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ARTICLE

FAMILY, NATION BUILDING, AND CITIZENSHIP: THE LEGAL REPRESENTATION OF MUSLIM WOMEN IN THE BAN AGAINST THE BIGAMY CLAUSE OF 1951

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ABSTRACT

This article focuses on the representations and perceptions of Muslim Palestinian women as encapsulated by early Israeli legislation. The analysis is based on a close reading of the negotiations and discussions leading up to the criminalization of bigamy by the Israeli state and, in particular, those principal discussions surrounding the legislation of the Women's Equal Rights Law of 1951. Primary materials from the Israeli State Archives are used to reconstruct the debates in the Knesset, assess the legislation's intended effects on the Muslim Palestinian family, and trace the opposition to it fielded by the Palestinian religious leadership. The legislative process is dissected to expose the implicit and explicit patriarchal and nationalized underpinnings of the image of the "ideal family" fashioned by Israeli legislators. Despite their national divide, I argue, both the Israeli Knesset and the Muslim community leadership articulated women's roles in similarly distinctive national-patriarchal hues.

KEYWORDS: Muslim women, family law, bigamy, citizenship, nation building, Israel, Palestine

INTRODUCTION

The aim of this article is to explore how Palestinian Muslim women (hereafter Muslim women) were represented in the legislative process of the criminal prohibition against bigamy as reflected in the Women's Equal Rights Law of 1951, in order to reveal the underlying patriarchal and national assumption with regards to family, women, and citizenship.

Archival materials are used to reconstruct and analyze debates in the Israeli parliament, the Knesset, regarding the 1951 legislation of the Ban against Bigamy in the Women's Equal Rights Law and the Muslim and qadis' response to this legislation. The Women's Equal Rights Law was the first bill in which the Israeli Knesset dealt explicitly with gender equality. Its wording marked the boundaries of gendered citizenship in the Israeli state. Its principled image of the Israeli woman was Jewish, Zionist, Ashkenazi, and Hebrew-speaking. Unlike the arrangements under the British mandatory government, the Israeli criminal law in principle applied to religiously condoned Muslim practitioners of polygamy, notwithstanding the stipulation of shari'a law. Its passing was, therefore, a watershed moment in the official legality of polygamy in Israel.

The Women's Equal Rights Law of 1951 played a seminal role, enshrining women's equality in law, establishing the boundaries of state intervention into the family, and attempting to impose normative notions of femininity, nuclear families, and households. In commending what is normative and desirable, the Israeli legislators also implied what would be abnormal and undesirable. The analysis of the discussions the Israeli Knesset held during the legislative process in which these issues were dealt with is the heart of this article.

I focus on a newly revealed axis of Muslim women's legal representation in the process of legislation of the bigamy ban in the Women's Equal Rights Law. I argue that Muslim women's citizenship was indirectly defined as a secondary aspect of the main definition of Jewish women's citizenship, represented by the national-patriarchal discourse of the Israeli legislators, the qadis, and the Arab Knesset member.

The institutionalization of the criminality of polygamy should be read against the backdrop of the broader nation-building effort on behalf of the Jewish state, a process in which central Israeli institutions and legal structures rose to permeate the political landscape, and government-led propaganda efforts sought to impose normative definitions of family. Much of the state legislation concerning personal status was passed during this transformative period between colonial and Israeli military rule. Newer policies addressing the legal and political complications facing the state were urgently needed to define the boundaries of the citizenship of the sizable Palestinian minority and to reconcile the state's commitment of ensuring religious freedom and criminal law.

The analysis of the legislative process is based on a dissection of the implicit and explicit national and patriarchal underpinnings of the ideal family type in the Jewish state, a collective process of imagination that is inseparable from the process of legislation. Despite their national divide, both the Israeli Knesset and the Muslim community leadership articulated women's roles in distinctively national-patriarchal hues. From the perspective of the Israeli Knesset, formulating family law and legislating Women's right to equality was about building the state of Israel as the Jewish nation where women constitute the heart of the nation, symbolizing both the national progressiveness and western identity and pristine mother figures of the national collectivity. From the Muslim community's perspective, however, resisting the onslaught of the Knesset was about protecting the Muslim notions of family and femininity while also fighting to secure autonomy in personal status laws by fending off the state's paternalistic intervention.

The Women's Equal Rights Law defined women's citizenship, yet Muslim women were missing from these debates, and their representation was limited. The citizenship of Muslim women was not at the core of the debates and was indirectly defined as secondary and marginal to the main definition of Jewish women's citizenship. Muslim women's voices were not heard in the process of legislation; they were represented by the paternalistic discourse of the Israeli legislature that perceived Muslim women as part of a backward culture, victims that need to be saved, and by the patriarchal discourse of the qadis and the Arab Knesset member, who strove to preserve the patriarchal family and opposed any change or interference in their personal status matters and the shari'a court's autonomy.

ON POSTCOLONIALITY AND FAMILY LAW

Achille Mbembe defines *postcolony* as "the specific identity of a given historical trajectory: that of societies recently emerging from the experience of colonization."[1] In order to understand

1 Achille Mbembe, "The Banality of Power and the Aesthetics of Vulgarity in the Postcolony," trans. Janet Roitman, *Public Culture* 4, no. 2 (1992): 1–30, at 2.

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postcolonial power relations, Mbembe argues that it is essential to look at the ways power works and its manifestations: what specific kinds of institutions, knowledge, norms, and practices does it produce?[2] Mbembe's conception of postcolonialism encourages us to look at the institutions and practices themselves, rather than at the historical period, in order to reveal the channels of colonial power and its manifestations. With the transition from the British to the Zionist Israeli rule, then, we see that not everything had changed, although much had.

Anne McClintock argues that the notion of postcolonialism was shaped by a paradox: that the meanings of the term *post-* in many cultures indicates a linear historical "progress," "from the 'pre-colonial' to the 'colonial' to the 'post-colonial.'"[3] This division, she explains, reinforced a binarism of categories and organization of historical understanding around axes of time (European time) rather than axes of power.[4] She further argues that the application of *postcolonialism* with regard to women is intrinsically problematic, since postcolonial nations had been based to a large extent on male's interests and aspirations; nation-states did not provide women and men with equal access to rights and resources. Moreover, the construction of gender stands at the heart of the "national" collective, in particular marital laws that are used to mediate between women's citizenship and marriage in the nation-state and determine women's political subjugation to national objectives. Thus, women's status is a product not just of a colonial past but also of a national present guided by patriarchy and gender-based power struggles.[5]

McClintock casts doubt on the commonly understood notion of postcoloniality by pointing out that cultural decolonization has not yet been completed.[6] The colonial is doubted because it suggests that colonialism has been a well-defined set of power relations. The postcolonial is equally brought into question since it, too, enfolds an assumption that colonialism was an essentially concrete, knowable set of phenomena that constituted the most important aspect for the colonized people.[7]

Ann Laura Stoler and Frederick Cooper argue that in order to use the term *colonial legacy* constructively, there is a need for a rich and comprehensive understanding of the colonial situation. Colonial institutions, bureaucracies, and attitudes were continually reconfigured and reprioritized, and they should be examined in light of these changes, along with the various colonial projects, in order to understand postcolonialism.[8] Stoler and Cooper further argue that colonialism was characterized in ambivalence and contradiction. They argue that colonial relations produced dichotomies between the colonialist and the colonized (ruler-ruled, white-black, and so on) that reflect only a part of the colonial experience. They argue that "it is the categories of colonialism, not colonialism itself, which are alive and well . . . how those categories have shaped postcolonial contexts and have been reworked in them."[9] Following Stoler and Cooper, then, I seek to unearth these transfiguring colonial categories as they have permeated Israeli family laws to show how these complex colonial legacies affect the legal status of Muslim women.

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2 Mbembe, "The Banality of Power," 4.

3 Anne McClintock, "The Angel of Progress: Pitfalls of the Term 'Post-Colonialism,'" *Social Text*, no. 31/32 (1992): 84–98, at 85–86; Ann Laura Stoler and Frederick Cooper, "Between Metrolpole and Colony: Rethinking a Research Agenda," in *Tension of Empire: Colonial Cultures in a Bourgeois World*, ed. Frederick Cooper and Ann Laura Stoler (Berkeley: University of California Press, 1997), 1–56, at 33.

4 McClintock, "The Angel of Progress," 85.

5 McClintock, 91–92.

6 McClintock, 92.

7 Stoler and Cooper, "Between Metropole and Colony," 33.

8 Stoler and Cooper, 33.

9 Stoler and Cooper, 34.

Family and family law were central to the colonial project, and the ways in which they were perceived are illustrative of a cultural attitude toward colonial subjects. Colonial familial policies were shaped according to these perceptions. Decisions regarding intervention or nonintervention in the private sphere of the family were attuned to these perceptions and were contingent on the interest of maintaining effective rule. It is important to examine the ways postcolonial states dealt with family laws in order to achieve a better understanding of the colonial legacies of these states.

Some postcolonial states retained most of the personal status laws from their pre-independence colonial period. This was ostensibly done because these laws were in accordance, or at least did not contradict, the forms of family and household arrangements that the new state wished to maintain (for example, Lebanon and Syria). Other states, however, significantly reformed family law by limiting religious and ethnic authority and institutional interference for the purpose of attaining national unification and a modern state (for example, early republican Turkey) over a varied ethnic and religious population. Other states introduced new interpretations of existing laws (for example, early postcolonial Tunisia). Most of the postcolonial states reformed colonial family law only slightly but with significant consequences (for example, Egypt, Iraq, Pakistan, India, Sri Lanka, Malaysia, and Indonesia).[10]

The regulation of family law in postcolonial states was forged in the space between the poles of Western modernity and deeply rooted traditions. It addressed questions of the degree of authority to be granted to the nuclear family versus an extended one, women's rights, and autonomy.[11] As in other postcolonial states, the family played a crucial role in building the Jewish state and the nation. The Israeli legislature adopted the colonial family law system that was based on prioritizing religious cohesion rather than on egalitarian citizenship.[12] The British colonial legacy is therefore embedded in Israeli institutions and its family-law system.[13] These legacies have profound implications on the legal status of the Palestinian minority in general and on the legal status of Muslim women in particular. In the next section, I address family and family law in the Israeli context.

BETWEEN ESTABLISHING CONTROL AND PRESERVING LEGALITY: ISRAEL VIS-À-VIS ITS MUSLIM MINORITIES

My point of departure for analyzing legislation in this period is twofold. First, I see in the 1950s a formative decade of constructing the twin notions of family and nation. The struggle over family laws, therefore, was a central point of contact and friction between the two. Second, the colonial aspect of the Israeli military government over Palestinians in Israel that lasted until 1966 shaped

10 Narendra Subramanian, "Making Family and Nation: Hindu Marriage Law in Early Post-Colonial India," *Journal of Asian Studies* 69, no. 3 (2010): 771–98, at 771–72.

11 Subramanian, "Making Family and Nation," 772.

12 Zvi H. Triger, "The Gendered Racial Formation: Foreign Men, 'Our' Women, and the Law," *Women's Rights Law Reporter* 30, no. 3/4 (2009): 479–525, at 481.

13 Opposed to current scholarship that refers to Israeli family law as an Ottoman legal continuity, new research has revealed that the notion of Ottoman legal continuity is mistaken. The fact that the British applied the Ottoman Law of Family Rights of 1917 only to Muslims contradicts the Ottoman continuity claim. Thus, the colonial legacy in Israeli family law is not a combination of Ottoman and British legacies, or what is called the Israeli Millet System, but rather a British colonial legacy. See Iris Agmon, "Yish Shoftim BeJerusalem Vehayo Mechokikim BeIstanbul—Al Hahistorya Shel Hachok Hakaroy (Beta'ot) Chok Hamishpacha Haotomani" [There are judges in Jerusalem and there were legislators in Istanbul: On the history of the law called (mistakenly) "The Ottoman Law of Family Rights"], *Mishpaha ba-Mishpat*, no. 8 (2016–2017): 136–44.

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their hybrid legal status as "subjects-citizens" and placed considerable restrictions on their civil and political rights. This insight adds a significant dimension for the analysis of the legislation on family law as part and parcel of a continued colonial project.

Analysis of the legislative process on the ban against polygamy cannot be done without consideration of Israel's policy toward the Muslims as a religious, not national, group during the 1950s.[14] The reading and analysis of the legislation should therefore be examined in this light. Paradoxical government policy oscillated between asserting control through dubious means and preserving a veneer of legality, between publicly denouncing what is illegal and monitoring and controlling Muslims as a religious group, detached from nationalistic inclinations.

The treatments of the Palestinians in Israel by the state can be characterized as dualist, even paradoxical. Nationally, Palestinians are treated by Israeli state officials strictly through the prism of individual rights, while in the religious arena they are recognized as religious communities.[15] This state of affairs has a negative effect on the individual freedoms of Palestinians who wish to be free from illiberal religious norms.[16] Michael Karayanni argues that, given the conservatism of Palestinian society and its nonsecular nature as a community, coupled with the conflictual relations with the state, the preservation of the religious autonomy is also an interest shared by the community itself, integral to its identity as a group.[17] This insightful argument needs to be taken into consideration in the reading of the legislative process and the regulation of polygamy during the early 1950s.

The Department of Muslim and Druze Affairs in the Ministry of Religion played a significant role in formulating Israeli policy toward Palestinian Muslims as a religious, not national, group after the establishment of the state.[18] The foundations of the policy toward the Muslims in Israel were laid out in a biannual report by the department written on January 31, 1949, which stated that

> [t]he role of the department is to establish relations with the Muslim community in the fields of religious services and jurisdiction, to manage the religious endowment, and to foster friendly relations with their religious leaders in the country and abroad. This mission indicates the great revolution that has taken place in our lives and in the life of the Muslim community. Handling the affairs of the Muslim community is completely new to us. For the first time since the Crusades, the Muslims in this country are under non-Muslim rule. Their religion, which was also the religion of the Turkish conquerors, remained the dominant religion in the country and maintained its privileges under British Mandate rule. The 75,000 Muslims who remained in our country were left without religious judges, religious services or clergy people, and the like. It was obvious that we cannot leave a vacuum in the lives of the Muslim community and allow this society to fall apart. With no other choice, we started to arrange the life of the community from the bottom up in a time of war and emergency as members of the community were far from friendly towards us and our young country. Our approach towards the representatives of the Muslim communities was not to offer cheap

14 The policy toward the Muslim as a religious group is addressed in the literature. See Alisa Rubin Peled, *Debating Islam in the Jewish State: The Development of Policy toward Islamic Institutions in Israel* (Albany: State University of New York Press, 2001), 48–49; Martin Edelman, *Courts, Politics, and Culture in Israel* (Charlottesville: University Press of Virginia, 1994), 77; Michael M. Karayanni, "Tainted Liberalism: Israel's Palestinian-Arab Millets," *Constellations* 23, no. 1 (2016): 71–83.

15 Michael M. Karayanni, "Two Concepts of Group Rights for the Palestinian-Arab Minority under Israel's Constitutional Definition as a 'Jewish and Democratic' State," *International Journal of Constitutional Law* 10, no. 2 (2012): 304–39, at 327–28.

16 Karayanni, "Two Concepts of Group Rights," 328.

17 Karayanni, 332, 338.

18 See Peled, *Debating Islam in the Jewish State*, 48–49.

> friendship and a poor desire to please them by granting those benefits that are clearly impossible to fulfill. The Muslim community should learn to live as loyal citizens of the state, without the flattery that characterizes "Eastern people," and without dangerous illusions about possibilities of political change. Our decent attitude is not based on personal feelings but rather on our obligations towards our country and on the need to teach the community under our supervision a lesson in Western governmental methods, which means educating them of independence and responsibility. Our ultimate goal is to give the Muslim community full responsibility for the management of their own affairs and to supervise in a liberal and very discreet way. Especially on religious and cultural matters it is better for the state not to intervene too much.[19]

The report demonstrates that policy makers were indeed aware and apprehensive of the issue of non-Muslims ruling Muslims. The challenge was even greater given the political implications of 1948 that lead to the collapse of the national and religious leadership and created a vacuum in the lives of the Muslims that needed to be filled by the state of Israel. The state aspired to reestablish religious services and friendly relations with the religious leaders, but it acted out of an overarching policy of attaining control, merged with discreet supervision and a paternalistic approach toward the "backward" Muslims, who were intended to "be introduced to Western governmental methods"[20] by the new Israeli regime. At the same time, policy makers expressed their concerns of intervening too excessively in religious and cultural matters. Being part of the private sphere, these matters were considered "sensitive." The state of Israel was apprehensive of wholescale confrontations with the Muslim community on such issues. Its challenge was to achieve control over its Muslim minority without provoking religion-based clashes. This basic disinclination, along with the political and legal status of Palestinians as citizens-subjects, are an important political basis for the legislative process regarding the institution of the polygamy ban.

"BACKWARD" MUSLIM WOMEN AS A CONTROL GROUP FOR MEASURING ISRAELI PROGRESS

The fact that the Women's Equal Rights Law and the prohibition against polygamy had been extended to Muslims was presented by Israeli government officials as an indication of the improvement of the legal status of Muslim women brought about by Israeli policy. In a 1960 document on the status of Muslim women in personal status laws in the Oriental countries and Israel, Jacob Joshua, director of the department, addresses what he refers to as "the poor status of the Muslim woman in the East, in terms of social and familial status," claiming that the dire personal status of Muslim women in oriental countries was not ameliorated despite recent attempts at instituting legal reforms to promote the status of women.[21] Joshua further indicated that personal status matters are among the most serious and troubling matters in the lives of Muslim women that harm their status as women and mothers.[22] The comparison to the Arab world in evaluating the progress in the legal status of Muslim women in Israel by the department was predicated on the presupposition that, when compared to its neighbors, Israel's haphazard attempts to enfranchise Muslim women stands out as a progressive example. It might also indicate that Israeli policy makers

19 Biannual report by the Department of Muslim and Druze Affairs, January 31, 1949, Ministry of Religious Affairs, file no. 304/42, Israeli State Archive. Unless otherwise noted, all translation from the Hebrew are mine.

20 Biannual report by the Department of Muslim and Druze Affairs, January 31, 1949.

21 Report on the status of Muslim woman in personal status laws in the Oriental countries and Israel by Jacob Joshua, February 11, 1960, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

22 Report on the status of Muslim woman in personal status laws in the Oriental countries and Israel.

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were attentive to the international community's concerns by Israel's treatment of Muslims as a religious group.[23]

Joshua's report further mentions that the prohibition to marry more than one wife was uniformly accepted among Israel's Muslims, and that "the Muslim woman is en route toward accomplishing prominence in society." It stresses that Israel was the first country in the Middle East to provide equal voting rights for Arab women, and that since the establishment of the state, they have been actively participating in elections.[24]

Joshua begins his discussion of polygamy by stating that "the state of Israel preceded Tunisia in legal action about polygamy."[25] It was important for Israeli policy makers not just to depict Israel as more progressive than its neighbors, but also to emphasize that it was even more progressive than Tunisia, possibly the most progressive Muslim-majority country in the world at the time, with its 1957 Personal Status Law, which abolished the colonial legal system that had tolerated polygamy during colonial times. Tunisia's personal law reforms prohibited polygamy altogether and abolished shari'a *courts*.[26] In the report, Joshua emphasized that "the prohibition against polygamy in Israel for all its citizens including Muslims is in line with the views of the most prominent modern Islamic scholars such as Sheikh Mohamad Abdo, Egypt's well-known Mufti, Amir Ali in India, and others. This is the first law concerning polygamy in the Arab East and there is no doubt that it will encourage religious scholars in the neighboring countries and other scholars to prohibit polygamy as well."[27]

Notwithstanding Joshua's self-congratulations, did the Muslim community truly come to terms with the ramifications of the legal changes concerning polygamy? I discuss this in detail in the following section, presenting the debates between qadis and the Muslim response to the polygamy ban.

It could be claimed that Israeli policy makers were largely concerned with two matters: presenting Israel as relatively progressive in comparison to the Arab states and gaining legitimacy as a Jewish state that could tolerantly rule over non-Jews, in particular, Muslims. This aspect has political implications particularly regarding a possible clash with the Arab Muslim leadership. In order to avoid such potential clashes, it was important for the Jewish policy makers to present their initiatives as congruent with the prominent, contemporary progressive Islamic scholars. By associating the application of the prohibition against polygamy with the modernist Islamic interpretation of polygamy in the Arab world, policy makers were seeking to obtain legitimacy from progressives in the Arab Muslim world. It is a conflicted stance, positioning Israel as a progressive factor, uti-

23 Uri Bialer, "Top Hat, Tuxedo and Cannons: Israeli Foreign Policy from 1948 to 1956 as a Field of Study," *Israel Studies* 7, no. 1 (2002): 1–80, at 2–3, 14–15. Karayanni similarly argues that Israel's policy to maintain the millet system among the Palestinians in Israel was affected by its quest for international legitimacy. See Karayanni, "Tainted Liberalism."

24 Report on the status of Muslim woman in personal status laws in the Oriental countries and Israel.

25 Report on the status of Muslim woman in personal status laws in the Oriental countries and Israel.

26 Mounira M. Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria and Morocco* (Berkeley: University of California Press, 2001), 1, 222.

27 Report on the status of Muslim woman in personal status laws in the Oriental countries and Israel.

lizing the polygamy ban as a case in point, while at the same time seeking legitimacy from the religious elites of Arab world.

THE DEBATES SURROUNDING THE LEGISLATION OF THE WOMEN'S EQUAL RIGHTS LAW, 1951

The discourse about the Women's Equal Rights Law in 1951, which criminalized polygamy among Muslims, unfolded around two primary focal points: Muslim women and polygamy and the ideal Jewish family. Therefore, my analysis seeks to explore how Muslim women were represented in the process of legislation, and by whom, in order to investigate the notion of citizenship and family in the postcolonial context.[28] The letter and spirit of the law are extremely important in the legislative process of a national community that is undergoing processes of building a new Jewish nation and formulating the ideal family in the Jewish state. What are the implications of these processes on Muslim women's citizenship and what can be learned about the patriarchal and national meaning of family and family law?

This piece of legislation defined women's citizenship and the ideal family in the Jewish state. The ideal family was defined by national-patriarchal forces. The majority Jewish legislators defined the family from a Zionist perspective, and the Muslim men—mainly qadis and a few legislators—defined the ideal Muslim family. Muslim women were largely missing from these debates and their legal representation was only partial.

INSCRIBING HEBREW WOMANHOOD INTO LAW

The Women's Equal Rights Law of 1951 was intended "to establish the full and complete equality of women, equal rights and obligations in the life of the state, society and economy and throughout the legal system."[29] The law begins with a statement that men and women will have the same status vis-à-vis every court of law and invalidates any legislative regulation or ordinance that discriminates between men and women. The first version of the Women's Equal Rights Law (May 9, 1951) proposed in section 8 to amend section 181(c) of the Criminal Code Ordinance of 1936. Section 181(c) stated that "the law governing the personal status of the husband at the date of the subsequent marriage allowed him to have more than one wife."[30]

The purpose of the proposed amendment was to extend the prohibition against polygamy to all religious communities in Israel.[31] In her analysis of the legislative history of the Women's Equal Rights Law, Pnina Lahav reveals the premises of the law regarding the women who were the principal beneficiaries of the law, "the mother and the wife, the Jewish and the Hebrew woman, the

28 For the purpose of this article, the two sides of the debate presented are the Israeli Zionist legislators and the Palestinian/Muslim voices. The analysis does not suggest that the nationalist/patriarchal arguments are the only possible explanation. However, because the analysis is based on archival work that focuses mainly on the process of legislation, it is beyond the scope of this article to present other possible explanations based on other archival materials.

29 Women's Equal Rights Law of 1951 (May 9, 1951): 191 (proposed legislation), Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive [hereafter Women's Equal Rights Law, Proposed Legislation].

30 Women's Equal Rights Law, Proposed Legislation.

31 Women's Equal Rights Law, Proposed Legislation, 192.

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Western and the Ashkenazi woman."[32] Lahav's analysis teaches us about the worldview that served as the basis for this law and how that worldview related to the women whose status it sought to enhance. There is almost no mention of any names of non-Jewish women. The imagined ideal woman, according to the law (the mother and the wife), was always Western and, in the context of the Zionist Jewish collective, Ashkenazi. Jewish women from Middle Eastern communities were, like Arab women, perceived as hailing from backward cultures, perpetual victims whom the state should lift from their state of darkness to the twentieth-century enlightened West.[33] Nitza Berkovitch uses the Women's Equal Rights Law as a test case to illustrate the social constructs and cultural cues of what it means to be an Israeli woman in a Jewish state. In the framework of the discussion regarding the citizenship of women, no mention is made of the Palestinian woman; the citizenship of Jewish women is presented primarily by their contribution to the state as mothers.[34] Zvi Triger adds another dimension to the analysis of the Women's Equal Rights Law by using Zionism as the explanatory component of the worldview regarding family structure, arguing that the adoption of religious law in family law in Israel is "a natural outcome of the development of the Zionist ideology."[35] One can deduce, then, what this means in regard to the citizenship of Palestinian women in Israel as nothing more than mothers to children unwanted by the collective. Their citizenship was thus hollowed out from the start, emptied of all independent political or legal content; Israeli law was never designed to protect them. The next section will highlight some of the voices in the process of legislation that represented the Zionist discourse.

In his opening statement presenting the proposed law, Minister of Justice Pinchas Rosen (Progressive Party) employed Zionist imagery in justifying the Women's Equal Rights Law. At the heart of Rosen's remarks stood the Hebrew woman, an integral part of the Zionist project and the Jewish Yishuv and a loyal citizen whose first and foremost obligation is to Zionism, with her own rights a far second. The law's authors, too, basked in the light of a history where "The Zionist movement from its inception recognized the equality of men and women," a commitment expressed by the equal right of men and women to participate at the election for the Zionist bodies.[36] Regarding Section 1(b) of the Women's Equal Rights Law, according to which "this law is not intended to affect the religious laws of marriage and divorce," Rosen states,

> [c]ertainly, there will be those who argue that the proposed law is not far-reaching at this point. But let us not forget that we are living in a turbulent period of ingathering of the exiles in our country. Every day masses of Jews from different cultures and traditions arrive in Israel, and their spiritual and moral absorption are among the most fundamental problems. The proposed law avoids intervening in Jewish laws of marriage and divorce out of consideration to the sensitivity of the public in these matters. I have no doubt that this law will be an important stage in building our young country and in supporting Israeli democracy.[37]

32 Pnina Lahav, "Kshehpliative Rak Mekalkel: Hadion Baknesset al Chok Shivoy Zchoyot Haisha" [When the palliative is damaging: The discussion in the Knesset on Women's Equal Rights Law], *Zmanim* 46/47 (1993): 149–59, at 149–51.

33 Lahav, "Kshehpliative Rak Mekalkel," 151.

34 Nitza Berkovitch, "'Eishet Chayil Mi Yimtza'? Nashim Veezrachot BeIsrael" ["Who will find woman of valor?" Women and Citizenship in Israel], *Sociologya Israelit*, B (1) (1999) 277–318, at 277–78.

35 Zvi Triger, "Yish Medina La'hava: Nisoem Vegeroshem Ben Yihodem Bemedenat Yisrael" [There is a state for love: Marriage and divorce between Jews in Israel], in *Mishpatim Al Ahava* [Trials on love], ed. Orna Ben-Naftali and Hannah Naveh (Tel Aviv: Ramot, 2005), 173–226, at 174–75.

36 See Women's Equal Rights Law of 1951 (June 27, 1951) (first reading) [hereafter Women's Equal Rights Law, First Reading].

37 See Women's Equal Rights Law, First Reading.

Although Rosen recognizes that the religious law is part of the Israeli law system to which the different religious group are subjected, he acknowledges that these laws were not progressive and did not fit the development of a modern society and the status of the women in Israel, but the jurisdiction of the religious courts will not be affected by the law. Rosen defines what is sensitive and outside the state's intervention. By doing so, he is subjugating women to the national discourse and granting that discourse supremacy over egalitarian norms.

Rachel Cohen-Kagan[38] drew a parallel between the national rights of the Jews and the citizenship of women, referring to the Hebrew woman's citizenship and rights: "The moral value of the law is the same as the moral value of the law of return. Both laws refer to the restoration of natural rights; the law of return restores to each Jew the right to return to his homeland while this law intends to restore women's rights as equal citizens."[39]

Esther Raziel-Naor[40] emphasized the important rule of the Hebrew woman as a pillar of the house that educated her sons and enabled her husband to study Torah. Highlighting how her role became significant with the revival of the national movement, where she played "a significant part in Zionism, pioneering, and in war."[41]

The discourse surrounding the legislation process reveals that it was about building the Jewish nation as much as it was about protecting women and enfranchising them with equal legal and political rights. Overriding motivations included prioritizing national considerations over other concerns, supporting the preservation of religious laws of marriage and divorce (ostensibly a politically wise maneuver in the essential matters of the nation at the time), and understanding the importance of the family as the primary biological and sociological cell of the future Israeli nation. Ben-Zion Dinur's[42] remarks stressed the significance of treating family matters in a sensitive way that would be accepted by all parts of the nation:

> We aspire to merge all the Diaspora's people into one home and one family; therefore, we should make sure that the feeling of home is not damaged, especially during our time, when we are facing mass immigration from many distant countries and different groups, that their lifestyle, especially in their countries was a traditional lifestyle. Any harm to this lifestyle risks the unity of the nation. We should not apply different norms in the regulation of marriage and divorce that may smash the house of Israel.[43]

Similarly, Hasya Drori[44] continued this discourse by emphasizing the contribution of women to the national project, and the need to take into consideration the gathered Diaspora:

> There is no doubt that the most significant accomplishment of woman is her participation in the settlement of this country she helped establish, the rooted home, that raises a brave young generation. They played a significant role in building the state as mothers, sisters, wives and part of the settler movement helped to build

38 Rachel Cohen-Kagan was an Israeli politician who served as a Member of the Knesset for WIZO (Women's International Zionist Organization) at the first and fifth Knesset.

39 See Women's Equal Rights Law, First Reading.

40 Esther Raziel-Naor was an Israeli politician who served as a member of the Knesset, first for the Herut party (1949–1965) and then for the Gahal coalition party (1965–1974).

41 See Women's Equal Rights Law, First Reading.

42 Ben-Zion Dinur was an Israeli politician who served as a member of the first Knesset for Mapai (1949–1951) and as a minister of education (1951–1955).

43 See Women's Equal Rights Law, First Reading.

44 Hasya Drori was an Israeli politician who served as a member of the Knesset for Mapai (1949–1951).

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> the state. We must take into consideration the gathered Diaspora, the different patterns and lifestyle. There is a need for an adaptation period until the proper familial and social climate will be suitable for that.[45]

Yitzhak Ben-Zvi,[46] too, opposed any changes on the religious laws of marriage and divorce, concerned by the possible harm to the unity of the nation: "We know what it means to initiate reforms in marriage and divorce matters; we know what happened in other countries among Jews following such radical reforms in these matters. It means separation, smashing Jewish people (house of Israel) into two nations. Such reforms at this moment may cause great harm to Israel."[47]

Prime Minister David Ben-Gurion emphasized the need as well for preserving the status quo in marriage and divorce laws from a national perspective:

> The Minister of Justice announced back then that the proposed law is lacking and does not affect marriage and divorce; we did it knowingly because in the debate on the governmental plan on 1949, I announced on behalf of the government that this government is not willing to initiate a bill that deals with non-religious marriage and divorce, because non-religious divorce during this time may create great fractures in the house of Israel. Woman deserves equality not as a prize for her participating in building and protecting the state. It is human dignity, the dignity of woman and man. We cannot accept the desecration of the mother's honor, the most important person in our life. The proposed law aims to save the most important honor for us—the honor of our mother. This is the fundamental reason.[48]

WHO DOES THE BAN AFFECT?

This part will focus on analysis of section 8 of the law that applied the criminal prohibition against polygamy to all religious groups in Israel in 1951. Omer Aloni argues that the purpose of the Israeli jurisprudence in the early 1950s was first and foremost to eradicate polygamy within the Jewish Mizrachi community.[49] The elimination of polygamy among Muslims, then, was only a secondary goal to the elimination of polygamy among the immigrant Jews from Arab countries,[50] protocols from the debates suggest. The polygamy ban was intended mainly for Jews that emigrated from Arab countries. It was about building the Jewish nation, and therefore, it was deemed important that monogamy prevail among the Jewish population. Muslims were included in the law, but it was only derivative from the official commitments to equality of all before the law, and there was no actual intention of enforcing it. The State of Israel, in 1951, was interested in gaining international legitimacy as a new Jewish state and effectively ruling Palestinians as religious communities without creating too many areas of possible clashes, which might negatively affect their control priorities.

Rosen refers to section 8 of the proposed law that applied the prohibition against polygamy to all religious groups in Israel. In fact, this section abolished the exemption for Muslims from the criminal offence of polygamy that was in effect during the British Mandate period. Rosen refers

45 See Women's Equal Rights Law, First Reading.

46 Yitzhak Ben-Zvi was a historian and Israeli politician who served as a member of the Knesset for Mapai (1949–1952) and as the president of Israel (1952–1963).

47 See Women's Equal Rights Law, First Reading.

48 See Women's Equal Rights Law, First Reading.

49 Omer Aloni, "Orientalist Reflections in Early Israeli Law: (New) Perspectives on the Issue of Polygamy," *Comparative Legal History* 4, no. 2 (2016): 181–214, at 181, 195.

50 Rawia Aburabia, "Trapped between National Boundaries and Patriarchal Structures: Palestinian Bedouin Women and Polygamous Marriage in Israel," *Journal of Comparative Family Studies* 48, no. 3 (2017): 339–49, at 343.

to polygamy as the remains of the ancient period of human history that civilized countries in their development process saw the importance of eliminating. Then he refers to polygamy in the Jewish context: according to religious Jewish law, polygamy is not prohibited, and it was practiced among our nation in ancient times. However, over different periods of time, our religious scholars perceived polygamy to do moral and spiritual damage. Rabbi Gershom[51] prohibited the practice of polygamy and this decision was accepted by most of the Jewish people in the Diaspora and Eretz Israel. Only in small, detached communities was this phenomenon preserved. However, with the immigration of these "lost" tribes to Israel and their enrooting and absorption in Israeli society, polygamy is destined to disappear. Rosen refers to Muslims by mentioning, "current law allows polygamy for Muslims, but the proposed law suggests cancelling this exemption. The prohibition will be general, and all citizens of the country without any religious difference will be subjected to it, the law will impose monogamy as the only marriage suitable for civilized society."[52]

Rosen's hegemonic, Western-centric discourse refers to polygamy as a primitive, backward practice that should be eliminated. The Jews who practiced it were an uncivilized part of the Jewish nation, whom he refers to as "tribes." These tribes are part of the Arab-Muslim countries that will be enlightened once they immigrate to Israel. Additional support for Rosen's discourse could be found in the following debates that reflected the perceptions of the Western hegemonic, condescending approach toward the immigrant Jews from Arab countries.

Beba Idelson remarked,[53]

> The Knesset members that wanted to postpone the discussion on this law based their arguments on the fact that the state absorbs masses from different cultures and traditions. Sometimes they bring with them habits that we do not want as part of our legacy, a legacy of an inferior exile. Is it possible to consider that this could be the reason to adopt laws in our state that will reflect such habits? Is it possible to postpone our progress in life and live a primitive life until we reach a stable state? The absorption of the masses of immigrants is precisely the reason that this law should be adopted. The state should be clear regarding the ways that the Yishuv and the immigrants to Israel should act.[54]

Jenia Tversky[55] presented a condescending approach toward Eastern culture by stating that regarding section 3 of the proposed law, "a woman is obliged to support her husband and her children, if the circumstances require so." She explained,

> I think that this section might be abused by part of the society, especially by those from Eastern countries whose standards of living will cause them to abuse women by demanding that she support her husband and children, even if the husband is able to work and support his family. Genuine equality of woman in this country will be created only if we have a cultural and social climate that is required for woman's rights and duties with the man, and in fulfilment of the biggest mission of building the country.[56]

It could be surmised that the main purpose of section 8 was to eliminate polygamy among the Jewish immigrants from the Arab countries, and to make marriage an exclusively monogamous

51 Rabbi Gershom was from Mayence, Germany, where he banned polygamy in 1025 CE.

52 See Women's Equal Rights Law, First Reading.

53 Beba Idelson was an Israeli politician who served as Member of the Knesset for Mapai (1949–1965).

54 See Women's Equal Rights Law, First Reading.

55 Jenia Tversky was an Israeli politician who served as a member of the Knesset for Mapai (1951–1955, 1959–1961, 1963–1964).

56 See Women's Equal Rights Law, First Reading.

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institution in Israeli Jewish society. (In the next section I present the response of the Arab community to the section that prohibits polygamy.)

The only voice that represented the Muslim community was the voice of Amin-Salim Jarjora, an Arab Christian.[57] Jarjora opposed equality for women based on the argument that such equality would have a negative impact on a woman's femininity and character and would increase her obligations and troubles. He also opposed intervention by the state in the fundamental matters of personal status laws of Arab Muslims in Israel, emphasizing Israel's promise to guarantee freedom of religion and conscience as stated in the Declaration of Independence. The shari'a courts and personal status matters of Muslims, he argued, are part of these freedoms. Thus, the interference of the proposed law in the personal status matters of Muslims should be entirely rejected.

Jarjora criticized the Israeli government for not consulting Muslim religious scholars in Israel about such significant changes, especially given the Knesset's awareness that such changes require general consent. As for polygamy, the law proposed to prohibit polygamy, which was, under the British, legal and acceptable without any limitation or restriction. Therefore, his suggestion was to remove the proposed law from the Knesset agenda.[58] The other Arab Knesset members, Seif El-Din El-Zoubi[59] and Tawfik Toubi,[60] did not participate at the Knesset debates according to the protocols, which means that Jarjora's was the only voice of a non-Jewish legislator who spoke on behalf of Muslim women.

Jarjora's arguments raised reactions among the Knesset members illustrative of the common perceptions toward Muslims and Muslim women in particular. Beba Idelson remarked,

> [i]t was important for me to hear MK Jarjora, who is reflective of the conservatism in the Arab sector. I hope that the state of Israel will advance the Arab sector with its laws and will make an example for the Oriental countries, where the status of women is also inferior. I am sorry that MK Jarjora cannot realize that even his wife is a human being who has rights in the family and society. He mentioned the ways in which a woman is being respected by saying that what she has is enough for her. That is not respect, but humiliation.[61]

This statement indicates the ways that Arabs were perceived in the hegemonic Ashkenazi Zionist discourse, and in particular the status of Muslim women as backward, inferior women who should be uplifted by the state of Israel.

Fayge Ilanit[62] expressed similar view to Idelsons': "we heard Jarjora who finds that this law harms religion more than tradition; it reflects the social sector that he represents." However, her view toward the proposed law was critical: "The proposed law does not aim to change the religious court's jurisdiction in matters that are extremely important for the majority of women. The government is not allowed to tell women in Israel that they are not entitled to full equality and impose upon them explicit laws that discriminate against them in family life."[63]

57 Amin-Salim Jarjora was a Palestinian Israeli politician who served as a member of the Knesset for the Democratic List of Nazareth (1949–1951).

58 See Women's Equal Rights Law, First Reading.

59 Seif El-Din El-Zoubi was a Palestinian Israeli politician who served as a member of the Knesset for several parties between 1949 and 1979 (not consecutively).

60 Tawfik Toubi was a Palestinian Israeli communist politician who served as a member of the Knesset (1949–1990).

61 See Women's Equal Rights Law, First Reading.

62 Fayge Ilanit was an Israeli politician who served as a member of the Knesset for Mapai (1949–1951).

63 See Women's Equal Rights Law, First Reading.

The general perception of Ilanit toward the law and its discriminatory effects on women, in comparison to her specific view toward the backward Muslims, demonstrates the embedded patronizing views toward non-Jews and in particular Muslim women in the process of legislation. Ilanit could have objected to the proposed law because it was discriminatory to women, Jews and Arabs alike. Instead, she drew a distinction between the two groups, attributing conservatism to the Muslims. Conversely, she speaks of the Israeli government and the Jewish legislator without attributing to them similar traditional perceptions.

Yitzhak Ben-Zvi's reaction was in the same vein as Ilanit and Idelson. Ben-Zvi made a clear distinction between Muslims and Christians, marking Muslims as the distinctive backward other: "I want to refer to the Muslims and defend MK Jarjora who is not Muslim, but Christian; He was not talking about himself or about his group but about part of his constituency—the Muslims."[64]

Ben-Zvi stressed the need to protect Muslim women by referring to the practice of divorcing a woman against her will:

> We have an obligation to care for the Muslim woman. As to divorcing a woman against her own will, I do not think that the best way is to punish the offender by imprisonment for five years. I suggest imposing a monetary fine instead. For the Muslim who purchases his wife with money, if he is fined for divorcing his wife against her will, he will reconsider this act. In fact, the divorce could not be corrected by governmental law; it is a religious matter, and I leave it to them. What we are left with is protecting Muslim women who are suffering from it because of stricter fines, maybe in favor of the woman and not necessarily in favor of the state. I want to avoid possible reaction in the Muslim world. If we will impose a fine and harsh punishment on a man who divorces his wife against her own will, it won't provoke any reaction in the Muslim world, but if things will seem as if we are repealing their religion, it will arouse unnecessary reaction that we do not need at this moment.[65]

According to Ben-Zvi it would be more acceptable in the Muslim world if a fine or imprisonment would be imposed. If it were perceived that Israel is trying to repeal Muslim law, it would provoke unnecessary reactions by Muslims. It could be inferred from this reasoning about the criminal prohibition against polygamy and about the general criminalization of a certain religious practice that may be accepted as long as the autonomy in marriage and divorce will not be harmed.

Initial analysis of the response to Jarjora's objection to the polygamy ban demonstrates condescension toward Jarjora and his Arab Muslim constituency. The response portrays him and the Muslims as backwards, primitive, and conservative, stressing the inferior status of Muslim women and the need to protect them from their own culture. Even MK Ben-Zvi conditions his support by emphasizing that Jarjora is a Christian representing Muslims, not himself or the Christian community.

The paternalistic approach toward the Muslim other and the need to "save" Muslim women is part of the colonial perception in which Jewish men (and women) are saving Muslim women from Muslim men.[66] The voices of the other Arab representatives, MK Zoabi and MK Toubi, were not heard.

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64 See Women's Equal Rights Law, First Reading.

65 See Women's Equal Rights Law, First Reading.

66 This is paraphrasing Gayatri Chakravorty Spivak's notion of "White men saving brown women from Brown Men"; see Gayatri Chakravorty Spivak, "Can the Subaltern Speak? Speculations on Widow-Sacrifice," *Wedge* 7/8 (1985): 120–30, at 120. See also Lila Abu-Lughod, "Do Muslim Women Need Saving?," *Time*, November 1, 2013, 27–53 (where she explores the paradigm of saving Muslim women).

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Before voting on section 9 of the law, MK Yaakov Klivnov,[67] from the General Zionist party, raised his concerns with regard to the timing of imposing the criminal prohibition against polygamy on Muslims. His reason was fear of a possible clash with the Muslim community. MK Klivnov presented MK Jarjora's written reservation:

> MK Jarjora specifically asked for the right to express his reservations to this clause. Since Jarjora is absent, I will present his reservation, with which I am in complete agreement. MK Jarjora's reservations to section 8 (a) of the proposed law that states that paragraph (c) of Section 181 provides defense from the application of the Criminal Code to those whose religion allows polygamy should be cancelled. It means that Muslims or other groups whose religion permits polygamy will be exempted from the criminal ban. In the proposed law, section c of section 8(a) will be canceled and religious affiliation will no longer be used as a defense from the criminal ban against polygamy. It means that we are imposing monogamy on Israel's Muslim citizens, forbidding them to marry more than one wife. As far as the Jews, the prohibition against polygamy applies to all, even to the Jewish communities that come from places where polygamy was permitted. But I am asking all the Knesset factions: whether it is the right time to impose this law on the Muslim community in Israel? I would like the *Knesset* members to consider this carefully.[68]

Yaakov Klivnov responded,

> [m]y faction opposes it; we don't think that this is the right time. It could cause serious political damage to our country, damage to our relationship with our Muslim citizens, and to our position with the neighboring countries. The freedom to marry more than one wife is one of the sacred principles of the Muslim religion, and it would not be wise to violate it. The proposed step could trigger a very harsh reaction, as has already come from several parties among the Muslim community . . . Certainly, the time will come, and monogamy will be common in the Muslim community, but unfortunately, that time has not arrived yet. There is no need to create additional unnecessary disputes considering the current conditions in our country. I join MK Jarjora's reservation.[69]

Israel Bar-Yehuda[70] responded to Klivnov, stating, "I want to remind you that we amended by a majority vote a religious Muslim marriage law that is just and legal according to Muslim law. We all presume that if it violates the equality of the Muslim woman that we are obliged to correct the distortion even if it means that we are indirectly hurting part of the religious Muslim marriage law."[71]

Bar-Yehuda supported an intervention in Muslim marriage law because it was unjust to Muslim women. Ben–Gurion responded to Bar-Yehuda's words, addressing the substantive Islamic law regarding polygamy:

> I am not an expert on Muslim law, but I have learned about this law in a Muslim university with Muslim teachers, and my Turkish teachers taught me that it is allowed for a Muslim to marry up to four wives, though there is no such obligation. This was before Ataturk prohibited polygamy in Turkey. Most of the men in the Muslim world marry only one woman for the simple reason that the number of women and

67 An Israeli politician, Yaakov Klivnov served as a member of the Knesset for the General Zionists (1949–1959).

68 See Women's Equal Rights Law (July 17, 1951) (second and third readings) [hereafter Women's Equal Rights Law, Second and Third Readings].

69 See Women's Equal Rights Law, Second and Third Readings.

70 An Israeli politician, Israel Bar-Yehuda served as a member of the Knesset for Mapam (1949–1954), minister for internal affairs (1955–1959), and minister of transportation (1962–1965).

71 See Women's Equal Rights Law, Second and Third Readings.

> men is almost equal in each country. The largest Muslim country in the Middle East has already prohibited polygamy, and it does not mean that it is a violation of Islamic law. It may violate tradition, but it does not violate religion. At least that is what I was taught by Muslim professors and Islamic literature. Muslims in our country will continue to marry according to Islamic law, but as in Turkey, they will not be allowed to marry more than one wife. MK Klivnov's suggestion humiliates women in general and the Muslim woman in particular. We do not allow Yemenis to practice polygamy, because we consider polygamy an insult to humans, an insult to the woman as a human being. If we allow polygamy among Muslims, it means that we are abandoning the Muslim woman and discriminating between women, and because we have committed to equal rights for women, we are not entitled to discriminate against the Muslim woman.[72]

To summarize, the discussion indicates that polygamy among Muslims took up considerable attention. However, the main purpose of the polygamy ban in the Women's Equal Rights Law was to eradicate polygamy among the immigrant Jews from Arab countries and make monogamy the exclusive type of marriage among Jews, as part of building the Jewish nation and the ideal family in the Jewish state. In the process of legislation, Muslim women were represented by a patriarchal, nationalistic discourse. The Jewish legislators legislated for Jewish women and perceived Muslim women as part of a backward, inferior culture who needed to be saved and protected, while the Arab Knesset member represented a patriarchal discourse that opposed women's equality based on the possible harm to her femininity, objecting to state intervention on personal status matters. Below I focus on the Muslim response to the Women's Equal Rights Law, especially the qadis' response.

OBJECTIONS TO THE POLYGAMY BAN: THE PATRIARCHAL ESTABLISHMENT MAKES A STAND

Qadis Musa Tabari, Taher Hamed, Hasan Amin Habash, and other representatives of the Muslim community addressed the prime minister on July 7, 1951, in a letter expressing their objections to the application of a law that stood in violation of the Islamic shari'a. They demanded that Muslims be exempt from the law. They based their demand on the declaration of independence that promised complete religious freedom.[73] The qadis also addressed the minister of religious affairs, stating,

> [t]he religious scholars cry in protest and ask that the Women's Equal Rights Law not be applied to Muslims since it contradicts Islamic shari'a. You safeguard the holy places and act to preserve the religious dogma. The ulama [religious scholars] ask you to exempt the Muslims from the application of this law. The Muslims are not willing to apply any law that deeply violates their religion and ask you to act in this matter.[74]

On January 21, 1952 Taher Hamad, the qadi of Yafa'a shari'a court, wrote the head of the Muslim Department at the Ministry of Religion. He attached a petition objecting to the

72 See Women's Equal Rights Law, Second and Third Readings.

73 Letter from shari'a court judges Musa Tabari, Taher Hamed, and Hasan Amin Habash and representatives of the Muslim Community to the prime minister, July 7, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

74 Letter from shari'a court judges.

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Women's Equal Rights Law based on its contradictions to Islamic shari'a in several ways, including explicit quranic verses to which millions of people throughout the world adhered. He coyly projected that this law in its current form might raise an outcry, but he added that he was sure that the democratic government, whose leadership was dedicated the pursuit of justice, would know how to successfully deal with that. Still, Hamad requested that the Muslim and Druze department not apply the law to Muslims because its explicit contravention of shari'a laws ran against Israel's core commitment to religious freedoms for all its population.[75]

The Advisory Committee for Muslim Affairs in Haifa and the district also addressed the head of the Muslim Department in reference to section 5 of the Women's Equal Rights Law (the law will not affect marriage and divorce matters), protesting that this law violated shari'a and threatening that Muslims would not accept a law, imposed by a non-Muslim government, that runs in contradiction to their religion. They requested that the state act in the same way it had acted in the past, when it protected their holy places. It could be inferred that Palestinian Muslims considered such a legal contravention of their faith to be an even greater harm than physical harm to their holy places.[76]

On July 9, 1951, the representative of the Ahmadiyya Muslim community addressed the prime minister and the Knesset members via the minister of religion and the Knesset chair: "The Women's Equal Rights Law constitutes a blatant interference with the Islamic shari'a. We are joining our voice with the voice of Knesset Member Jarjora, who represented the opinion of 150,000 Arab Muslims in Israel and the Muslim world. We are asking that the law only be applied to Jewish women or to be partially applied to Muslim women, applying only the sections that did not violate shari'a."[77]

Numerous similar letters were sent to the Knesset by Muslim religious organizations and figures throughout the summer of 1951. On July 17, 1951, representatives of the Muslim community in Haifa and the district addressed the Ministry of Religion requesting not to include the Muslim community in the Women's Equal Rights Law because of its violation of the Islamic religion.[78] The Islamic Association in Haifa sent its petition on July 25, 1951, in which it protested the implementation of the Women's Equal Rights Law, which contradicted Muslim public opinion and the Quran. They, too, stated that the declaration of independence declared that the state would not intervene in religious matters, and, therefore, Muslims must be exempted from this law.[79] Similar letters were sent to the Ministry of Religion on the same day from the mukhtar and imam of Kabul,[80] from the Advisory Committee for Muslim Affairs in Haifa,[81] and from the mukhtar and imam of Tamra.[82]

75 Letter from Taher Hamad, the qadi of Yafa's sharia court, to the head of the Muslim and Druze Department at the Ministry of Religion, January 21, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

76 Letter from the Advisory Committee for Muslim Affairs in Haifa and the district to the head of the Muslim and Druze Department at the Ministry of Religion, February 26, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

77 Letter from the Ahmadiyya Muslim community to the prime minister and the Knesset, July 7, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

78 Letter from representatives of the Muslim community in Haifa and the district to the Ministry of Religion, July 17, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

79 Letter from the Islamic Association in Haifa to the Ministry of Religion, July 25, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

80 Letter from mukhtar and imam of Kabul to the Ministry of Religion, July 25, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

81 Letter from the Advisory Committee for Muslim Affairs in Haifa to the Ministry of Religion, July 25, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

82 Letter from mukhtar and imam of Tamra to the Ministry of Religion, July 25, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

These letters demonstrate the fear that gripped patriarchal Muslim clerics and political patrons from the colonial era in light of the suggested reforms in women's legal status. This is demonstrated in the letter from Amin Kasem, a prominent figure holding the position of the Imam of the Muslims in Haifa, to the Muslim Department on July 21, 1951. After expressing his regret that the Knesset would think of enacting such a law even after being notified that it contradicts the stipulations of the shari'a, Kasem cited verse 34 of An-Nisa (the women), in the Quran: "Men are in charge of women by [right of] what Allah has given one over the other." He stated uncompromisingly that good Muslims will always follow this verse, explaining that Muslim women are forbidden from dealing with important matters and that the law would not only constitute an offense to the Islamic faith, but also run contrary to the basic truths of existence: women cannot reach the degree of wisdom attainable by men since, had they been able to, God would have granted them this honor, and equated their exalted status to that of the Prophet's. However, as God recognizes the weakness of femininity, the Prophet commands that men take care of the elderly, children, women, and slaves.[83] Kasem's letter is interesting, as he not only seeks to dissuade the Israeli government from instituting the ban based on existing legal frameworks or former declarations but also attempts to reason with the legislators. He argues that one must not interfere in the relationship between a man and his wife or between men and women in general, not only in the interest of political tranquility or cultural tolerance but because to do so is a fundamental break with the natural order of things.

On July 17, 1951, the shari'a court qadis Taher Hamad, Hasan Amin Habash, and Musa Altabari submitted their lengthy and comprehensive comments and reservations to the Women's Equal Rights Law. While they expressed reservations about all the sections of the Women's Equal Rights Law, I focus on the section dealing with polygamy, Section 8.

Like many of their colleagues and coreligionists, the qadis opposed the law mainly because it contradicted shari'a law. They perceived section 8, stipulating the criminalization of polygamy, as a brazen violation of the Quran. They warned the authorities not to intervene in the shari'a courts' jurisdiction in applying shari'a law to Muslims. They also requested that the jurisdiction over personal status matters of Muslims not be transferred to any other court. Any law that the government enacts that violates Islamic texts, they opined, should not be applied to Muslims. Therefore, they requested a total and blanket exemption from the law.[84]

On July 9, 1951, a group of representatives from the Muslim Ahmadi community addressed the prime minister and the Knesset members via the minister of religion and the Knesset chair, arguing that their support of polygamy was due solely to the stipulations of the Quran and that polygamous marriages are enacted only with the full consent of the husband, the future wife, and her legal guardian. If a Muslim woman does not want to be a second wife, they explained, no authority can force her. If she consents to be a second, or third, or fourth wife, and if her husband can support her, and if her parents accede to the marriage, and if it is all religiously sanctioned and has been for centuries, then the government should not, and indeed, cannot deprive the woman of her choice. Such an unwarranted interference in Muslim affairs and revocation of the shari'a would undercut the freedom of religion that the Israeli government espoused as part of its democratic principles.

On April 19, 1952, the qadi of the shari'a court in Acre sent a letter to the head of the Muslim Department referring to a petition from April 3, 1952, by the mukhtars (village headmen) and

83 Letter from Amin Kasem, the imam of the Muslims in Haifa, to the Muslim and Druze Department at the Ministry of Religion, July 21, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

84 Comments on the Women's Equal Rights Law Proposal by shari'a court judges Musa Tabari, Taher Hamed, Hasan Amin Habash, July 17, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

representatives of the Muslim villages in the Acre district, protesting the government's decision to prohibit polygamy. The qadi writes that he had been made aware of governmental efforts to exempt the Muslim community from the law and is writing to express his support and hopes that it will happen.[85] The petitioners he referred to protested the law and the qadis' guidelines with regard to the prohibition of polygamy by stating that it contradicts the Quran and the Sunna, pointing to verse 4:3 of the Quran: "Marry those that please you of [other] women, two or three or four."[86] They claimed that they have enjoyed the freedom of religion from the Prophet's time until the present time, and that no authority has ever intervened in their religious matters. For their preservation of their freedom of religion, they requested a cancelation of this harmful bill—especially in a democratic state like the state of Israel that aimed for equality and individual freedom—so that they would not be forced to turn to international forums.[87]

On January 29, 1952, Taher Hamad, qadi of Yafa's shari'a court, addressed the qadis of Nazareth (sending a copy to the Ministry of Religion and the rest of the qadis), regarding the imposition of the Women's Equal Rights Law on the Muslim community. He stated, "I have no doubt that you think the husband has the full right to divorce his wife and to marry other women. I had some correspondence with those in charge at the Ministry of Religion but without any success. I have not been able to convince them. Therefore, I think there is a need for an urgent meeting of the Qadis to discuss these matters as soon as possible."[88]

On March 6, 1952, the qadis convened to discuss shari'a issues and other religious matters. The qadis of Yafa, Acre, and the Mediterranean region attended, as did the Knesset members Zoabi and Hamdan. The Nazarethean qadis did not attend. The head of the Muslim Department sent a report to the minister of religion summarizing the convention. Most of the discussions were dedicated to the Women's Equal Rights Law. As for arbitration in the prosecution of polygamy offenses, the qadis demanded that they be given the same authority that the rabbinical courts have to permit the marriage to a second wife in certain cases.[89]

On May 26, 1952, the newspaper *Davar* published an article that claimed that polygamy cases were very low among the Israeli Arabs even before the Women's Equal Rights Law was enacted, and that polygamy could potentially save the life of a "prostitute" who became pregnant by her fiancé or a married man who could not marry her because of the prohibition of the law. Therefore, "the life of the woman is threatened by the primitive – popular 'justice.'"[90]

To summarize, the ban against bigamy clause sparked widespread protests in the Muslim community and among the qadis. The ban was perceived by the Muslim community to be contradictory to shari'a, a blatant interference in their personal status matters and religious autonomy, and the

85 Letter from qadis of the Sharia court in Acre to the head of the Muslim and Druze Department at the Ministry of Religion, April 19, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

86 "And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]. Al-Qur'an, Al-Nisa [The women], accessed February 20, 2017, https://quran.com/4:3 (brackets original to source).

87 Petition from the mukhtars (heads of the villages) and representatives of the Muslim villages in the Acre district to the head of the Muslim and Druze Department at the Ministry of Religion, April 3, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

88 Letter from the sharia court's Qadi, Taher Hamad, to the qadis of Nazareth, January 29, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

89 Letter from the head of the Muslim and Druze Department at the Ministry of Religion to the minister of religion, March 6, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

90 "Arosa, Almana 'Vechok Habigamya'" [Fiancée, widow and the "Bigamy Law"], *Davar* (May 26, 1952), Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

qadis asked to be exempted from the applicability of the law. The protests demonstrated their fear of a changing status for Muslim women and losing control over personal status matters. Below I discuss the state's response to the Muslim protests.

THE STATE'S RESPONSE TO THE MUSLIM PROTESTS

On July 15, 1951, Hirschberg addressed the Ministry of Religion regarding the Women's Equal Rights Law and Muslim women's situation. Stating that as long as the Muslim religious courts did not express their opinion about the Woman's Equal Rights Law, he did not see a need to be involved in this discussion, Hirschberg reported,

> [d]uring the past two weeks, we received several oral and written protests from representatives of this religious community, which forces me to draw your attention to this matter. I do not think that we should take the protests against the prohibition of polygamy and the limitation on the freedom to divorce into consideration since they are not violating Islamic laws. We should, however, take into consideration the protest against the reform in inheritance matters since it deeply violates Islamic laws and the religious conscience of community members. The tone of the religious judges is bitter and expresses a willingness to resign.[91]

Therefore, Hirschberg suggested that the government make some amendment to the law that would enable its implementation without causing disruption in to the process of legislation.[92]

In his report, Hirschberg distinguished between the types of protests, according to what he understood to be violations of Islamic law and Muslim's religious conscience and what he thought was in line with Islamic law. Polygamy was thus classified as a phenomenon that does not violate Islamic law. This knowledge enabled Hirschberg to aspire to determine, irrespective of the Palestinian Muslim qadi's petitions, which reforms the Muslim community would never accept and which it might eventually accept. Most importantly, Hirschberg clarified, was to avoid a possible clash with the entirety of the Muslim religious leaders that would negatively affect the possibility of implementing the law. To this end, he proposed some amendments regarding inheritance matters.

His curt letter to Qadi Taher Hamed echoes Hirschberg's confidence as someone who can judge independently whether the objections raised by the ulama were religiously valid: "I am truly sorry; I cannot provide you with any advice with regards to the conundrums of religious conscience that might arise as a result of implementing the law, including the prohibition against polygamy."[93]

Policy makers and government bureaucrats, however, proved more alert to the possibility of a nationwide outbreak of Muslim protests following the reforms in family law and a host of other issues. On February 15, 1952, the head of the Muslim Department addressed the deputy minister of religion in a letter titled "Urgent Matters," in which he refers to section 8 of the Women's Equal Rights Law, complaining that it continued to arouse resentment among the Muslims. Questioning whether it was worth the risk, he suggested slightly amending the law to permit the marriage to a second wife in the case of infertility, severe illness of the woman, or other special social reason.[94]

91 Letter from the head of the Muslim and Druze Department at the Ministry of Religious Affairs to the minister of religion, July 15, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

92 Letter from the head of the Muslim and Druze Department at the Ministry of Religious Affairs to the minister of religion.

93 Letter from the head of the Muslim and Druze Department to Qadi Taher Hamed, January 27, 1951, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

94 Letter from the head of the Muslim Department to the deputy minister of religion, February 15, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

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On March 6, 1952, some three weeks later, Hirschberg notified the Ministry of Religion, his deputy, and the attorney general of the suggested amendment of section 8 of the Women's Equal Rights Law:

> At the conference of the qadis, it was decided to ask the prime minister to propose that the Knesset amend section 8 to allow Muslims in certain cases (infertility, old age, and social cases) to marry a second wife, like the authority that was granted to other religious courts. According to the qadis' proposition, the marriage will be recognized by the qadis and the Ministry of Religion would be informed.[95]

On March 9, 1952, the inspector of the shari'a court sent a proposal for amending the Women's Equal Rights Law to MKs Seif E-Din E-Zoabi and Fares Hamdan and requested that the shari'a court be granted similar authority that had been granted to the rabbinical court to permit bigamy in certain cases, based on the agreed upon guidelines of the qadis' conference.[96]

On March 16, 1952, the attorney general stated that he had no objection to accepting the proposal.[97] This letter supports the argument that the initial law prohibiting polygamy was designed for Jews. On June 5, 1952, David Ben-Gurion waded into the issue, merging Hirschberg's self-assuredness with political calculations and self-awareness of the need to project strength and resolve:

> The claim that this law contravenes religious norms is baseless, even Muslim countries accepted such a law, and also free liberal countries such as England and the United States. Exceptions to the ban may be granted to the man, and no one would suggest that a woman would marry two men, because sometimes the man may be the cause of infertility and not the woman. The fact that a person would unlawfully marry a second wife might occur among Christians or Jews, and it is not sufficient to annul the law entirely. If the chief rabbis approve the marriage of a second wife, they are breaking the law. I think it would be unreasonable to allow polygamy in any case and there should be no difference between a Jew, Christian or Muslim. Human circumstances and possible complications have nothing to do with one's religion... I am not the one to "decide"; there is a government and the Knesset. If someone from the government proposes a change, I will oppose it, and the majority will decide . . . I do not believe that the Knesset will allow polygamy . . . the ban will remain in force and the citizens, regardless of their religion, are obliged to follow the law. The rabbinical office and the qadis are not authorized to circumvent the law.[98]

CONCLUSION

The criminal ban against bigamy as reflected in the Women's Equal Rights Law was affected by national projects and processes.[99] The main project was building the Jewish nation and constructing the ideal family in the Jewish state. The construction of nationhood included the codification of idealized notions of "womanhood" and "manhood." Jewish and Muslim women were constructed

95 Letter from the head of the Muslim and Druze Department to the minister of religion, March 6, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

96 Letter from the inspector of the shari'a court to Knesset members Seif E-Din E-Zoabi and Fares Hamdan, March, 9, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

97 Letter from the attorney general to the head of the Muslim and Druze Department at the Ministry of Religion, March 16, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archive.

98 Letter from David Ben-Gurion to the deputy minister of religion, June 5, 1952, Ministry of Religious Affairs, file no. 2374/8, Israeli State Archives.

99 See Nira Yuval-Davis, *Gender and Nation* (London: Sage, 1997), 1, 26–27.

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as the "bearers of the collective."[100] The formation of family and family laws were central to, and inseparable from, the nationalization project. The discussions of the criminal prohibition against polygamy reveal the underlying patriarchal and national assumptions that guided and underpinned the desired notions of family, women, and citizenship among legislators.

The Israeli legislature adopted the colonial family law system that was based on religious rather than egalitarian values. The British colonial legacy is therefore embedded in Israeli institutions and its family law system. These legacies have profound implications for the legal status of the Palestinian minority in general and the legal status of Palestinian women in particular. Analysis of the legislative history of the criminal prohibition against polygamy demonstrates the multiple manifestations of these legacies in Israeli Law. Israeli policy toward the Palestinian Muslims strictly as a religious group reflects one manifestation of the British colonial legacy. This policy was paradoxical, oscillating between control and legality, between regulating what constitutes illegal conduct and monitoring and maintaining control over the Muslim population by seeking to eradicate nationalistic sentiments and strengthening religious ones and by avoiding clashes with the Muslim community.

The process of legislation raises questions about the definitions of citizenship and family. It defined the boundaries of citizenship of women in general and Muslim women in particular in their absence in the debates surrounding the legislation. The civic rights of Arab Muslim women were indirectly defined as a by-product of Jewish women's citizenship.

It also defined the family and the ideal family in the Jewish state as part of nation building. Arab Muslim women were rarely mentioned; if they were, they were mostly spoken for by paternalistic men, either Jewish men with a paternalistic approach toward them or Arab men represented by the qadis and the Arab Knesset members. In their resistance to what they deemed unwelcome state encroachment, Muslim men strove to preserve the patriarchal family and the inferior status of Muslim women and perceived this legislation as a threat to their autonomy on personal status matters. The Jewish state enacted family laws, but Muslim women were not part of this debate; their perceptions, attitudes, and voices were not brought forth, and they were misrepresented by both a national hegemonic Jewish discourse and an oppressive patriarchal Muslim discourse.

The process of legislation was significant in creating the Jewish nation and its ideal family; it helped to construct and redefine Zionist values. The legislation of family law enabled the building of the Jewish nation and the ideal family in the Jewish state and was aided by the regulation of polygamy.

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100 Nira Yuval-Davis, "Bearers of The Collective: Women and Religious Legislation in Israel," in *Israel Women's Studies: A Reader*, ed. Esther Fuchs (New Brunswick: Rutgers University Press, 2005), 121–32.