
Reviewed by Annika Rabo

This thesis¹ is an important and welcome contribution to the research on family law (or personal status law) in Syria. Esther van Eijk has studied both state law within sharia courts and Christian spiritual courts and discusses them as part of a similar normative order. She combines formal legal analysis with material collected through interviews with judges, lawyers and others concerned with family law in Syria. Fieldwork was conducted in Damascus for about ten months in 2008 and 2009. Van Eijk discusses the general difficulties in doing fieldwork in Syria and not getting official permission to work in courts. She does not, however, reflect on the ethical aspects of the extreme openness which lawyers and judges discussed cases with her. The book contains a delineation of the development of legal pluralism within family law in Syria but the focus is on debates about family law reforms and family law as practiced in courts as well. These debates and these practices tell us something vital about Syria. The thesis should, hence, be of interest also to readers without a background in legal studies, Islamic or Church law.

In classical Islamic jurisprudence there was no specific area which systematically covered what we today conventionally identify as family law. Classical jurisprudence was flexible and case-oriented. Litigants and seekers of justice could seek out the advice or expertise of different scholars/jurists and also non-Muslims used Islamic courts. Through the process of nation state building and modernization in Europe and elsewhere codified laws regulating relation between husband and wives, parents and children have emerged. Modern nations require uniform laws and modern and controllable families. Ideas from the anti-feudal but highly patriarchal 1804 Code Napoleon spread across Europe and to the Middle East and North Africa. In the Ottoman Empire there was no unified legal system pertaining to betrothal, marriage, divorce, filiation and guardianship until 1917. On the eve of the disappearance of the Empire, the sultan promulgated a Family Rights Law which combined Hanafi and other Islamic doctrines with influences from European notions of “family”. It also had provisions for non-Muslims. This Ottoman law became used in Lebanon, Jordan and in Syria.

The term “family law” has so far not taken root in law books or in law schools in most of the Arab world although codification has generally taking place. Between 2005 and 2009 the latecomers UAE, Qatar and Bahrain codified their laws but Saudi Arabia has still not done so. Syria was one of the first countries in the region to codify “family law” in 1953. But perhaps the term “family law” should be avoided? Van Eijk (and others) study what today is usually termed “personal status law” in contemporary Syria. This term was first used by Muhammad Qadri Pasha in Egypt in the 1890s. His compilation, based on the Hanafi doctrine, is still used by judges and lawyers in, for example, Syria. It is convenient for them to have a standardized Hanafi handbook since they are not trained in classical fiqh. They are rather products of what we can call secular law schools. Van Eijk does not discuss who in Syria – and elsewhere in the Arab world – lobby for the development of a “family law” and who remain within the framework of “personal status law”. There are both national, regional and international contexts in which these terminologies play out. I urge also other scholars to analyze these struggles.

Ester van Eijk’s understanding of the development of legal pluralism in Syria from the late Ottoman period, through the French mandate period to independence and the consolidation of Ba’th power, leans on established research. The plurality of family law is seen as a continuation of the millet system where recognized religious communities administered their own “family” affairs. The 1953 personal status law in Syria covered all citizens but those belonging to specific and recognized religious categories were given certain exceptions and allowed to set down their own codes. The Druze, like Christians do not allow polygamy and for the latter only marriage performed in church (or by clergy) is recognized by the state. The great strength of van Eijk’s book is that she follows the parallel development of the codes of those fully covered by the state law and those covered by the exceptions. Issues of betrothal, marriage and the dissolution of marriage (or annulment for the Catholics) for the Syrian Christians was devolved to their churches and religious courts. But all Syrian citizens were -
least in theory - subject to the state law for inheritance until 2006. In that year the Syrian parliament passed a new personal status law for the Greek, Armenian, Syrian, Assyrian, and Roman Catholics and the Maronites. The most important changes for the Catholics included the right to adopt and that women and men would inherit equal shares.

This legal development took even many Catholics by surprise and it was not well received by many Orthodox Christians who had hoped for a unified Christian position concerning reforms of the personal status law. The Catholic code was passed three years after Syria became a signatory to the Convention of Elimination of all forms of Discrimination Against Women, (CEDAW) and after article 146 in the personal status law had been modified to increase the years of a mother’s care-taking of her children in case of a divorce. This modification was the result of a country-wide campaign which had hoped for a more ambitious change of the code. CEDAW was signed with crucial reservation and the change in the personal status law was quite modest, but family and gender relations were firmly placed on the national agenda. One indication was the establishment of the Syrian Commission for Family Affairs with a mandate to scrutinize laws which discriminated against women. In 2004 the Syrian parliament received a proposal that not only Syrian fathers but also mothers should be able to pass their citizenship to their children. This proposal was much discussed all over Syria, but the law was never changed. Instead, counter-forces to gender equality reforms were mobilized.

In 2009 a draft for a new personal status law came from the Council of Ministers. The draft was written by anonymous legal scholars and shocked many in Syria due to its conservative character. It asked for increased “Islamic” regulation of in public life and it named Christians in a condescending and offensive manner. In short, it lauded and reinforced patriarchal relations. The draft law was heavily criticized in all kinds of permitted and unpermitted media and it was withdrawn by the president after a few months. Instead another revised draft law was presented which was almost indistinguishable from the law already in place. The reasons for these events were much debated in legal and civil society circles in Syria. When the new draft proposed that all Christians – not only Catholics – be given the right to have their own rules for inheritance this also caused speculation. Concomitantly the power of the Catholic courts were diminished and much of what was became legal for Catholics in 2006 was now reversed. As succinctly stated by van Eijk: “Where this change will lead to, especially for the Catholic communities, remains unclear.” (p.106). Van Eijk herself has not been able to follow up on this, but as far as I know no new developments have taken place since then.

In the introduction to this Ph.D. thesis Esther van Eijk worries that the topic - family law – is trivial or irrelevant to the current disastrous situation for Syrians. It is, of course, possible to analyze family law as a highly specialized topic with little attention to other issues in society. But it is also possible to approach family law as an entry to understanding society at large. Esther van Eijk has implicitly chosen the latter. She also underlines that her work contributes to throwing light on the complexities that has formed contemporary Syria. I would like to add that “family law” is at the heart of society and central to understanding relationships of power and influence. Thus by delineating the historical developments of personal status law in Syria, and by following recent debates van Eijk is able to lay bare many of the contradictions and paradoxes which face Syrian women and men today. Thus research on family law – personal status law – in Syria is extremely important today as a stepping stone for discussions and deliberations about the future.

Annika Rabo is a Professor of Social Anthropology in the Department of Social Anthropology, Stockholm University.

1 The thesis can be found at https://openaccess.leidenuniv.nl/handle/1887/21765