maḥkama bidā‘iyya*). According to Article 339, a church court is to comprise an archbishop who is a member of the Holy Synod and who is appointed by the Holy Synod as the president of the court. The patriarch, as the head of the Holy Synod, in this way plays an instrumental role in the appointment of all judges. The decision as to who gets appointed as judge is therefore made outside of Jordan.

The church courts, unlike the Jordanian shari‘a courts, are not publicly funded, instead being funded by the individual churches themselves. The salaries and pensions of all priests and church court judges in the patriarchate are paid by the Greek Orthodox Patriarchate.⁷⁸ Lawyers claim that the patriarch does not want church court judges to become state employees, as this would increase state control over the church courts.⁷⁹

⁷² Timothy Ware, *The Orthodox Church* (London: Penguin, 1997), 5.

⁷³ See item 10 of the “Statement of the Arab Orthodox Clergy of Jerusalem on Reforming the Patriarchate,” 27 July 2014, <https://araborthodoxy.blogspot.com/2014/07/statement-of-arab-orthodox-clergy-of.html>.

⁷⁴ See the introduction of Ya‘qub al-Far, ed., *Qanun al-‘A‘ila al-Bizanti al-Nafidh lada Ta‘ifat al-Rum al-Urthudhuksi al-Urdunni* (Amman: self-published, 2011).

⁷⁵ Interview with Archbishop Christophoros Hanna Kamal Atallah, Archbishop of the Greek Orthodox Church (Amman, 29 October 2018).

⁷⁶ 1958 law, Article 4.

⁷⁷ *Ibid.*

⁷⁸ Article 7, paragraph c, of the 1958 law refers to the salaries and pensions of priests and does not specifically mention church court judges. However, as all church court judges also are priests, the same rules apply to them.

⁷⁹ Interview with a lawyer who works in the church courts (Amman, 20 October 2018).

Article 333 of the Byzantine Family Code stipulates that the Holy Synod of the patriarchate adjudicates as an appeals court (*maḥkamat isti'nāf*) for decisions issued by the church courts of the patriarchate and also as a high court (*maḥkamat al-naqḍ*). Therefore all the members of the appeals court and the high court are members of the Holy Synod who are directly appointed by the patriarch.

The Greek Orthodox Patriarchate also is the site of conflict between the Greek leadership and its lower-ranking Arab clergy and congregation.⁸⁰ This conflict is multifaceted. Arab Christians are dissatisfied with the lack of pastoral and spiritual care and have demanded that lay members of the community be able to benefit from the revenues of the patriarchate and be included in its administration.⁸¹ The struggle for these goals can be traced back to the 19th century.⁸²

The lack of decision-making power of the lay community also affects family law reform. Lay (Arab) members of the community have very few ways to participate in the governance of the patriarchate and so cannot influence the development of the Byzantine Family Code from the inside. Members of the community particularly complain that the so-called mixed council (*majlis mukhtaliṭ*) is not institutionalized.⁸³ An activation of the mixed council would increase internal democracy in the church, that is, give more power to the Arab congregation at the expense of the Greek leadership.

Reforming the Church Courts

The Constitutional Reform of 2011

In 2011, in the wake of the Arab Spring protests, the Jordanian Constitution was amended in an effort to appease protestors asking for political and social reforms.⁸⁴ A group of prominent Christian lawyers used the constitutional reform process to lobby for changes in the organization of the church courts and to push the Jordanian government to regulate the church courts more strongly, while at the same time expanding ecclesiastical sovereignty to include issues like adoption.⁸⁵

As a result of their lobbying efforts, Article 109 of the Jordanian Constitution, which regulates the organization and jurisdiction of the church courts, was amended.⁸⁶ The amended Article 109 stipulates for the first time that the appointment of judges to the church courts needs to be regulated, expanding the role of the Jordanian government in regulating the church courts. Its paragraph b also seems to undo the previous principle that the church courts and the shari'ā courts adjudicate the same personal status matters.

Article 109, paragraph a, in its previous form, stipulated that the councils of religious communities (*majalis al-tawa'if al-diniyya*), the church courts, are established in conformity with the provisions of the laws that regulate them. These laws define the competence (*ikhtiṣāṣ*) of the church courts regarding matters of personal status and charitable endowments (*awqāf*) which are established for the benefit of the respective community.

⁸⁰ All patriarchs of the Greek Orthodox Patriarchate of Jerusalem from the 16th century onward were Greek. See Katz and Kark, "Greek Orthodox Patriarchate of Jerusalem," 516. Over the past century, the Greek Orthodox Patriarchate has been trying to preserve its Hellenic character; P. J. Vatikiotis, "The Greek Orthodox Patriarchate of Jerusalem between Hellenism and Arabism," *Middle Eastern Studies* 30, no. 4 (1994): 916.

⁸¹ Katz and Kark, "Greek Orthodox Patriarchate of Jerusalem," 519.

⁸² See Laura Robson, *Colonialism and Christianity in Mandate Palestine* (Austin, TX: University of Texas Press, 2011), 75.

⁸³ Interview with the director of the Orthodox Society (Amman, 27 September 2016). The mixed council would be composed of lay members and clergy. It would fulfill a number of tasks, including financial oversight functions. See Article 30 of the 1958 law.

⁸⁴ Sean L. Yom and F. Gregory Gause III, "Resilient Royals: How Arab Monarchies Hang On," *Journal of Democracy* 23, no. 4 (2012): 74–88.

⁸⁵ The group consisted of Nizar Dayyat, Adib Hawatma, and Ya'qub al-Far.

⁸⁶ "Ta'dil al-Dustur al-Urdunni li-Sanat 2011," *al-Jarida al-Rasmiyya* [Jordan], no. 5117 (1 October 2011), 4452–68.

According to Article 109, paragraph a, the matters of personal status of Christian communities are the same as the matters of personal status for Muslims who are under the jurisdiction of the shari‘a courts. This means that issues, such as adoption, that are not regulated by the Islamic personal status law cannot be issues of personal status law for Christians, but paragraph b of the reformed Article 109 seems to call this approach into question.

The amended Article 109, paragraph b, stipulates that the church courts apply the provisions relating to personal status that are not considered provisions of personal status for Muslims under the jurisdiction of the shari‘a courts provided that the legislation of the church courts regulates the procedures (*uṣūl al-muḥākamāt*) used in front of the church courts. The amendment appears to contradict the first part of Article 109, which balances the jurisdiction of church and shari‘a courts. The amended Article 109, paragraph b, implies that there are personal status matters specific to Christians.

This wording was the result of a conscious advocacy effort on the part of the Christian lawyers who were part of the reform commission that aimed to expand the jurisdiction of the church courts. One Christian lawyer stated that when the question was raised during the commission proceedings as to what personal status matters Christians have that Muslims do not have, he gave the example of baptism (*ma‘mūdiyya*) and consciously omitted the controversial issue of adoption.⁸⁷ Christian lawyers think that the amendment will allow them to apply the adoption provisions of their family laws.⁸⁸

Article 109, paragraph b, also forces the church courts to adopt procedural law. This provision primarily targeted the Greek Orthodox. The Greek Orthodox court does not have its own procedural law. According to the church court judges, the court applies the Jordanian civil procedures law (*qanun usul al-muhakamat al-madaniyya*). Lawyers commonly identify the selective application of the civil procedures law and the misfit of the civil procedures law for family law matters as one of the greatest challenges to their work.⁸⁹ One lawyer stated: “The decisions are arbitrary. One priest [church court judge] traveled abroad for months to seek medical treatment but did not delegate the case to another judge. The authoritarianism of priests is a problem. They don’t give appointments. They are not bound by any law. This is an injustice towards Jordanian citizens.”⁹⁰

The constitution stipulated that all laws remain in force until legislation was issued to implement the new constitutional provisions within a period of three years.⁹¹ Thus, the constitutional amendments of 2011 made the issuing of the 2014 law necessary. The constitutional changes introduced in 2011 forced reluctant state bodies to intervene to implement the constitution.

The Promulgation of the 2014 Law for Christian Councils

The 2014 law went through the ordinary legislative process in Jordan with known stakeholders, which made it easier for Christian lawyers to lobby for change. The same group of lawyers who had lobbied for a reform of the constitution also lobbied for a reform of the 1938 law for the councils of non-Muslim communities and was closely involved in drafting the 2014 law. Many of their suggestions were included in the 2014 law for Christian councils. This law replaced and annulled the 1938 law for the councils of non-Muslim communities.⁹² The law considerably increased the role of the state in regulating the church courts.

⁸⁷ Observation of a Christian lawyer during a meeting about the personal status law of Christian communities at Saint Elias Greek Catholic Church in Amman, 12 October 2019, attended by the author.

⁸⁸ This interpretation also is shared by Christine Faddoul. See Christine Faddoul, “al-Waqi‘ al-Qanuni li-l-Wujud al-Masihi fi al-Urdunn,” *al-Dustour*, 17 February 2021, www.addustour.com/articles/1199813.

⁸⁹ Interview with lawyer who works in the church courts (Amman, 27 September 2016).

⁹⁰ Interview with lawyer who wishes to remain anonymous (Amman, September 2016).

⁹¹ See Article 128, paragraph b, Jordanian Constitution.

⁹² See Article 32 of the 2014 law.

The 2014 law introduces a number of important changes. The state, for the first time, regulates who can be appointed a judge in a church court in Jordan, slightly limiting the autonomy of the patriarch who appoints the judges. Article 3 stipulates that judges have to meet a number of conditions: they must have Jordanian nationality or the nationality of another Arab country, and they need to be able to understand, read, and write Arabic. Furthermore, the first instance courts as well as the appeal courts must hold their sessions and issue their rulings in Arabic and in the name of the Jordanian king.⁹³ These language requirements were issued in response to criticism from lawyers that the president of the Greek Orthodox court of first instance in Amman had in the past always been a “foreigner”—that is, a Greek with limited Arabic language skills.⁹⁴

The 2014 law also imposes educational requirements for judges. The judge has to hold at least a bachelor’s degree in law (*shahāda jāmi‘iyya al-ūlā fī al-qānūn*) or a bachelor’s degree in theology (*lāhūt*).⁹⁵ In the past judges at the Greek Orthodox court often had no higher education at all. The Jordanian legislature clearly took as its starting point the educational requirements stipulated for shari‘a court judges.⁹⁶ The law also stipulates that a judge on a first instance court has to have served either in the service of the church (*fī khidmat al-kanasiyya*) for at least five years, occupied a judicial position (*mansīb qaḍā’ī*), or have worked as a lawyer or professor for a minimum of ten years.⁹⁷ The law thereby opens the possibility for lay members of the community to serve as judges on a church court.

The 2014 law also prescribes the organization of the church courts, attempting to nationalize the church courts in the process. The 2014 law stipulates that the church courts must hold their sessions inside the kingdom.⁹⁸ The 2014 law required that Christian communities establish an appeals court inside the kingdom (*tashkīl maḥkamat isti’nāf fī al-mamlaka*) no later than six months after the law’s enactment. Subsequently, decisions taken by appeals courts outside the kingdom are considered invalid, and jurisdiction in cases of appeal is transferred to the regular courts.⁹⁹ Until a community establishes a court of appeal as required, the regular courts of appeal will have jurisdiction in appellate matters.¹⁰⁰ This is in stark contrast to the 1938 law, which had allowed Christian communities to use appeal courts outside of Jordan.¹⁰¹ As noted, prior to 2014 the court of appeal of the Greek Orthodox community had been based in Jerusalem, which meant that lawyers had to travel from Jordan to Jerusalem to present an appeal, which was costly and time consuming and in some instances impossible due to the Israeli occupation, as Jordanians of Palestinian origin cannot obtain visas easily.¹⁰² As a consequence of the 2014 law, appellate court judges from Jerusalem began to travel to Amman once a month to hold their sessions at the Greek Orthodox court of first instance.

The 2014 law stipulates that the church courts follow the civil procedures law with respect to notifications (*tabliḡhāt*) the courts issue.¹⁰³ The law also stipulates that the government will issue regulations (singular: *niḡām*) that lay out the procedures of the church courts and regulate the fees church courts can charge.¹⁰⁴ These regulations, which have not been

⁹³ See Article 25 of the 2014 law.

⁹⁴ Interview with lawyer who works in the church courts (Amman, 19 September 2016).

⁹⁵ See Article 3, paragraph c, no. 4, of the 2014 law.

⁹⁶ Until 2007 shari‘a court judges had to hold either a bachelor’s degree from a shari‘a faculty or from a faculty of law. In 2007 only shari‘a degree holders became eligible. See Article 3 of “Qanun Mu‘addal li-Qanun Tashkil al-Mahakim al-Shar‘iyya,” Law no. 23 of 2007, *al-Jarida al-Rasmiyya* [Jordan], no. 4821 (12 March 2007), 2257–58.

⁹⁷ 2014 law, Article 3, paragraph c, no. 6.

⁹⁸ *Ibid.*, Article 16, paragraph c.

⁹⁹ *Ibid.*, Article 23, paragraph b.

¹⁰⁰ *Ibid.*, Article 23, paragraph h.

¹⁰¹ 1938 law, Article 15.

¹⁰² Interview with a church court judge at the Arab Episcopal Church court of first instance (Amman, 30 October 2018).

¹⁰³ 2014 law, Article 27.

¹⁰⁴ *Ibid.*, Article 31.

issued to date, would apply to all recognized Christian communities in Jordan. Roman Catholics have opposed the application of a unified procedural law as they, in contrast to the Greek Orthodox, have their own procedural law. One Roman Catholic church court judge explained: “We are fighting the attempt to issue one procedural law for all. We met with the Minister of Justice. We told them that if I have to decide whether to go against the king or against God, I choose to go against the king. We have a law that is issued by the Pope.”¹⁰⁵ Lowering the fees the church courts charge also has been met with opposition from the churches who argue that the fees are appropriate as they are partly used to cover the salaries of the church court judges as well as their health insurance.¹⁰⁶

The reform has thus achieved setting education and Arabic language standards for judges and nationalizing the appellate courts of Christian communities, all of which had been key demands from lawyers and members of the community. However, the scope of reform was limited by the constitution. Members of different churches have referred to Article 109 of the constitution, which they argue protects their normative autonomy and limits government interference.¹⁰⁷ The laws of the respective communities allow the establishment of courts of appeal headed by a bishop in different countries. Therefore, the nationalization of the appellate courts was possible. However, with regard to the high courts, there is no flexibility. The Holy Synod in Jerusalem which, in the case of the Greek Orthodox, functions as the highest court, and the Apostolic Tribunal of the Roman Rota in Rome, the highest appellate court of the Roman Catholic Church, cannot be transplanted. The nationalization of the church courts therefore will remain incomplete, and the challenges that courts in different countries pose for the parties involved will remain in place.

The Parliamentary Debate about the 2014 Law

The legal committee (*lajnat qanuniyya*) of the lower house of parliament (*majlis al-nuwwab*) held four sessions to discuss the draft law in June 2014. These sessions were attended by “Christian religious men” (*rijāl al-dīn al-Masīhī*) as well as Christian lawyers. The committee endorsed the draft law on 24 June 2014 and submitted it to the lower house of parliament for consideration. The lower house debated the draft of the 2014 law on 2 July 2014.¹⁰⁸ An analysis of the sixty-eight page transcript makes it clear that members of parliament see the transnational dimension of the church courts as a violation of Jordanian sovereignty (*siyāda Urdunniyya*). Members of parliament argued in favor of nationalizing the church courts while at the same time emphasizing that the initiative to reform the church courts came from the Christian community itself and was not imposed from above. According to the president of the legal committee, the law addresses some of the problems that “our brothers from the Christian communities” (*ikhwānunā min al-tawāʾif al-Masīhīyya*) face with respect to personal status matters.¹⁰⁹

Members of parliament emphasized that court decisions need to be “Jordanian” and not taken outside the kingdom. The president of the committee regarded the setting of criteria for the appointment of church court judges as the most important amendment of the law, as previously some judges did not speak Arabic and were foreigners (singular: *ajnabī*). Having non-Jordanians act as church court judges in Jordan was seen as a violation of Jordanian sovereignty. Jamil al-Nimri, a Christian member of parliament, pushed back against this notion, emphasizing that before 1967 churches were unified in Syria, Palestine, Lebanon, and Jordan, that is, the Levant (Bilad al-Sham). Since many priests who serve in Jordan are from the West Bank or Lebanon, allowing church court judges to have the nationality of another Arab

¹⁰⁵ Interview with the president of the Roman Catholic court of appeal (Amman, 6 September 2016).

¹⁰⁶ Interview with the general secretary of the Council of Churches (Amman, 27 March 2019).

¹⁰⁷ Interview with the vice president of the Greek-Catholic court of first instance (Amman, 20 September 2016).

¹⁰⁸ “Mahdar al-Jalsa al-Thaniya (al-Yawm al-Sadis) min al-Dawra al-Istithnaʿiyya al-Ula li-l-Dawra al-ʿAdiyya al-Ula li-Majlis al-Nuwwab al-Sabiʿ ‘Ashar al-Munʿaqida Yawm al-Arbaʿa’ al-Waqiʿ fi 4 Ramadan 1435 Hijriyya, al-Muwafiq 2.7.2014 Miladiyya,” [Majlis al-Nuwwab] (2 July 2014).

¹⁰⁹ *Ibid.*, 8.

country was necessary.¹¹⁰ In the same vein, the Ministry of Interior also clarified that the churches have “their main centre” (*markazhā ra’īsī*) outside of the kingdom, which makes it necessary to allow judges who hold the nationality of another Arab country to serve in Jordan.¹¹¹ In sum, the debate demonstrates that Jordanian members of parliament saw elements of the transnational dimension of the church courts as violating Jordanian sovereignty. They aimed to Arabize and nationalize the courts, but they did so with an awareness that this was a sensitive issue that touched upon Christian and thereby minority rights. The debate also demonstrates that Muslim MPs have little knowledge about how the churches are organized.¹¹² Although Christian MPs like Jamil al-Nimri were in favor of the 2014 reform because the reform cured some of the problems Christian communities were facing, they also were more aware of how the churches operate. For them enforcing Arabic language requirements and forcing the churches to hold their appeals court sessions inside the kingdom was a priority, but imposing Jordanian nationality on all church court judges was not, as church court judges frequently rotate within the Levant. Although the creation of states has weakened other concepts of belonging like Bilad al-Sham, these concepts remain relevant for the organization of churches and for how Christians think about their own belonging and organization.

Legal Advocacy and Feedback Effects of the 2014 Reform

The promulgation of the 2014 law invigorated calls for reform. However, legal advocacy in favor of reform of the church courts and the personal status laws applicable for Christians has been less organized and less forceful than campaigns calling for the reform of Islamic family law.¹¹³ There are several reasons for this. Ecclesiastical sovereignty, the “minority issue,” the church’s lack of established processes of reform and internal democracy, and objections to reform within the churches have all hampered advocacy efforts.

Legal practitioners have never witnessed how the Byzantine Family Code was amended, and therefore they could not rely on existing practices and established processes. The family laws of Christian communities, in contrast to Islamic family law, never underwent a process of “profanization,” meaning that the sacred character of these laws was preserved because nobody in living memory has shown that they can be reformed. When Islamic family laws began to be reformed during the 1990s in some Middle Eastern countries—often for the first time since the codification of family law that had occurred after these countries became formally independent starting in the 1940s—many women’s groups stated that one of the biggest achievements was the reform of family law, because such reform uprooted the holiness that enveloped these texts and made them more like any other law.¹¹⁴ The Byzantine Family Code, by comparison, has never undergone a similar process in recent times.

The reform of the personal status laws of Christian communities has not been on the top of the agenda for official women’s groups, because these groups address their advocacy efforts toward the state. Since in this case the state is not the lawmaker, advocacy efforts have been modest. However, the Jordanian National Commission for Women (JNCW), a state institution, has issued reports calling for the reform of the personal status laws of Christian communities as well as the church courts.¹¹⁵ The JNCW was founded in 1992, the year Jordan ratified the Convention for the Elimination of all Forms of Discrimination

¹¹⁰ *Ibid.*, 22.

¹¹¹ *Ibid.*, 22–23.

¹¹² This is a frequent criticism of Christians interviewed in Jordan.

¹¹³ For a description of advocacy efforts for Islamic family law reform, see Dörthe Engelcke, “Law-Making in Jordan: Family Law Reform and the Supreme Justice Department,” *Islamic Law and Society* 25, no. 3 (2018): 274–309.

¹¹⁴ Oriana Wuerth, “The Reform of the Moudawana: The Role of Women’s Civil Society Organisations in Changing the Personal Status Code in Morocco,” *HAWWA* 3, no. 3 (2005): 318–19.

¹¹⁵ CEDAW, “UN Committee on the Elimination of Discrimination against Women: State Party Report, Jordan,” 26 October 1999, CEDAW/C/JOR/2, <https://www.refworld.org/docid/3f6ade817.html>.

against Women (CEDAW).¹¹⁶ Several prominent members of the JNCW are Christian, which is one reason Christian grievances have been addressed by the JNCW. The late Asma Khader, for example, a prominent Christian lawyer and former secretary general of the JNCW, had been an outspoken critic of the personal status laws of Christian communities.¹¹⁷ The JNCW demanded that the personal status laws of Christians be amended and treated as national legislation, meaning that they should be issued by parliament and published in the *Official Gazette of the Hashemite Kingdom of Jordan* to guarantee easy access to whoever wants to consult them.¹¹⁸ Judgments issued by the church courts should be subject to appeal in front of the Jordanian Court of Cassation (*Mahkamat al-Tamyiz*).¹¹⁹

Since the second half of 2018, the Amman chapter of the Young Women's Christian Association (YWCA), a Christian organization established in the 1950s, has been turning its attention toward the reform of the church courts and the personal status laws of Christian communities. The YWCA has taken up this issue to raise awareness about the importance of family law reform within the community and to ensure that Christian women secure their full rights as citizens.¹²⁰

The YWCA has formed a coalition with the Initiative of Female Lawyers for Change (*Mubadarat Muhamiyat nahwa al-Taghayyur*), a subdivision of the lawyer's syndicate, which was founded in December 2018 at the Jordanian judges' club.¹²¹ This coalition is loosely supported by several prominent lawyers, such as Nizar Dayyat and Ya'qub al-Far, as well as reform-minded clergy like Bassam Shahatit. Members of the YWCA discussed whether their advocacy efforts should include Muslim women. They decided in favor of interreligious cooperation as this underlines their intention to speak as Jordanians and not primarily as Christians.¹²² The coalition has been met with opposition from some clergy. They fear that family law reform will encourage other reform efforts such as the issuance of an inheritance law for Christian communities. Such a law could introduce equal inheritance shares for men and women, which some clergy as well as lay Christians oppose.¹²³

The coalition has received support from Archbishop Christophoros Hanna Kamal Atallah, who was appointed in May 2018. Atallah is the first Arab Greek Orthodox archbishop in Amman and is the highest representative of the Greek Orthodox Church in Jordan.¹²⁴ Previously, the archbishop had always been an ethnic Greek, and the relationship between the archbishop and the community had been tense. Atallah is a very popular figure in Jordan. His reform-mindedness regarding the organization of the Greek Orthodox Patriarchate has brought him in conflict with the patriarch in Jerusalem in the past.¹²⁵ He has shown great interest in the reform of the church courts and the Byzantine Family Code and has demonstrated his willingness to listen to demands from within the community.

¹¹⁶ Ibid.

¹¹⁷ Interview with Asma Khader, lawyer and former secretary general of the JNCW (Amman, 21 October 2018).

¹¹⁸ Asma Khader, "Bayan al-Matalib fi Majal al-Islah al-Qanuni," JNCW, 2007, on file with author. See also Asma Khader, "Bayan al-Matalib fi Majal al-Islah al-Qanuni," JNCW, 2010, on file with author.

¹¹⁹ In Israel the rulings of the shari'a courts are subject to judicial review by the High Court of Justice. See Ido Shahar, *Legal Pluralism in the Holy City: Competing Courts, Forum Shopping, and Institutional Dynamics in Jerusalem* (Farnham, UK: Ashgate, 2015), 32.

¹²⁰ Interview with Hania Kakish, president of the Young Women's Christian Association (Amman, 10 April 2021).

¹²¹ Prominent members include Christine Faddoul, Nida al-Hourani, Reem Abu Hassan, and formally Soumaya Zawaideh.

¹²² Interview with the president and the executive manager of the YWCA (Amman, 15 April 2019).

¹²³ In February 2018 a unified inheritance law was elaborated. The future of this draft remains unclear; on file with author.

¹²⁴ The 1958 law stipulated that the patriarch must within three years of the application of the 1958 law ordain two Jordanian Arab bishops, who were to become members of the Holy Synod; see Article 26 of the 1958 law. However, it was only in 2005 that the first Arab bishop was appointed, this being Theodosios (Hanna) of Sebastian, also called Hanna Atallah.

¹²⁵ See Hager, "Orthodox Issue in Jordan," 218–20.

His appointment has raised hopes that the church will move the reform initiatives forward. The Arabization of the seat of the archbishop in Amman may well have had an impact on the prospects of family law reform.

Despite the existing challenges, the advocacy work has already achieved several important goals regarding the structure of the Greek Orthodox court as well as reform of the Byzantine Family Law. In June 2020, the first female judge, as well as the first judges who are not priests but are trained in law and have previously served on a regular Jordanian court, have been appointed to the Greek Orthodox court of first instance and appeal in Jordan. The judges who sit on the Greek Orthodox court of appeal are all Jordanian and permanently based in Jordan. Christine Faddoul, the first female church court judge in Jordan, is a member of the Initiative of Female Lawyers for Change as well as the YWCA.¹²⁶ The appointment of lay community members also was made possible by changes introduced by the 2014 law, as explained above.

Regarding the Byzantine Family Code, on 19 December 2018, the Greek Orthodox Patriarch in Jerusalem for the first time in the history of Jordan set up a commission to prepare amendments to the Byzantine Family Code. The committee consists of five members.¹²⁷ Christine Faddoul, the only female member of the committee, explained that the committee did not meet with the patriarch in person. Archbishop Christophorus Atallah selected the members of the committee and proposed these names to Patriarch Theophilos III, who accepted the names and formally appointed the committee. The patriarch also has selected a scholar from Greece trained in canon law, who will discuss the draft law with the committee and give his input.¹²⁸ According to members of the committee, the committee will submit the draft to the patriarch, who will issue the law after the Holy Synod has approved it. This process, once again, demonstrates the transnational dimension of the lawmaking process: a committee consisting of Jordanian lawyers is to elaborate a draft that will be issued in Jerusalem after an expert from Greece has given his input; the law will then be applied in all of the Greek Orthodox Patriarchate of Jerusalem's church courts in Palestine, Israel, and Jordan. At the time of writing in November 2021, the outcome of this process remains unclear.

Conclusion

State law pluralism creates conditions that make reforming the family laws of Christian communities challenging. It affects how reforms are carried out because in such a system jurisdiction and territory do not map onto one another. When people think about lawmaking, they commonly think about the state, but the jurisdiction of the Greek Orthodox Patriarchate transcends the boundaries of the Jordanian state. The Byzantine Family Code is a regional, not national, law that is applied in all countries that belong to the patriarchate: Jordan, Israel, and Palestine. Changes will therefore affect Greek Orthodox Christians in those three countries.

State law pluralism creates a situation in which religious minorities often face discrimination from their respective churches as well as the state. Christians aim to overcome discrimination within state law, but they also need the state to address discrimination they face within the church courts that continue to be operated by individual churches with little scrutiny. This creates a web of dependencies that needs to be carefully maneuvered. Adding to this, war and conflict in the region have made Christians further dependent on

¹²⁶ Ahdath al-Yawm, "Muhamiyat nahwa al-Taghayyur Tubarik bi-Ta'yin Awwal Qadi Imra'a fi Isti'naf al-Mahkama al-Urthuduksiyya," insert Title of Publication, 20 June 2020, www.ahdath24.com/article/219324.

¹²⁷ The committee was officially established by the patriarch in a letter dated 19 December 2018, on file with author.

¹²⁸ Interview with Christine Faddoul, Christian lawyer and member of YWCA and the Initiative of Female Lawyers for Change (Amman, 17 April 2019).

the ecclesiastical leadership of their churches as well as the Jordanian monarchy, as they see these institutions as guarantors of their own security.

Christian lawyers as well as women's groups have long called on the state to intervene and to regulate the church courts more strongly. In 2014 the state responded to some of these demands by imposing new language, education, and organizational requirements on the church courts. The state did intervene, but it did so reluctantly. Also, it did not do everything that it could have done. It did not force Christian communities to publish their legislation in the *Official Gazette* or submit their laws to a parliamentary vote. It did not introduce concurrent jurisdiction, and judgments issued by the church courts cannot be appealed in front of the Jordanian high court. This reluctance must be interpreted against the backdrop of the history of state law pluralism as well as the political context.

The institutionalization of the church courts and the political organization of communal life along religious lines by the British mandate authorities meant that Christians were no longer just Arab citizens but a religious minority whose legal affairs were a sensitive issue because they ultimately touched upon their communal organization and hierarchies. Christian legal issues are not merely a Jordanian affair. Christians are Jordanian citizens by law, but they also are assumed to have preserved an invisible bond with Western states that are majoritarian Christian.¹²⁹ Today, Jordan's dependence on Western donors and the assumption that Christian affairs in Middle Eastern countries continue to be of (some) interest in Western countries make Jordan reluctant to intervene in Christian affairs, as such a move could be interpreted as restricting religious freedom. Christian Jordanians themselves have emphasized that they speak as Jordanians. They have been careful to portray their demands as national, not sectarian issues. The emphasis on Arabic language as a unifying factor in a multireligious society should be understood in this regard.

The question remains how representative the experience of reform in the Greek Orthodox Patriarchate of Jerusalem is. The transnational dimension of the personal status laws of Christian communities certainly is an issue that is at play in all Middle Eastern jurisdictions in which Christians enjoy normative autonomy. This transnational organization of law makes advocacy efforts and reform processes more challenging. However, differences remain among communities as well as patriarchates. What seems to be different between the Greek Orthodox Patriarchate of Jerusalem and, for example, the Greek Orthodox Patriarchate of Antioch is the degree of Arabization and the rootedness of the church within the local community. In 1893 the first Arab patriarch since the 16th century of the Greek Orthodox Patriarchate of Antioch was appointed and the patriarchate has been Arabized since then.¹³⁰ The applicable family law within the patriarchate was last reformed in 2003, and the church is currently preparing several new amendments.¹³¹ Further research is necessary, but it seems that the church is more responsive when it is itself firmly rooted in the local community. The appointment of the first Arab Archbishop of Amman, Christophoros Hanna Kamal Atallah, in May 2018 has accelerated reform efforts. The Arabization of the seat of the bishop of Amman has thus made reform more likely. The outcome of this process remains unknown: the struggle for reform is ongoing.

Acknowledgments. I would like to thank the members of the Research Group on Family and Succession Law in Islamic Countries at the Max Planck Institute for Comparative and International Private Law for their helpful comments on an early draft. In Jordan, I would like to thank all the interviewees who gave generously of their time. Special thanks are due to Nizar Dayyat, Hania Kakish, Rula Habaibeh, Christine Faddoul, Bassam Shahatit, and

¹²⁹ These bonds can be traced back to the Ottoman Empire. On the capitulations see Donald Quataert, *The Ottoman Empire, 1700–1922* (Cambridge, UK: Cambridge University Press, 2005), 78–79.

¹³⁰ Robson, *Colonialism and Christianity in Mandate Palestine*, 77.

¹³¹ Interview with the president of the Greek Orthodox court of first instance in Tripoli and judge at the Greek Orthodox court of appeal in Beirut (Chekka, 16 June 2021).

the late Soumaya Zawaideh. Mark Erbel, Irene Schneider, and Yüksel Sezgin read the text and provided valuable feedback. I thank Tess Chemnitzer and Michael Friedman for their editorial support. Finally, I thank the three anonymous reviewers for their constructive and insightful comments as well as Joel Gordon for his careful reading of the manuscript and his helpful comments and suggestions.

Cite this article: Dörthe Engelcke (2022). “Between Church and State: The Challenges of Reforming the Church Courts and Family Law in the Greek Orthodox Patriarchate of Jerusalem.” *International Journal of Middle East Studies* 1–20. <https://doi.org/10.1017/S0020743822000125>