BARGAINING WITH THE DEVIL

STATES AND INTIMATE LIFE

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ABSTRACT

Since the 1980s, an explosion in state, international, and non-governmental campaigns and programs propose to increase women's rights and protections in Arab countries. Women and women's rights activists often invite and appeal to male-dominated states to regulate, intervene, or change the rules in sexual and family life in order to address a range of problems and challenges, including lack of economic and other resources, political and citizenship exclusions, or intimate violence. What are the implications of relying on states as the main arbiters of rights and protections? This is a longstanding feminist question whose answer hinges on underlying assumptions and theories about states and governance. Reliance on states as the primary sources of protection and support in intimate life has largely worked to rearticulate gendered, economic, and other inequitable power relations, bolster states, reconstitute state authority over intimate domains, and limit possibilities for gendered, sexual, and kin subjectivities and affinities. This dynamic may be metaphorically described as a "devil's bargain" since state-delivered rights and protections in these realms are so often attached to important restrictions and foreclosures. The article conceptually and theoretically expands on my research on family law projects in Egypt and the United Arab Emirates in Consuming Desires: Family Crisis and the State in the Middle East *(Stanford University Press, 2011). Its title is inspired by Deniz Kandiyoti's influential article, "Bargaining with Patriarchy" (*Gender & Society, *1988), which I re-engage for analytical purposes.*

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INTRODUCTION

Since the 1980s, an explosion of state, international, and non-governmental campaigns and programs propose to increase women's rights and protections in Arab countries. Women and women's rights activists often invite and appeal to male-dominated states to regulate, intervene, or change the rules in sexual and family life in order to address a range of problems and challenges, including lack of economic and other resources, political and citizenship exclusions, or intimate violence. What are the implications of relying on states as arbiters of rights and protections? This is a longstanding feminist question whose answer hinges on underlying assumptions and theories about states and governance. Reliance on states as the primary sources of protection and support in intimate life has largely worked to rearticulate gendered, economic, and other inequitable power relations, bolster states, reconstitute state authority over intimate domains, and limit possibilities for gendered, sexual, and kin subjectivities and affinities. This dynamic may be metaphorically described as a "devil's bargain" since state-delivered rights and protections in these realms are often attached to important restrictions and foreclosures.

This article conceptually and theoretically expands on my research on family law projects in the United Arab Emirates (UAE) and Egypt (Hasso 2011). Its title is inspired by Deniz Kandiyoti's (1988) influential article, "Bargaining with Patriarchy," which comparatively examines ideal-type familial labor and household regimes in some sub-Saharan Africa and Middle East and Central and South Asia societies. Concerned that Marxist and radical feminist-informed assumptions about class and patriarchy ignore women's agency (accommodation or resistance), subjectivity, and changing situations over the life course (Hammami and Kandiyoti 2006, 1349), Kandiyoti (1988, 275) argues in her article that women in different societies strategize within "concrete constraints," social rules, and household regimes and that each strategy has different gender implications. In the Middle East and other "classic patriarchy" societies, families were historically extended, patrilocal, and corporate (278 – 81). Women stayed in or close to home and worked on biological and social reproduction, while men, especially older men, economically led the household, ruling over women and younger men, a situation she

recognizes as more difficult to maintain for landless households (281). This bargain requires "interpersonal strategies" where women collude in their age and gender-based subordination with the understanding that they would later reap social power as mothers and mothers-in-law over extended households that include married sons (279). Kandiyoti understood that such bargains were being fundamentally transformed by "new market forces" that allow young men to break away from patriarchal authority and require most women to work in formal and informal labor markets while using strategies to maintain their "respectability" (281 – 2). Nevertheless, she found that women prefer men to keep their side of the bargain by fulfilling their masculine responsibilities, especially when there are "no empowering alternatives" (282 – 3).

Since the article's publication twenty-five years ago, Kandiyoti critically reflected on some of its "simplifying assumptions," her use of "ideal types to talk about different kinds of male dominance," and her reliance on theories of class relations to understand gender relations (Hammami and Kandiyoti 2006, 1349). In retrospect, she sees that spaces for resistance are often built into or may easily work within subordinating structures without undermining them. She also reflects that "phenomenological rather than deconstructive" methods may take gender categories and desires as given rather than compel us to examine their instabilities in particular contexts (Kandiyoti 1998, 141 – 6).

Kandiyoti's reassessments invite us to consider as well how feminist, gender, and rights bargains may reinforce problematic institutions, categories, and ideologies and preclude other productive ways of living and thinking about intimate life. I use the verb "bargain" to capture the active and complex agencies, power dynamics, economic exchanges, and negotiations that exist between state-affiliated actors, activists, regular men and women, and others as these pertain to intimate life. States in the classic sovereign sense are a crucial "devilish" party to bargains in intimate and family life given their capacious resources and force, their status as final arbiters on citizenship and legal recognition, and their ability to make and enforce family laws and regulations. I take for granted that the parties involved in a given bargain typically have asymmetrical goals and disparate resources and negotiating power. For example, streamlining court processes, rationalizing law and record-keeping, and insisting that fathers pay for progeny allow states to reduce overall social

welfare outlays, manage their resources, and respond to their population priorities. In turn, a women and her children often have concrete needs that may dovetail: maintenance or housing, legal recognition of a child born from an unauthorized sexual relationship, or a faster divorce from a recalcitrant husband (Hasso 2011, 133, 142). My argument emphasizes that patriarchies are malleable and plural and shows that women and rights activists unintentionally produce and reinforce them in a variety of bargains. It also shows how patriarchies may co-exist with and be challenged by other repressive or inequitable projects, including neoliberal governmentalities that frequently proclaim their interest in empowering women as sexual, gender, consumer, or wage-earning, if not political, subjects. As a result, it is difficult to categorize state and other dominant institutions, including male-dominated police or military formations, as always working on behalf of men writ large or against women writ large, certainly in relation to sexual and family life.

ECONOMIC, POLITICAL, AND LEGAL BARGAINS IN MARRIAGE

Numerous scholars have examined the gendered, sexual, class, and political dimensions of marriage and family life, citizenship, and family law in Arab and other Middle East societies (Abu-Odeh 2004, Charrad 2001, Haeri 1989, Hasso 2011, Joseph 2000, Kholoussy 2010, Mir-Hosseini 2000, Moors 1995, Sonbol 1996, Tucker 1998, Welchman 2004, 2007). Mindful of historical and contextual specificities and the complexities of lived experiences, this scholarship shows how states play crucial legislative, judicial, mediating, and policing roles in the redistribution of men's income to wives, ex-wives, aged parents, and children. It also demonstrates how women from every class background at different historical points and locations in the region approach state-sponsored courts and offices to hold husbands and fathers accountable for responsibilities and costs toward themselves and their children. Many contemporary Arab states offer modest welfare safety nets that include old age, widow, divorcee, and military pension systems. With few exceptions, laws and policies affecting marriage, divorce, guardianship, child custody, and inheritance are organized around a complementary normative logic that understands men and women to be naturally and essentially different

types of physical, psychological, and emotional persons with distinct responsibilities. Men lead households and are financially responsible for the sustenance of wives and children, while women socially reproduce households as mothers and wives, even if they also work in formal or informal economies. Children in most Arab states are considered to be under the legal guardianship of their biological fathers, who are in turn responsible for their housing and maintenance until they become adults, which is commonly marked by marriage.

Most postcolonial Arab states created marriage codes and regulations to serve nationalist ends, which are by definition gendered and depend on defining the boundaries of social and biological reproduction and belonging in the familial *and* national (or state) sense. Barbara Stowasser and Zeinab Abul-Magd (2004, 167 – 8) argue that the term "family" in its current nuclear, permanent, and restrictive legal understandings has no "precedent in Qur'an, Sunna, or classical Islamic" jurisprudence, which defined "the marriage contract as a fairly flexible instrument that the spouses could enter and exit within reasonable regulations." The marriage contract was treated as a subcategory of civil contractual law, a way for any person to "satisfy his or her sexual desire in a lawful manner" (167 – 8). The idea of marriage as producing a permanent nuclear family "first appeared in the Arab-Islamic discourse on marriage and divorce during the second half of the nineteenth century," initiated mainly by Egyptian male "reformist and/or nationalist intellectuals" exposed to European culture and its understanding of the relationship between the family and "the modern nation-state" (Stowasser and Abul-Magd 2004, 168). In turn, Muslim religious scholars

> adopted (and modified) the modernist position of twentieth-century Arab state legislatures that the family is the cornerstone of society. In this new legal universe, any internal or external attack on the existing personal status codes calls forth the defense of traditionalist forces that include the very ulema who otherwise deem the modern legal codes as Western inspired and therefore inauthentic. (Stowasser and Abul-Magd 2004, 177)

These dynamics are more recent in the largely monarchical Arab states in lower Asia Minor, such as the UAE, where rulers are more likely to constitute their political and cultural legitimacy in Islamic rather than

republican or nationalist terms and different forms of Islamic jurisprudence continue to hold sway. These monarchical states nevertheless share with other Arab states an enduring concern to assure their publics that state-initiated legal changes in family realms are consistent with sharia. Sharia refers to a complex and layered set of Islamically informed, rather than determined, legal systems that should be understood as having developed civil and secularized (if not statist) aspects in various contexts well before Western colonization (Shalakany 2007, 44). The competing sources of legal authority represented by independent Islamic jurisprudence pose significant challenges to the consolidation of sovereign authority. States use legal rationalization as one strategy to undermine this competition. As I contend elsewhere, rationalization of law and judicial systems has typically also been encouraged by modernizing activists and marginalized individuals and collectivities, including feminists, who often share the goal of weakening the "traditional" authority systems of family, religious, tribal, and ethnic institutions (Hasso 2011, 25 – 6, 170, 172).

Whatever its benefits for modernizers and marginalized groups, legal rationalization often institutionalizes inflexible rules for marriage, divorce, and gender relations and increases the influence of states, social workers, religious appointees, police forces, and male parliamentarians over intimate lives (32 – 45). Moreover, state involvement typically restricts rather than expands women's options. This is clearest in situations where citizens and non-citizens marry and/or reproduce, since citizenship law in most countries disadvantages women with respect to *jus sanguinis*, or the right to pass on nationality to a child based on blood relations. While personal status codes typically limit the ability of Muslim women to marry outside their religious tradition, citizenship laws go further in most states by limiting women citizens' ability to acquire state recognition of a religious marriage with any non-citizen man.

CHANGING FAMILY LEGAL SYSTEMS IN THE UNITED ARAB EMIRATES AND EGYPT

In *Consuming Desires: Family Crisis and the State in the Middle East*, I discuss legal, administrative, and procedural transformations affecting marriage, divorce, and citizenship in Egypt since 2000 and the promulgation of the first UAE federal personal status code in 2005 (Hasso 2011).

Both legally expanded state authority over family life and defined new patriarchal family forms, although the legal changes eventually eased a woman's ability to obtain certain kinds of divorce in Egypt (133 – 53). Men in Egypt and the UAE continue to have the right to unilateral divorce and polygyny, marriage continues to be premised on principles of wifely obedience and sexual access in return for economic maintenance from the husband that is assured by state courts, and divorce initiated by women now requires reconciliation attempts with state arbiters and counselors. While the changes may serve emancipatory, equity, or justice purposes for some women, they do so largely within the restrictive frameworks already legitimated by each state and dominant gender and sexual ideologies. Women in both countries advocated for and implemented such changes as state employees, relatives of rulers, or as part of professional and putatively non-governmental organizations (NGOs) that exist in various proximities and relations to state apparatuses.

United Arab Emirates

While Egypt was a field of political contestation that included feminist activism and women's rights NGOs even before the revolution that began in January 2011, the same cannot be said of the UAE. In the UAE, benevolent undemocratic rule is largely accepted by "native" inhabitants who have citizenship in a state that controls significant wealth. These citizens comprise less than 20 percent of the country's residents and expect a good deal of pastoral care and cultivation by the state. Moreover, rulers pride themselves on having used oil wealth to build a modern country that facilitates high levels of education for girls and women and integrates women into most professional fields and government offices. Given the repressive political context, bargaining between state authorities and citizens in the UAE must be understood as limited, although some bargaining clearly occurs below public and scholarly radar, especially between members of the ruling families of different emirates, among ruling family members, and between rulers and religious authorities.

The UAE Federal Law No. 28 of 2005 in Matters of Personal Status for the first time produced a federal code of personal status that applied to all Muslim Emiratis. The law did not emerge from advocacy by social movements or NGOs since UAE rulers repress independent political and

women's organizations. Legal and policy initiatives related to marriage in the UAE emerge as federal top-down projects incited by a variety of population concerns that are shared by rulers and national elites (134 – 42). While polygyny is frowned upon as leading native women to divorce native men, Law No. 28 does not restrict this male prerogative (114, 121 – 31, 134 – 42). Law No. 28, federal and emirate-level policies and programs (involving many women), and government-sponsored pedagogical publications target children, young men, women, newlyweds, mothers, wives, or husbands in campaigns to build and sustain the health and reproduction rates of Emirati citizens (Hasso 2011, 132 – 42, 159 – 66, United Arab Emirates 2006, 22 – 3). State authorities strongly prefer that Emiratis marry and reproduce with each other rather than with migrants, raise their children in heteronormative nuclear families, and avoid what it sees as risky sexual relations (Hasso 2011, 99 – 131, 160 – 6). With some exceptions, these agendas are largely shared by other elites in the UAE, although I often heard different motivations and anxieties in their accounts. Women of elite and non-elite backgrounds shared many complaints about the gendered, sexual, and family desires and practices of their male compatriots, as did some men and women court officials and social workers (72 – 80, 106 – 31, 141 – 2, 159 – 66).

Given restrictions on expression, it is significant but not surprising that dominant discourses on legal unification and codification of family law in the UAE did not problematize how the code expands the power of UAE federal authority in an authoritarian political system where sharia courts are domains of plurality and independence. Most court officials and legal scholars I interviewed in Dubai and Abu Dhabi were adamant that federal unification of family rules was necessary for reducing complexity and confusion across different emirates and making it easier for men and women to know their marital and divorce rights and duties, irrespective of the dominant school of Islamic jurisprudence followed in a given emirate or by a given citizen (134 – 42). More broadly, with the exception of some critical indigenous feminists, most Emirati academics, social workers, and pedagogues assume that the state has an obligation to produce regulations, policies, and educational programs (e.g. training in communication skills for newlyweds) to ameliorate high rates of singlehood among Emirati women and high divorce rates, including the significant proportion of breakups initiated

by native women (e.g. Al-Gharaibeh and Bromfield 2012, 440, Hasso 2011, 117 – 9, 136).

Egypt

In Egypt, Law No. 1 for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters consolidated procedures related to family law in January 2000. Law No. 1 and the legal changes that followed resulted from many years of strategizing by coalitions that included leaders and supporters in the ruling National Democratic Party (especially the National Council for Motherhood and Childhood, the National Council for Women, and the Ministry of Justice), independent lawyers, high-ranking judges, women's rights activists with different degrees of distance from the state, and women academics (Shaham 1999, Singerman 2004). Given the much more dynamic Egyptian political field, state actors, religious authorities, lawyers, legislators, pundits, professional organizations, and women's rights activists staked out varying positions and employed a range of narratives in the legal campaign that preceded passage of the law: easing women's ability to acquire a judicial divorce without a husband's consent, improving court efficiency by reducing a backlog given the lengthy and difficult-to-meet requirements of judicial divorce for women, saving time and money, protecting the Egyptian family, and aligning personal status law with international gender norms (Bernard-Maugiron and Dupret 2008, 57 – 9, Hasso 2011, 142 – 5, 150 – 1, Sonneveld 2012, 19). Islamic elites and institutions were divided over the proposed changes and whether they violate sharia (Hasso 2011, 143 – 4, Sonneveld 2012, 36 – 8, Welchman 2004, 59 – 67), while women advocates and government officials insisted that the changes would be consistent with such principles. Advocates were most likely to justify the law on the basis of stabilizing the Egyptian family rather than improving women's rights or facilitating their freedoms (Singerman 2004, 167, Sonneveld 2012, 38 – 9). Some Egyptian feminists worried about alliances between activists and apparatuses of the authoritarian state, criticized the exclusion of independent feminist activists and ordinary women from the process, or called for a family code that does not depend on the maintenance/obedience formula, although these critiques largely did not occur in public spheres (Hasso 2011, 147 – 8, 151).

Subsequently, Law No. 10 of 2004, which was initiated by the Min-

istry of Justice and supported by prominent lawyer Mona Zulficar ("a key member of the legislative committee in the National Council for Women"), established the family court system in Egypt, an idea introduced in Article 10 in Law No. 1 of 2000 (al-Sharmani 2008b, 12). The law intended to "centralize and unify matters relative to personal status and to gather all courts in charge of personal status affairs within one and the same institution" (Bernard-Maugiron and Dupret 2008, 63). Egyptian women face many practical and substantive obstacles in this court system (Bernard-Maugiron and Dupret 2008, al-Sharmani 2008a, 2008b, 33 – 60, Sonneveld 2012, 105 – 32).

Egyptian personal status law remains based on an axiom of gendered dependence. In 2007, the Egyptian National Council for Women sponsored a ten-cassette legal rights educational series, "On the Path of Life," developed by a specialized committee of legal experts, Ministry of Justice representatives, and Muslim and Christian "men of religion." The language used demonstrates how complementary gender relations (where sexual, gender, and material contractual bargains are imbricated), the neoliberal priorities of the Egyptian state, customs, religious expectations, and patriarchy are intertwined. A wife and husband who are licitly married to each other have the following mutual rights, according to the first tape: "sexual access and intimacy; inheritance, even if no sex has occurred; no cheating with others; and good intimacy [good sex?]" (Ghunaym 2007, Tape 1). The husband has the right for a wife to obey him, in the mixed metaphors used on the cassette, since

> he is the driver of the vehicle of married life; he is the manager; he is responsible for the family's (*usra*) security and provision of maintenance for all its members. The head of any administration or interest cannot manage it well unless all the individuals in the interest obey him," although "this obedience does not include harming requests.[1]

He also has the right to restrict the wife to the marital home in order to "reduce public talking and involvement of the devil" and avoid "instability" (Tape 1).[2] This right does not allow him to limit the wife from working outside the home unless "she goes out all the time, hurts the well-being of a nursing infant, or hurts family life," and these accusations are "proven in court." In such cases, she would be considered disobedient and would not receive maintenance (Tape 4). Men are responsible for

family guardianship and leadership and have polygyny rights (Tape 9). A wife has the right to a dowry that shows respect for her ("the expensive thing is valued and placed in a safe, clean, and secure place; but the cheap thing is not cared for"), to be economically maintained during marriage and the waiting period after divorce, and to equitable dealings if the man marries more than one wife (Tape 1).

Economic considerations are crucial to the devil's bargain between states and women in their intimate lives, with states, often at the behest of regular women or their advocates, deploying their services in extractive and protective roles while reinforcing fundamentally conservative family forms. Article 72 of Law No. 1 instructs Bank Nasser to pay court-ordered judgments of maintenance and rent from the husband to his "wife, divorcé, children, or parents, in agreement with the rules and regulations of the Minister of Justice and Minister of Insurance [and Social Affairs]." Article 73 calls on state apparatuses, companies and private interests, unions, and the military to assure that a family court judgment of maintenance leads to seized deductions from the husband's wages in specific percentages outlined in Article 76 for the wife and family members, to be picked up at Bank Nasser or any of its branches at the beginning of the month if the wife cannot resolve a maintenance issue amicably with the husband (Ghunaym 2007, Tape 6, Hasso 2011, 146, Law No. 1 2000). An "On the Path of Life" speaker encourages women to seek assistance from the state by bringing maintenance and alimony lawsuits to family court, whose officials will demand payment on her behalf, in order, from the husband, father-in-law, or other male relatives of the husband, determining who has the money to pay (Ghunaym 2007, Tape 6).

This didactic discourse instructs women to prepare their lawsuits by using only allowed bases and required procedures in order to save the time and resources of family court. A non-compliant man determined able to pay maintenance to a woman could "be imprisoned for no more than one year and fined no more than 500 LE or one of these two punishments." However, "sisters are advised to focus their efforts less on imprisonment than on fulfilling their rights through the civil means that are available to them" (Tape 6). While transcribing and translating Tape 6 of the "On the Path of Life" series, I wrote to myself: "Could it be that women need the empowered state more than men?" As was the case in

the UAE on these matters, the speakers use language that constitutes the state as the protector of women while encouraging conservative family forms as the national ideal.

TRANSNATIONAL NEOLIBERAL-SECURITY BARGAINS

The "On the Path of Life" series was funded by the United Nations Development Programme, the European Union, and the Arab Program for Information Technology and Communication, illustrating how such state projects are co-articulated with various stakeholders who exist on multiple scales. The series was sponsored by the National Council of Women, a state organ headed by the wife of the former Egyptian president, Suzanne Mubarak. Women's rights organizations and feminists participate in such projects with different levels of commitment because of their sheer ubiquity in the Egyptian political field and the extent to which they are encouraged and funded by UN development organizations and U.S. and European governments and funding agencies.

An activist I interviewed in mid-2011 in Cairo believes that legal and family court changes were rushed through by the government in the previous decade in order to "claim credit… in the eyes of the Egyptian general public as well as international donors" and to acquire "millions" from the U.S. government (Suliman 2011). Indeed, the judiciary and "international business interests" had long viewed the backlog of divorce and maintenance cases to be "paralyzing" for Egyptian courts and considered "judicial reform"—which includes isolating marriage and divorce-related lawsuits to their own family courts—"as an essential precondition for and component of Egypt's growing involvement in the global economic order" (Singerman 2004, 165 – 6). To support "Egypt's goals to fully implement Law No. 10," the U.S. Agency for International Development (USAID), working "closely with the Ministry of Justice (MOJ) and the National Council for Childhood and Motherhood (NCCM) (now within the newly established Ministry of Family and Population)," established the five-year $17 million Family Justice Project (FJP), whose implementation began in January 2006 (U.S. Agency for International Development 2009, 2).

The stated objectives of the FJP are "to strengthen access to justice, enhance family stability, and protect the rights of children" by

"strengthen[ing] family mediation" and "improv[ing] access to and information about the family court services." The FJP provided for "a broad technical assistance and training program for [judges and mediators in] the family mediation centers, including extensive infrastructure projects in [the] three pilot jurisdictions" of Giza, Port Said, and Minya (2).

The messy connections between repressive Arab states, Western states, NGOs, profit-making ventures, and neoliberal interests is further illustrated by USAID's allocation of "media support for the [Egyptian] Ministry of Justice" (Office of Inspector General 2009, 8).[3] For example, approximately $2 million of the total amount was subcontracted by USAID to the NGO sector to "raise awareness of the family courts," although the main government contract was with ARD, Inc. (U.S. Agency for International Development 2009, 2), based in Burlington, Vermont. ARD is a "wholly owned" company of Tetra Tech, "one of the largest providers of infrastructure and water services to government entities and the private sector in the United States."[4]

FAMILY AS A "PRIVILEGED INSTRUMENT" OF GOVERNANCE

Women's desires to regulate male behavior and cultivate certain subjectivities in relation to marriage, divorce, reproduction, and sexuality often overlap to some degree with state concerns in these domains. The Egyptian and Emirati states, like many women in the region, are interested in shaping the sexual and familial behavior of men in directions that reproduce self-sustaining, responsible, stable, heteronormative patriarchal families or, if this is not possible, at least compel men to take economic responsibility for wives, ex-wives, and children. Economic costs related to unruly marriage, divorce, reproductive, and sexual practices can make even masculinist states allies of women more than of men on such population matters. The consequences of unruly family and sexual practices are exacerbated when gendered and sexual double standards are deeply embedded in cultural assumptions, norms, and law, since these limit the options of women and girls (Hasso 2011, 14, 31 – 2, 133, 169). Devil's bargains are common in such contexts by a shared, not necessarily feminist, agenda between women, state officials, social workers, and others to cultivate responsible marriage and sexual practices among boys and men.

Appeals for state intervention in intimate realms and state in-

terventions are, not surprisingly, often part of a pastoral discourse (Foucault 1982) of the necessity to care for and protect the family. Michel Foucault (2009, 105) famously argues that in modern states, the family becomes "a privileged instrument for the government of the population rather than a chimerical model for good government." "The state," he contends in a January 1979 lecture, "is nothing else but a mobile effect of a regime of multiple governmentalities" (Foucault 2008, 77). Governmentality describes a kind of reasoning and related set of practices designed to structure "the possible fields of actions of others" (Foucault 1982, 789 – 90; 2006; 2008, 32 – 3).[5] Governmentality operates *through* a variety of practices rather than being lodged in a "transcendent singularity" (Foucault, 2009, 93, 88 – 9). Because of this dispersal and immanence, there is a necessarily "uncertain" quality to the operations and impact of power from this view, "an uncertainty that constantly demands new forms of knowledge and practice" (McKinlay and Pezet 2010, 487) by researchers, scientists, engineers, and other professionals.

While Foucault acknowledged states to be the most important "form" and location for the "exercise of power," he "rejected attempts to develop any general theory about state power—or power more generally—based on a priori assumptions about its essential unity, its pre-given functions, its inherent tendency to expand through its own power dynamics, or its global strategic deployment by a master subject" (Jessop 2007, 36, 37).[6] Thus, he understood power to emerge from complex interactions and dependencies between state and non-state actors and apparatuses rather than as primarily lodged within sovereign authority. This understanding has influenced a set of approaches in legal scholarship that Kevin Walby (2007) has usefully described as "post-sovereigntist." In contrast to classic approaches to the state, post-sovereigntist approaches (feminist and non-feminist) draw our attention to bio-political and population concerns. They show how categorical distinctions between state and non-state (e.g. "civil society"), national and international, state welfare policy and philanthropy, government and economy, and public and private ignore the co-articulations and interdependencies of these ideological, discursive, and institutional formations.

Though governmentality is an extremely productive frame for

understanding certain forms of power, certainly with respect to marriage and intimate life, Foucault's (2009, 109) definition of the state as a "composite reality and a mythicized abstraction" underplays its continuing importance as a node of law, policing, and resource distribution. States make citizenship laws and determine rights and resources for citizens, non-citizens, wives, husbands, and children. Feminist scholars in many disciplines have demonstrated that intimate, sexual, and family life cannot be understood to exist in binary opposition to states, law, economies, or public spheres. Feminist scholars have shown how nationalist, ethnic, and religious projects—all of which are concerned with their collective reproduction in biological, legal, and cultural terms—work through sex, gender, and marriage. While post-sovereigntist scholars of law take law more seriously than did Foucault (Golder and Fitzpatrick 2009, Walby 2007), they have largely not examined family and intimate life as loci of legal and other forms of governmentality. This is despite the fact that familial, sexual, and gender relations intersect with the "population" concerns of state and other actors in ways Foucault (2009, 104 – 5) noted.[7]

Modern Arab states are similar to modern Western states in that marriage is often constituted as the "bedrock" of society and yet understood to be "fragile" (Lewis 2001, 117 – 8). While families are important to modern states as institutions of social, biological, and political reproduction, their ability to bear the costs of this reproduction and limit behavior that hurts state budgets may be equally important. Jacques Donzelot illustrates these concerns in his study of nineteenth-century France, where "tactical collusions" occurred between states and parents of unruly children, wives of irresponsible men, and children of unreliable parents, although their interests were not necessarily "symmetrical" (Donzelot 1979, 25).[8] For Donzelot, "the social concern with children… made family life… a target of social intervention[s]" that transformed families. Families become a "point of intersection for different social practices: medical, judicial, educational, psychiatric" (36).[9] A strategy does not imply or require measurable intentionality in a post-sovereigntist perspective: A strategy for maintaining a population's health, for example, can include coordinated and uncoordinated interventions that originate from multiple individuals and locations at different scales and levels of influence and resources (91).

THE PROBLEM WITH EFFICIENCY

Economic and distributive concerns permeate the knowledges, practices, and reasoning of governmentality projects as well as state rules for citizenship, marriage, and reproduction. Particularly striking to me are the related efficiency concerns, which are widely present in the legal reform, rationalization, and streamlining narratives of state officials and professional elites in Egypt and the United Arab Emirates (Hasso 2011, 43, 133 – 5, 142). Such concerns can be strategic or genuine and serve multiple agendas, some salutary (e.g. facilitating a quicker divorce for women) and others less so (e.g. consolidating or rearticulating state control).

Nikolas Rose (1999, 29) argues that notions of efficiency, prominent in debates about "government, industry, and social organization" and diverse in their meanings, often play a "tactical function in these discourses." Similarly, I found advocacy of efficiency to be present in misogynist, neoliberal, and classist narratives, as well as in feminist and other progressive rhetoric. One meaning of efficiency approximates what Foucault terms the frugal exercise of power: people, souls, and communities are directed rather than commanded (Foucault 1982, 789 – 90, Foucault 2008, 37 – 8). This is politically economical rule that uses the least sovereign power and money to harness and manage human and other sources of value. In neoliberal contexts, efficiency projects and processes are particularly concerned to lower costs, "harm reduction, economy, and effectiveness"—in sum a "governmental style that is organized around economic forms of reasoning" (Garland 1999, 17 – 8).

In practical and empirical terms, projects whose putative or intended goals are legal, political, administrative, or economic efficiencies are often incomplete, ineffective, or inefficient, in empirical terms. For example, while rationalization of family law in the UAE did consolidate and federalize the rules of personal status and thus streamline the work of family courts and legal workers, it also added a layer of required counseling and mediation for women seeking judicial divorce, did not restrict extra-judicial divorce by husbands, and did not reduce divorce rates. Efficiency rationales, while appealing (including to me), are deployed for a variety of purposes, many extractive or repressive.

FEMINIST TROUBLES WITH BARGAINS

Feminists often ally with state apparatuses, appeal for legal changes, and bargain for state resources for a variety of reasons, including being comfortable with the expansion of democratic state protections and support for the underprivileged and certainly women (Orloff 2009). Feminists in Arab and other Middle East contexts, where states have been undemocratic and masculinist, will bargain or collude with them because options for social change are perceived to be limited. However, in the process, fresh thinking on sexual and family life is foreclosed.

Wendy Brown and Janet Halley (2002, 19, 20) insist that feminists put "legalism under a viewfinder," even when its goals are leftist or feminist, which is largely not the case in the examples discussed here, in order to "assert the possibility of political life and political projects not fully saturated by legalistic constraints and aims." Too often, Brown (1995, 5) argues, activists seek rights, regulations, or "distribution of goods" for the "vulnerable or disadvantaged" to the detriment of demands for the "redistribution of political power." Ambivalence toward social reform and rights projects is necessary not because

> reform is impossible… but to reveal the extent to which reforms must pose as central *not simply a certain set of ends*—the elimination of poverty, the provision of free and universal health service on a non-commodity basis or whatever—*but also the means within which those ends are to be met* and the relationships and distribution of power" expressed and produced by such means. (Rose 1979, 60, emphasis added)

The political philosopher Jacqueline Stevens argues for a critical feminist and yet pragmatic relationship to states, proposing a radical redefinition of states and their responsibilities. She reminds us that modern states are "political societies" and membership organizations built on married forms of family (Stevens 1999). States decide what marriage, child, or family forms count as legitimate (9, 109, 136, 199). States determine the legal categories and implications of husband, wife, father, and mother and decide when biology counts and when it does not for redistributive, citizenship, parental, or other rights (222). Her argument recognizes that states, hegemonic family forms, and racial-ethnic, religious, and other differences are mutually constituted, which is certainly

true in Arab and other Middle East states. State-recognized marriage to a biological father, she argues, legally undermines a woman's rights "to make decisions about her children" (227). States should stay out of marriage, making it a "purely private activity" (183), and should instead focus on enforcing contracts related to fulfilling children's developmental needs (157). In more recent work, Stevens (2010, 180 – 3) elaborates that marriage law should be replaced with parenting contracts for the mother-child dyad, with "mother" broadly defined. More radically, she argues for abolishing birthright citizenship altogether, replacing "nation-states" built on violence and exclusions, reinforced by myths of shared familial, ethnic, racial, or religious genealogies, with technocratic "states" accountable to all "stakeholders" (75 – 102).

Feminists in India have a history of skepticism regarding gender-based legal reform and rights projects because they have often fed patriarchy and communal/ nationalist divisions (Gangoli 2007, 9, 40 – 4, 55, 84). Geetanjali Gangoli (2007, 9, 55, 119) summarizes Indian feminist critiques of such projects, most of which can apply with slight revisions to similar projects in Arab and other Middle East contexts: They hurt some women, reinforce the category of "woman," restrict the "emancipatory impulse of feminism itself," rely on languages that "can be alienating, individualistic, and homogenizing," "validate the superior status of the state over citizens," leave out non-citizen sex workers and minoritized women whose citizenship is "contested on a day to day level," and do not address gender, "caste, class and community" as cross-cutting sources of privilege and oppression. Examining feminist projects in non-democratic Singapore, Geraldine Heng (1997, 37, 45) shows how recognition of certain legal rights by patriarchal state authorities excludes a range of identities and practices even as the authorized rights can function "to the very real advantage of women." Such expansions are often instrumentalist and selective, constituting the state as a protector and provider for women and children in devil's bargains. This is a patronage relationship that leaves little room for feminist social transformation, or in Heng's terms, "rights seized upon and practices initiated by women in the pursuit of their imagined collective interest" (45). A number of scholars and activists, especially in post-revolutionary Egypt, have similarly argued for gender-based legal rights and "development" campaigns to be replaced by social movements (MacKay 2012, 2,

6, 98 – 9); for broad-based feminist movements that explicitly recognize themselves as political (Sholkamy 2012); and for feminist projects that take seriously intimacy, identity, and embodiment for men and women.[10]

This article also points to neoliberal economic concerns and interests, as well as economistic-efficiency discourse in such projects, which are largely based on governmentalizing models that seek to privatize welfare and care. Anna Marie Smith (2007, 68) examines collusions between states and citizen-sexual subjects (or their advocates) within the neoliberal governmentalities that emerged in earnest in the 1980s to construct "a new subject of power, namely the individual as an entrepreneur who seeks to maximize profits, minimize costs, and manage risk exposure." Advocates for poor mothers, argues Smith (2007, 118), while correct that child support payments from husbands "can lift some of these women and their children out of poverty," do not address how an increasingly marketized "wage labor market… locks a substantial number of these men and women in the lowest income brackets." The shift to "paternacare," for example—forcing husbands to pay for biological children—an agenda often shared by policymakers, legislators, and courts, "encroaches upon poor custodial mothers' privacy rights and right to self-determination, and… uniquely imposes its heteropatriarchal model of dependence on poor women" (Smith 2007, 118). In a similar vein, Brenda Cossman (2002, 484 – 5) shows how the Canadian state increasingly privileges depoliticized and de-eroticized notions of "love" and sexual citizenship that encourage self-reliance within married families of heterosexual or homosexual forms. Analyzing Canada more recently, Katherine Osterland (2009, 93, 94 – 5, 97, 101) contends that Canadian law has normalized committed love relationships, even of same-sex couples, within a privatized "rhetoric of care" that is part of a "technology of governance" whereby states seek to oversee rather than "invasively regulate" families and reduce the provision of welfare benefits. She argues that "both sexuality and emotions are increasingly subject to 'rational management' and we must be critically attentive when self-actualization, affect, even the 'soul,' are incorporated into processes of government" (94).

In the Arab world, social debates and legal proposals related to sexuality, gender, and family life occur within and must respond to discursive terms established since the nineteenth century by Western

colonialism and regularly rearticulated in contemporary imperialisms that express themselves in the languages of security, development, neoliberalism, and even rights. In such contexts, the rise of United Nations- and international financial institutions-based protocols, demands, metrics, and funding opportunities focused on women's rights and development campaigns elicits fierce rhetorical battles between rulers, conservative legislators, critics of various ideological stripes (including Islamist), women-focused NGOs, and social movements. As Hania Sholkamy (2012, 94) writes, "For decades, development… programmes have adopted the values of human wellbeing and dignity, which are both profoundly political projects, while at the same time pretending that development is an apolitical venture." Arab states, in turn, want to be awarded such development money and avoid reprimand from Western states, non-governmental funders, and UN apparatuses. These states actively compete with independent women's organizations and NGOs, and NGOs and women's organizations compete with each other, for recognition, approval, and external funding.

Ron Shaham (1999) and Diane Singerman (2004, 171 – 6) found such competing agendas and discourses in debates surrounding a proposal to include a checklist of optional stipulations on the Egyptian marriage contract form in advance of the 1994 International Conference on Population and Development (Cairo) and the 1995 UN Women's Conference (Beijing). Lila Abu-Lughod (2009), Fida Adely (2009), and I (Hasso 2009) use different critical lenses to examine the problematic languages and elisions of the UN Development Programme's Arab Human Development Report, which focused on women's empowerment. Such research provides windows on the complex motivations that structure legal rights, women's rights, and development projects. It also shows the difficulty of extricating state (at executive, judiciary, policing, and legislative levels) agendas from NGO, scholarly, or independent feminist agendas, a key recognition in post-sovereigntist and deconstructive approaches. This research also illustrates the extent to which these matters are driven by the economic priorities and metrics of transnational governmentality articulated through a rhetoric of concern for women's rights.

Women's rights advocates in the region often justify and invite state intervention in intimate domains even when the state is built on gender-based and other repressions and exclusions. Such a paradox is

illustrated by Zainah Almihdar's appeal to the authoritarian, securitized, patriarchal Saudi state to improve patriarchal Islamic *fiqh*-based laws by codifying them. She calls on the state to "modify… all social and cultural patterns that lead to violating women's rights" in order to fulfill the UN Convention on the Elimination of All Forms of Discrimination against Women[11] Article 5 requirements of signatory "State Parties" (Almihdar 2008, 13). Codification of family law, she argues, would provide: "women and children an official legal document to rely on, one that would guarantee their rights and remove uncertainty about the outcome of their cases." Codification would also "limit the discretion of judges in family law cases thereby avoiding contradictory or arbitrary judgments" (13). Such codification should be based on Hanbali jurisprudence, she argues, but adapted "to modern day standards of Human Rights" by setting a minimum age for marriage and defining the limits of men's legal guardianship over women (13). Such appeals violate the premises of multidimensional feminist transformation and dovetail with the consolidating political agendas of masculinist, undemocratic states and their economic, population, and security concerns. In contexts without feminist movements that recognize gender and sexual relations in multidimensional and cross-cutting terms, include and engage women and men from many backgrounds, and consider more critically on what basis states are asked to intervene in intimate life, even changes that increase some women's rights and resources and "protect" them are likely to have repressive consequences.

Many feminists will argue that since women and other marginalized groups experience violence, misogyny, and repression in their families and religious, ethnic, or caste communities, state legal remedies may provide spaces of freedom, recognition, and resources (Gangoli 2007, 123). Thus abandoning states is "a luxury that [many women] cannot afford" (125). Amina Jamal's (2005, 58, 59) analysis of feminist discourses in Pakistan, for example, illustrates how activists deploy and appropriate "liberal notions of citizenship" and "universalistic concepts of rights and freedom" in response to oppression from an Islamized and militarized state, as well as "culturalist" fundamentalist groups. Such feminists insist that the state has a "responsibility… to uphold the rights of citizens by disallowing (mis)interpretations of the Quran and Hadith since this is against both Islamic justice and the constitutional rights of citizens"

(69). The activists argue that Pakistan, as a "modern state," must "override all other claims to authority such as familial, tribal, or religious and act as a neutral arbiter of interests within the nation when the rights of the individual collide with the interests of the 'community'" (69).[12] While such appeals are understandable, it is improbable that militarized state apparatuses that are fundamental sources of so many problems faced by Pakistani women, poor people, and minoritized ethnic groups will serve as sources of feminist solutions.

CONCLUSION

Mine is not a purist position that requires feminists to avoid or condemn all rights and development projects, since the consequences of such projects often exceed the intentions or control of their designers, and situational factors and context deeply matter. Nevertheless, addressing states as allies in women's and sexual rights campaigns is neither innocent nor necessarily emancipatory in a feminist sense. Such campaigns too often reproduce or reinforce new forms of inequity and foreclose a range of options, certainly when they work on given discursive and political terms rather than redefining them. It is essential that feminists approach this issue carefully and consider multiple options for supporting and producing more affirming, inclusive, and just forms of living. Such options require more wide-ranging participation by men and women, more imaginative and critical consideration of means and ends, and more care in alliances, strategies, and language. Like all social formations, legal institutions and state apparatuses are malleable and subject to transformation. Nevertheless, cautious and even ironic (in the literary sense) sensibilities by activists would broaden our focus, resources, and battles beyond state apparatuses and law, recognize them as largely unconcerned with inclusion or justice, and restrain our expectations of what they can deliver.

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NOTES

1. Unless otherwise mentioned, I performed all translations from Arabic to English.

2. See also Hasso (2011, 156).

3. See also U.S. Agency for International Development (2009, 2). An entirely new paper is required to analyze the semiotics, assumptions, and relations of power expressed in these USAID reports.

4. See: "ARD: A Tetra Tech Company": https://www.gsaadvantage.gov/ref_text/GS10F0093M/0H8BI9.22TI2T_GS-10F-0093M_ARDINCNOV2009.PDF (accessed on November 19, 2013).

5. Governmentality techniques are part of all modern states, not only liberal or neoliberal ones (Dean 1999, 187 – 8, 190, 212, Foucault 2008, 21 – 2).

6. See also Foucault (1982, 793; 2008, 77 – 8, 186 – 8).

7. See Hasso (2011, 27 – 32) for a detailed discussion of post-sovereigntist approaches to law that have worked from Foucault's writings on governmentality, among others.

8. See also Shapiro (2000, 278), Hodges and Hussain (1979, 98), Hasso (2011, 133).

9. See also Hodges and Hussain (1979, 89 – 90).

10. This position is represented by the Cairo organization Nazra for Feminist Studies. I interviewed Mozn Hassan, Maissan Hassan, and Doaa Abdel Ayaal in Cairo on July 24, 2011.

11. UN Convention on the Elimination of All Forms of Discrimination against Women: http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed on November 19, 2013).

12. See also (Jamal 2005, 74 – 5).

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