

MARRIAGE, FAMILY, AND LAW IN EGYPT

Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt.

By Kenneth M. Cuno.

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Based on a rich variety of sources, such as 1848 census registers, sharia court records, legal opinions, periodicals, and personal memoirs, this insightful book, which will be of interest to students of Egyptian modern history, family history, and gender studies, explores the development of a conjugal family ideal in Egypt during the late nineteenth and early twentieth centuries. It also investigates the socio-demographic and legal changes affecting marriage in those decades. The book challenges the views of some scholars that no significant changes occurred in the family prior to the First World War.

The first two chapters address the changing political, social, and demographic factors that influenced patterns of marriage and family formation from the mid-nineteenth to the early twentieth century. The third chapter examines the new family ideology promoted by modernist intellectuals and popularized in the periodical press. The final three chapters analyze changes in the legal system that affected marriage and marital relations. An epilogue and conclusion briefly discuss the legislation of the 1920s that governed marriage and divorce.

The main thesis of the book is that the principal inspiration for the change in family ideology and, consequently, of family structure, in Egypt, was new perceptions about the family that developed in Europe, especially in France. According to these perceptions, the ideal family is conjugal, based on a monogamous marriage, affectionate relations between the spouses, and a clear division of roles between them — the husband supports the family and the wife takes care of the house and the children. Influenced by the European colonial presence, the Egyptian intellectual elite, including the rulers from Muhammad Ali's dynasty, adopted this ideology, believing *inter alia* that such practices would improve Egypt's image in the eyes of the colonizers and thus hasten the release from foreign control. For this purpose, this ideology was circulated among the public, both by the personal example of elites (who transformed their families from extended to nuclear ones and abstained from polygyny) and by the circulation of books and journal articles. The intellectuals who wrote that literary output 'participated in the transnational flow of a set of ideas about civilization, education, childrearing, and family that originated in the Enlightenment, selectively combining those ideas with precolonial Muslim normative ideals to produce a hybridized ideal of the family' (102).

In the legal field, this ideology was applied through, first, the administrative reorganization of the sharia courts, which were authorized to adjudicate familial disputes; second, changes in the procedural rules applied by these courts; and third, the codification of family law in the 1920s. These reforms, in addition to granting exclusive jurisdiction to the Hanafi school of law, turned the sharia court system from a flexible to a rigid one, and overall exerted negative effects on women. The latter were no longer able to improve their legal

status by using the laws of other Sunni schools, and their relative freedom of movement was curtailed, because their activities were restricted to the domestic arena and they were obliged to obey their husbands in order to avoid losing their right to be maintained by them. The promulgation of the family code in the 1920s aimed to reinforce these changes to family structure and marital relations, as well as to correct some of the unwanted ramifications resulting from the exclusive jurisdiction granted to the Hanafi school.

Cuno restricts his analysis to the nuclear family and, within it, to marital relations, thereby providing his readers with only a partial picture of family history. It is true that the Egyptian elite preached the transformation to nuclear families, but one may not ignore that even after the codifications of the 1920s, which were partial, the extended family continued to be relevant both socially and legally. Thus, for example, the sharia courts still adjudicated lawsuits referring to claims of maintenance among distant blood relatives, as well as disputes involving guardianship over minors, inheritance, last wills and testaments, and family endowments.

Furthermore, emphasizing the colonial state's role in generating social and legal change may lead to historiographical inaccuracies. One example is the introduction to Egypt in 1897 of the 'house of obedience' (the subject of Chapter Six), which enabled the police to return a disobedient wife to her husband's house, if necessary through use of violence. Cuno presents this reform as a deviation from classical Islamic law and judicial practice, in which the only sanction that a disobedient wife could suffer was the loss of her right to maintenance from her husband. The author attributes this new practice to the influence of France, where the 'house of obedience' was introduced in 1827. The French brought the institution to Algeria, which they controlled, and, after it was connected there to Islamic culture, it moved to Egypt and other places. I have expressed my reservations about this theory elsewhere.¹ I have recently come across another piece of evidence that undermines Cuno's thesis that the 'house of obedience' was 'a modern practice without precedent in custom or Muslim family law' (185).² Yossef Rapoport writes that the late Mamluk period in Egypt (the reigns of Qaytbay, r. 1468–96, and Qanṣawh al-Ghawri, r. 1501–16) saw a concentration of all jurisdiction in the hands of the sultans, who presented themselves as champions of sharia and openly disputed the formalistic doctrines of the judiciary. On the specific issue of the 'house of obedience', Rapoport notes that '[a] contemporary legal opinion tells of a man who swore on pain of divorce that if his wife left home without his permission, he would complain about her to the military courts (*siyāṣah*) and *bring the police to arrest her*' [emphasis added] (88). It seems, then, that the 'house of obedience' had precedent in late-Mamluk Egypt and was reintroduced in Egypt in the late nineteenth century as the result of the build-up of the centralist and bureaucratic Egyptian state.

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1 R. Shaham, 'Bayt al-Ṭā'a,' *The Encyclopedia of Islam*, 3 (2009, 3rd ed.), 166–69.

2 Y. Rapoport, 'Royal justice and religious law: *Siyāṣah* and Shariah under the Mamluks,' *Mamluk Studies Review* 16 (2012), 76.