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Book Review: Law in the Service of Legitimacy: Gender and Politics in Jordan

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Law in the Service of Legitimacy: Gender and Politics in Jordan. 2009. Catherine Warrick. Surrey: Ashgate Publishing Limited. 205 pp. \$99.95 (Hardcover).

Reviewed by Stephanie Chaban¹

Catherine Warrick's book, *Law in the Service of Legitimacy: Gender and Politics in Jordan*, uses the country of Jordan as a case study when considering the relationship between culture and political legitimacy. Specifically, Warrick examines how and why a legal system maintains traditional social practices that discriminate against women while simultaneously advocating for reform that affords women new rights and opportunities. The answer to this complicated balancing act is the need to cultivate a specific form of legitimacy for the government, in Jordan's case the monarchy, since other democratic systems are not in place or are limited.

The concept of legitimacy in this study refers to work done by Habermas on the theory of legitimation crisis and advanced capitalist states. Habermas argued that such a state "contains inherent contradictions in its required functions" (34). According to Habermas, such contradictions threaten a state's legitimacy. Warrick notes that claims to cultural 'authenticity' are one way for a state to prove legitimacy when it suffers from concerns over legitimation. Jordan, like many other Arab states, has what Warrick refers to as a dual legal system; a secular legal system (perceived as European) coupled with a religious (*shari'a*) code that regulates personal status issues (marriage, divorce, etc.). She argues that, contrary to popular belief, such codes have mutually informed each other over the years. Thus, while the use of *shari'a* law implies a sense of authenticity with the majority Muslim population, it is well documented that such laws are influenced by previously present European codes. Likewise, secular laws (viewed as imports) contain elements of Islamic influence. Both of these systems are employed by the Jordanian state, at various times, to bolster the state's own legitimacy in the eye's of the people. The dual legal system is also what allows each of Jordan's political sectors (nationalists, Islamists, liberals) to view the state as 'legitimate,' i.e., there is something in the legal code to appease everyone. This struggle between cultural authenticity and secular importation in the Jordanian legal system proves to be a source of tension for the state in its bid for the right to rule.

In the early chapters Warrick chooses to focus on the more contentious aspects of Jordan's Criminal Law which, she admits, have a tendency to capture the West's attention: the state's response to rape and honor-related crimes. Warrick argues that, "...such practices and the legal environments surrounding them should be understood as the product of a relationship among law, politics and culture that exists in all systems and is tied to political contestation and, ultimately, to state legitimacy" (61). Examining three specific articles of the Jordanian Penal Law, Warrick reveals a complex and confusing system of impunity and misguided gender equality. In a brief section on rape, it is noted that a rapist might avoid prosecution should he marry his victim. There are complex reasons for this option that focus more so on the preservation of social order rather than

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the victim's situation. To appease this social order, Jordan's innovation to the law is to resume prosecution of the rapist should he attempt to divorce his wife/victim. According to Warrick, such a choice is grounded in "social problem-solving rather than criminal justice" (67).

Examining in detail the articles of the Penal Law related to honor-related crimes, Warrick notes that only one article, the recently amended Article 340, specifically addresses honor crimes. While the monarchy has supported the cancellation of this article, it is seen by many as promoting a virtuous society and, for some, proves to be the marker of tradition and religion. Thus, the state has merely amended it allowing for a wife to commit an honor-related crime under certain circumstances against her husband. Despite this effort at misguided gender equality, few women will benefit from the change in the amendment; few wives kill their husbands in Jordan, and the definition of adultery is somewhat muddled given the acceptance of polygamy. In fact, the number of women murdered in the name of honor increased in 2002, after the revision.

Interestingly, while Article 340 is commonly associated with honor-related crimes, the Penal Law's Article 98 is utilized more frequently with regard to honor-related criminal impunity. Article 98 allows for lightened sentences for those who commit crimes in a 'furious passion.' While the text is gender-neutral and does not employ an honor defense, it does manage to redefine the victim as the guilty party. Thus, a man who kills his female family member in a fit of anger for a perceived transgression potentially will be given a lighter sentence because the victim so enraged him and he couldn't control himself. Warrick notes that prosecution of such crimes is heavily dependent on the influence and bias of the judiciary who often appear to have some independence in deciding these matters. Finally, Warrick discusses Article 99 that allows the victim of a crime to 'drop the charges' in a prosecution, resulting in a significantly reduced sentence for the accused. In the instance of honor-related crimes, it is often the same family that is victim and victimizer. The article thus allows for those complicit in the crime to be 'forgiven' by their own family and receive a reduced sentence. As for protective measures, women who are at risk for honor-related crimes are commonly put in protective custody, often a woman's prison, as another act that redefines the victim as the guilty party. The state argues that this is the only real solution given that it is easier to detain the woman than the multiple family members willing to kill her.

In much of the Middle East, the definition of female citizenship is a contentious issue; many women who marry non-citizens cannot pass their citizenship on to their children or their spouses. The same is true for Jordan as expressed in its Nationality Law. While many outside the Middle East might view the limits on female citizenship as a cultural relic, Warrick argues that such treatment is implemented in the state's interest. She argues that, "...gendered nationality laws, which have several sources, serve a dual purpose: they facilitate state claims to legitimacy through the maintenance of traditional practices, and they serve a demographic purpose in managing the perceived nature of citizenry" (96). Thus, the support of a discriminatory nationality law is a matter of the state choosing its battles and weighing the repercussions of displeasing certain vocal or politically powerful sectors of society and less so about fulfilling a traditional or religious mandate.

Similar to women's access to citizenship, women's access to divorce in much of the Middle East is limited, most often expressed in the local interpretation of the

country's own personal status law. Since 2001, Jordan has accepted the practice of *khul'* (wife-initiated divorce) as part of a piecemeal overhaul of their Personal Status Law begun in 1999. While activists have contested the contents of the Law, few challenge its existence. The practice of *khul'* counters the practice of *talaq* (husband-initiated divorce, also known as universal repudiation). Thus, instead of restricting or eliminating *talaq*, the state offered *khul'*, which is argued to be a more 'authentic' version of *shari'a* (some argue that *khul'* was common in the region in the previous centuries). In this respect, the state appears to want to rectify gender-based discrimination within the Personal Status Law, which also means challenging *shari'a*. However, the piecemeal aspect of the reform coupled with the framework of authenticity highlights how the Jordanian government seeks to avoid controversial decisions in order to preserve its legitimacy.

Warrick also considers the presence of women in institutions of state power, highlighting decisions full of contradictions. Efforts to integrate women into the National Parliament and the armed forces are actually more progressive in comparison to legal reform, but gains made are gradual and allow for the limited expression of women's abilities. In the 1990s there was a demand, for the most part instigated by the women's movement, to implement a women's quota in the lower houses of Parliament. In 2003, the state finally complied and a women's quota was created resulting in a reserve of six out of 110 seats (5.5%). While this served as an increase in women's political participation (previously there had only ever been one female parliamentarian) the political space was not markedly transformed or feminized. Additionally, Warrick argues that based on the way in which the quota was divided within Jordan's governorates, it disadvantaged candidates in the urban areas (where the majority of women candidates are concentrated) and favors conservatives (who are in rural areas and tend to run female candidates to further their own agendas).

Interestingly, within the armed forces, women's participation and service is palpable and has not been viewed as controversial. Supported by the monarchy due to the military career of the current king's sister, women's integration into the armed forces has not been promoted through the language of rights and equality and, thus, has not been viewed as a direct challenge to tradition or to gender roles. In fact, while female service members receive the same training as their male counterparts, they are also issued modest uniforms and are utilized to promote gendered services such as maternal health initiatives. Warrick concludes that while gradualism and the avoidance of public conflict have contributed to the integration of women into these institutions, the support of the monarchy has proven to be the greatest success factor.

In the midst of this reform, the women's movement has been present, but not as a direct opponent to the state. The movement is comprised of prominent NGOs and semi-governmental organizations run by well-educated urban women who strengthen the royal-liberal party line. In this environment, the tactic of the women's movement has been the 'incrementalist approach.' Interestingly, and similar to the monarchy's own reform tactics, such an approach has resulted in the reform of a handful of laws and has promoted the development of domestic violence shelters and Jordan's accession to CEDAW (with reservations).

Warrick offers other forms of small-scale progress made within Jordan's institutional frameworks. Two domestic violence shelters have sprung up in recent years that work in conjunction with a Family Protection Department at the police station,

another recent innovation. In the courts, judges receive training in human rights and women's rights with an eye toward protecting families and children, yet these reforms also benefit women: "The rhetoric of family protection is a way to pursue improvements in women's living situations and legal protections without using women's rights language and thus is likelier to avoid oppositions from conservatives" (169). Furthermore, a number of Jordanian leaders are interested in examples of reform within the international community and tailoring them to the Jordanian context. This small-scale progress, Warrick argues, has turned Jordan into an example for the Arab world.

As a practical document, *Law in the Service of Legitimacy* provides an interesting approach to explaining the reasoning behind gender-based discrimination within a specific legal system. The study reveals a state and a legal system that are full of contradictions. Jordan's actions mirror its own dual legal system revealing it to be a Janus figure, for example, human rights and women's rights trainings for judges in a system that appears to encourage impunity with regard to crimes of 'passion.' Similarly, Jordan's role model status in the Arab world and the characterization of the monarchy as supportive of women's issues are both a bit confusing given the reluctance to reform any legal code outright and the desire to pander to voices critical of the state's own 'authenticity.'

While Warrick's research into this topic is fascinating, the analysis in the text occasionally comes across as too neutral and sometimes sympathetic of the Jordanian government; Warrick's lack of emotion in detailing much of the discrimination or reform may catch a reader off guard. However, this often works to the study's advantage as the presentation of information and analysis is straightforward and concise. It is refreshing that Warrick does not give into the 'clash of the civilizations' argument, nor does she choose to focus on patriarchy and patriarchal attitudes as contributing factors to gender-based legal discrimination in Jordan's legal system. Yet, employing a feminist analysis of the subject matter would have been a positive contribution to the text, though such an addition might have changed the tone and trajectory of the book considerably. Despite this issue, Warrick writes in an accessible manner that makes for informative reading for activists and academics, as well as political scientists, working on gendered legal reform within mixed secular and Islamic legal systems, and reveals the need for further in-depth study in other Middle East countries on this topic.

In closing, the essential issue for Warrick is: What makes a good political system? For the Jordanian government, representation is based upon a perceived shared identity and an exploitation of 'indigenous' or 'authentic' values. Thus, the state is making conscious political choices about what is shared and/or authentic, a realm in which gender issues feature prominently. By examining certain aspects of the Jordanian legal system Warrick reveals that, "...gender issues are an important means by which the state seeks to preserve or enhance its legitimacy" (176).