
The Vanishing Victim: Criminal Law and Gender in Jordan

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Focusing on the issues of rape and honor killings in the Arab world, particularly Jordan, this article investigates the use of criminal laws as an element in political legitimation. These laws are an arena for contestation not merely over policy choices, but over the nature of the sociopolitical order as well. Recent debates over the alteration or preservation of such laws have highlighted the use of legal codes as an expression of dominant values in a political system. I argue that the use of gendered legal systems to serve legitimation claims has important implications for the prospects of democratization.

The ordinary administration of criminal and civil justice ... contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence toward the government.

(Alexander Hamilton, *Federalist Papers*, #17)

Criminal law in Arab countries catches public attention in the West only rarely, and then only on issues with a certain shock value, such as the amputation of thieves' hands in Saudi Arabia or honor killings in Jordan. These phenomena are usually characterized as the ugly side of an undemocratic and less-developed foreign culture. However, I argue that such practices and the legal environments surrounding them should be understood as the product of a relationship among law, politics, and culture that exists in all systems and is tied to political contestation. This

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relationship has important implications for democracy insofar as it defines the extent of equality and rights protection in a society.

Focusing on the issues of rape and honor killings in the Arab world, particularly Jordan, this article considers criminal law in its role as both a locus of political debate and an influence on the fundamental makeup of the political system. It has potentially greater social power than other elements of politics precisely because it does not appear to be primarily political; it is an arena for contestation not merely over policy choices, but over the shared values on which the political system is based. It is simultaneously part of the debate about political choices and rights and a means of defining the terms and scope of that debate.

This political function of legal codes is not always recognized, since their most apparent function is a practical regulatory one; criminal law, in particular, seeks to regulate social conflict for the purpose of public order. Laws also affect and reflect shared notions of justice and morality; these concepts are important elements of the legitimacy that states need to undergird their political rule. Contestation over the requirements of justice and morality are thus a chief means by which law becomes overtly a matter of political choices. The political implications of conflict regulation are usually invisible, as such regulation appears more practical or natural than political, but questions of justice and morality have a prominent place in many political systems.

The Theoretical Context of This Study

The statement above that law does not seem primarily political warrants further clarification. There is a large body of work on the anthropology and sociology of law, in which it has long been established that law and even crime itself are best understood as social constructs (see Quinney 1970). Law reflects dominant social values and at the same time helps shape these values. Thus law indicates what interests in a society are most powerful, and “law in operation is an aspect of politics – it is one of the methods by which public policy is formulated and administered for governing the lives and activities of the state’s inhabitants” (Quinney 1970:37). Furthermore, not only does law reflect power and interests within a society, but it is also a means by which the state can serve its own interests, which is particularly important in the cases studied here.

Thus of course law is political, but it is less obviously political than election contests, party platforms, public demonstrations, or other political activities that clearly involve competition of different interests. Law is often regarded (not by scholars, perhaps, but by regular citizens) as an objective collection of rules—moral,

certainly, but not really political (or even moral *rather than* political). Where the law is political, it is often constitutional, in the broadest sense (see Nourse 2002); that is, it appears less partisan-political and more about establishing and protecting the fundamental elements of society—the conditions that make civic life possible.

For example, murder is a crime everywhere, but this would not strike most people as a law that is political; it does not serve some identifiable political interest at the expense of others. Rather, murder is “just wrong.” But the outlawing of murder serves an important and fundamentally political purpose. It helps define and protect what is necessary for society to exist. If we take the example a step farther, laws about murder admit several exceptions and mitigations; these are perhaps more obviously an example of political choices in the law. Most, if not all, systems recognize, for instance, a difference between murder and justifiable homicide. This may appear to be merely a practical regulatory distinction, but it clearly incorporates a society’s (dominant) values about who is allowed to kill, what constitutes acceptable circumstances for killing, etc. Obviously, if the law allowed white men to kill but not women or black men, it would tell us something important about norms of equality and power in that society. But when the law is less blatantly skewed to a particular interest or set of values, the political implications can be more difficult to tease out. Where legal provisions seem to deal with the fundamental necessities for social life, as in the original example above, the law seems less political, and thus less contestable.

This question—how political law is—is an important one in the criminal law issues described below. Debate over criminal laws that are particularly disadvantageous to women often involves assertions about the primacy of moral claims over merely political ones. Those who advocate changing the laws to redress inequality must counter the assertion that they are promoting individual (political) preferences over society’s morality or cultural authenticity (discussed further below)—that is, that they are treating law as politics when really law is morality and cultural identity.

This article draws upon the anthropological and sociological approaches to law mentioned above but hopes to make a contribution with regard to how and why the politics of law is important to political systems. The cases examined here demonstrate that contestation over legal inequalities and legally reinforced social subordination is a fundamental element in the development and maintenance of democracy. Not only do laws that perpetuate social subordination harm the individuals at the receiving end of such laws, but they also undermine the principles of equality, inherent rights, and perhaps even popular sovereignty in a political system.

Gendered Criminal Law

The political purposes served by legal codes are perhaps most apparent in issues such as civil liberties regulation, but the same purposes can be served equally well, if not equally overtly, in ordinary criminal law. In the Arab world, as in many areas, criminal codes are markedly gendered, by which I mean that the definition of and penalties for certain crimes reflect societally sanctioned notions of appropriate sex roles. This is most obvious in legal treatments of rape and domestic violence; statutes as well as police and judicial practice in these areas are widely recognized to reflect social mores about female and male sexuality, appropriate roles of marriage partners, and so forth. This is true in every criminal justice system of which I am aware; the days are not long past when American court officials accused rape victims of inviting the attack by their manner of dress or behavior. In a similar vein, a man who punches his neighbor is guilty of simple assault, a crime to be dealt with by the public laws, while one who punches his wife is in many countries still considered to be acting within a semi-protected "private sphere" not subject to equal public regulation.

This gendering of law disadvantages women as victims of crime in order to serve a broader sociocultural purpose. The tension between individual rights and community interests exists in all legal systems; the rights of accused criminals, issues of community standards as a restriction on individual behavior, and the state's interest in maintaining public order versus the individual's interest in limiting the power of the state are issues that all systems deal with in some form. It must also be acknowledged that most, if not all, legal systems seek to be appropriate to the societies they regulate, by reflecting social norms and shared beliefs. What is notable about the issues examined here is that concessions to social practice or cultural tradition are reconciled with the legal system largely through altering the way the law applies in cases where crime victims are almost by definition female.¹ This is in keeping with the widespread practice, in state structures and in societies, of regarding women as the vehicles by which authentic culture is maintained; thus gender issues are fertile ground for efforts at cultural legitimation.²

¹ I do not mean to imply in the treatment below that rape is a crime exclusively against women. However, the laws at issue here treat it that way, and the social meaning of the crime is very much about women and honor. Rape of males raises similar gender issues about power and sexuality, but these do not inform the law or politics on the issue, as such crimes are not brought into public discourse.

² Traditional practices not related to gender are also given occasional recognition in legal codes. For example, some codes provide for the payment of *diyya*, or blood money, as partial redress for the killing of another. This practice recognizes the economic

When gender issues are related to the nature of a crime itself (as in rape, honor killings, and domestic violence), the penal code departs from the general orientation toward the pursuit of justice for the wronged individual and privileges the social-order aspects of law. That is to say, in the case of most types of crime, the state seeks justice for the victim (and thus indirectly for society) by pursuing criminal punishment of the offender. However, in the gendered elements of criminal law that I discuss below,³ the state seeks social justice—or more accurately social order—by means of redefining the victim as complicit in the crime, as perpetrator herself, or simply as the available means for resolving a social conflict. Thus the victim disappears in that she is no longer visible as a victim to whom justice is owed, and she reappears as a means by which a problematic situation can be resolved to best serve the interests of the community.

Rape

Rape law in the Arab world has long been a target of criticism by women's rights activists and others. Rape is a crime that, when prosecuted, carries serious penalties for those convicted. The punishment in Jordan for rape of an adult woman is 10 years' imprisonment⁴; in Egypt the penalty usually ranges from three years to life imprisonment (U.S. Department of State 2002: Egypt).⁵ In several countries, rapists can receive the death penalty, although this usually requires that the crime be accompanied by special circumstances, such as abduction or a juvenile victim.⁶

consequence to a family of a person's death, and diya amounts are adjusted accordingly. However, such traditions supplement, rather than circumvent, the practice of "regular" criminal law; laws of homicide still apply, and the state simply recognizes an additional interest to be served by the system, rather than redefining the system's interests as is the case in the gendered legal statutes.

³ This article addresses rape and honor killings, but not domestic violence. Although domestic violence has received greater attention in Jordan in recent years, it is still very much a hidden phenomenon. Victims of domestic violence are generally unwilling to make their troubles public, and cases are rarely brought to prosecution. As a result, the inclusion of domestic violence in this study was not feasible due to the absence of reliable data.

⁴ Lawyer Asma Khader, interview, Amman, April 1998.

⁵ In 1992, President Mubarak introduced a bill to raise the maximum penalty for rape to death in cases where the rape is compounded by kidnapping.

⁶ In Jordan, rape of a child under 15 is punishable by death, although lawyer Asma Khader (interview, Amman, April 1998) points out that the death penalty has usually been imposed in cases where the rapist also killed his victim and thus would have received the death penalty for another component of the crime (murder). However, news reports have indicated that some men have received the death penalty for rape (without other aggravating circumstances) of a child under 15 years old; two men were hanged for such rapes in 1996. See "Jordan executes two murder convicts," *Deutsche Presse-Agentur*, 12 March 1997 (n.p.). Tunisia provides for the death penalty in cases of "rape of a female with

However, legal codes (and public attitudes) have also treated rape as a social conflict requiring resolution among all the affected parties. Reliable statistics on the prevalence of rape in societies are difficult to find, as most observers believe that the vast majority of such crimes are unreported.⁷ Furthermore, marital rape, which takes place exclusively within the sphere deemed private and does not raise issues of threats to social order, remains legal in Jordan, Egypt, and most countries of the region.⁸ It is in cases where the crime becomes public that the law steps in, and even there, the law can provide a means for resolving the situation without prosecuting the crime.⁹

Under Jordanian law, it is possible for rapists to escape criminal prosecution if they marry their victims (Jordanian Penal Code 1961: Art. 308)¹⁰; this was also the case in Egypt until 1999 (Egyptian Penal Code 1937: Art. 291).¹¹ Because of family and societal pressures, rape victims often do agree to such marriages.¹² The law has permitted such a resolution out of recognition of the

violence," Morocco in cases of "rape of a minor leading to death," and Saudi Arabia in all cases of rape (United Nations Economic and Social Council 1995).

⁷ Jordan publishes official crime statistics (see Department of Statistics 1996); reported cases of rape numbered between 29 and 63 annually between 1992 and 1996, while cases of indecent assault ranged from about 400 to just over 500 per year in the same period (in a population of about 5 million; Department of Statistics 1996). Egypt does not publish such statistics, and newspaper reports of the annual rape rate range from about 80 per year according to *al-Ahram Weekly* to 200 per year according to the *Middle East Times*; Egypt's population is approximately 75 million.

⁸ United Nations Committee on Economic, Social and Cultural Rights 2000. See also U.S. Department of State 1999 (for Egypt, Jordan, Syria, and Algeria). It is sometimes asserted (see Rishmawi 1986 and Jewett 1996) that Egypt's rape law applies to husbands, but this is not the case.

⁹ Tucker points out that the history of Islamic legal practice also provides examples of the treatment of rape as a matter for compensation rather than strict criminal penalty. She cites the seventeenth-century mufti Khayr al-Din al-Ramli as instructing that a rapist who had abducted his victim should under some circumstances be allowed to compensate her by payment of *mahr* (dower payment to a bride) rather than face the penalty for unlawful intercourse (stoning or flogging). See Tucker (1998:160–4).

¹⁰ See also Rishmawi 1986 and the International Women's Rights Action Watch report on Jordan (1997). A medical examiner who assists in police investigations of such crimes suggested that this provision is no longer active (Dr. Hani Jahshan, medical examiner, National Institute of Forensic Medicine, Jordan, interview, June 1999), but it remains part of the legal code, and underreporting of rapes in general makes it impossible to determine how many such crimes are "privately" resolved this way. Once a rape is reported to the police, regulations require that the case be referred to prosecutors (Family Protection Unit, Public Security Department, Jordan, interview, November 1998).

¹¹ This article was cancelled by Presidential Act #14 of 1999 (confirmed by Parliament), published in the *Official Gazette*, 22 April 1999, p. 2.

¹² It is important to note that neither the legal nor the cultural aspects of this situation are unique to the Arab or Muslim world. For example, Brazilian law provides that a convicted rapist can escape punishment by offering to marry his victim (U.S. Department of State 2003: Brazil). Likewise, in Guatemala, "criminal responsibility for rape or certain other sexual crimes is extinguished upon the perpetrator's marriage to the victim," according to the Inter-American Commission on Human Rights (2001). The same was true

cultural value placed upon female virginity at marriage; despoiled girls and women are a source of shame for their families, innocent of wrongdoing though they may be. It is not unknown for rape victims to be murdered by family members in order to rectify the shame brought upon the family by the crime. In the Egyptian parliamentary debate surrounding the decree to remove the “marriage loophole,” some lawmakers have objected to altering the existing law on the grounds that it provided raped women with their only chance to marry, since after having been raped, no other man would want them (“Egypt’s president voids law setting free rapists who marry victim,” Associated Press, 5 April 1999, n.p.). Rape law has, in statute and in practice, privileged the protection of social order over the provision of individual criminal justice.¹³

The marriage loophole, where it exists, is clearly a means by which to rectify a social problem (the social standing of a raped woman and her family) rather than to punish a crime. In general, it is clear that the practice privileges broader social interests, especially those of the victim’s relatives, over the interests of the victim herself. Arguments about the presumed benefit to the otherwise unmarriageable victim of a rape are tenuous, as marriage to a violent attacker could hardly be more suitable than remaining unmarried, even recognizing the economic and social disadvantages facing unmarried women. It is worth noting, furthermore, that even this practical solution has its shortcomings, as rapists often divorce their wives/victims soon after marrying to avoid criminal charges. Jordanian law attempts to close this avenue of escape from marriage by providing for resumption of prosecution if the rapist arbitrarily divorces his wife/victim within three years of marrying her.¹⁴ He could, however, divorce his wife for cause, such as not bearing children.¹⁵ The claimed traditional aspect of the practice is tenuous as well, since the Egyptian law itself dates from 1904 at the earliest (el-Tablawy 1999).¹⁶ Nor is it an

in Peru until 1999, Colombia until 1997, and Mexico until 1991 (Inter-American Commission on Human Rights 1999, 2000; Report of the Special Rapporteur 1998).

¹³ As one author put it, Egyptian rape law punishes offenders, but “while this may be an attempt to protect the psychological and physical health of women, it is more likely an attempt to maintain both the purity of women and the honor of the family” (Jewett 1996:200).

¹⁴ Article 308 of the Penal Code; cited in International Women’s Rights Action Watch report 1997.

¹⁵ There is little information about the fate of such women, or even how often such divorces occur, which is not surprising given that the purpose of such a marriage in the first place is largely to avoid the social shame for the woman’s family consequent upon the rape. In general, however, the stigma attached to divorce varies from case to case, and many divorced women eventually remarry.

¹⁶ Other AP reports refer to the same 1904 date for the start of the practice, although the *Middle East Times* identified the source of the actual statute as dating from the 1930s, probably because the current criminal code was enacted in 1937.

element of Islamic law, and recent statements by Sheikh Nasr Farid Wasel, the mufti of Egypt, condemn the practice of pressuring girls and women to marry their attackers as contrary to the principles of Islamic marriage (“Legal Loophole for Rapists Closed,” *Cairo Times*, 28 April 1999, n.p.). However, the marriage loophole was created and used for the purpose of providing social problem-solving rather than criminal justice, and it addressed the social practices surrounding raped women and family honor, rather than the crimes against individual women. The problem of the social existence of a raped woman is settled by having the rape victim disappear, to be replaced by a wife.¹⁷

Honor Crimes

In recent years a great deal of international attention has focused on the phenomenon of “honor killings,” particularly in Jordan and Pakistan.¹⁸ Honor killings are murders carried out by family members against girls and women who are believed to have committed a sexual indiscretion, or to have caused gossip related to sexual behavior, that besmirches the honor of the family. The concept of honor (*sharaf*) has to do with social standing on the basis of moral behavior; men’s honor is intimately connected to the sexual chastity of their female relatives. Thus a woman’s or girl’s bad conduct would not only embarrass her family but would impugn the honor of the entire family, particularly the men, who have the right and duty of defending this honor. This conception of honor distinguishes such killings from otherwise-similar “crimes of passion” that are well-known in most legal systems. While claims of reduced responsibility on the grounds of rage are often claimed as mitigating circumstances by the perpetrators of honor killings, the justification for the killing is socially understood not as the temporary loss of control produced by passionate anger, but as the social harm and loss of honor caused by the woman’s behavior.

This phenomenon is often regarded, in the Western media and among its local advocates, as specific to either Arab constructions of honor or Islamic values, but in fact, similar practices relating to

¹⁷ Feminist scholars have noted a similar phenomenon in American law and society, as well. See Matoesian 1993 regarding the “social facticity of rape.” The argument is that the juridical treatment of rape tends to define and recast it in such a way that rape often becomes, in the view of the law, consensual sexual intercourse. The rape disappears to be replaced with sex, and if there is no crime, there is no victim. This is quite similar to the process described above wherein the victim disappears to be replaced with a wife (or, in some cases, a corpse).

¹⁸ News media including the *New York Times* (Jehl 1999) and various news programs, such as *20/20*, have featured stories on honor killings. Other works on the legal issues surrounding these acts include Arnold (2001) and Ruane (2000).

honor and female sexual behavior are found in other regions as well. In particular, the lenient treatment of men who kill their wives is well-known in many systems. From dowry deaths in India to the “legitimate defense of honor” in Brazil, many legal systems have found formal or informal ways to excuse or mitigate the penalties for wife-killing (see Spatz 1991). Many readers will be familiar with similar practices in the American system, in which husbands who murdered their adulterous wives received little or no penalty for the crime. In the American case, this phenomenon arises from a variety of sources: common law, statute, judicial interpretation, and jury practice. Blackstone wrote, for example, that a man who killed his wife’s lover upon discovering them in adultery was guilty of manslaughter, rather than murder, being assumed to have acted in a passionate rage.¹⁹ Until the 1970s, statutes in Texas, New Mexico, and Utah recognized a husband’s discovery of his wife’s adultery as grounds for justifiable homicide (see Weinstein 1986; Miccio 2000). Judicial interpretation in Georgia created a rule allowing a man to kill his wife’s (or, in this case, daughter’s or fiancé’s) lover in order to stop an adulterous relationship; interestingly, the Georgia rule also applied to wives, unlike the provisions in other states (Weinstein 1986:234–5).

Although it is widely believed that these statutory and judicial rules generally allowed men to kill their adulterous wives with little or no penalty, it appears that in fact we must look elsewhere for the source of the toleration of wife-killing in the American case: these rules allowed only the killing of the spouse’s lover, *not* the adulterous spouse (Weinstein 1986).²⁰ The widely known practice of letting wife-killers off with light penalties seems to be primarily a product of the application of crime-of-passion provisions and the sympathy of jurors (for most of history, exclusively male) for cuckolded husbands. The American case is thus not exactly similar to the phenomenon discussed in this article, because the concept of honor is less important in the American context than the common-law concept of a husband’s property in his wife,²¹ but in other respects the judicial treatments bear a strong resemblance. The

¹⁹ Blackstone’s Commentaries (1765–1769), Book 4, Ch. 14. Blackstone explained that such killing, while manslaughter; “is however the lowest degree of it: and therefore in such a case the court directed the burning in the hand to be gently inflicted, because *there could not be a greater provocation*. Manslaughter therefore on a sudden provocation differs from excusable homicide *se defendendo* in this: that in one case there is an apparent necessity, for self-preservation, to kill the aggressor; in the other no necessity at all, being only a sudden act of revenge” (emphasis added; see note 24).

²⁰ Weinstein notes, however, that the Texas statute was interpreted to allow the killing of the wife as well, until the 1920s.

²¹ Miccio cites an English case from 1708 in which the court commented, “. . . adultery is the highest invasion of property. . . . [A] man cannot receive a higher provocation” (2000:161). The language here is very similar to that of Blackstone (1765–1769).

legal path has different scenery, but the destination, where murder charges are reduced to manslaughter or the act is excused altogether, is very much like that in the Jordanian case, as discussed below.

The legal treatment of wife-murders has also received a great deal of attention in Brazil, where explicitly honor-based defenses were common until recent years. A man who murdered his wife or girlfriend was often exempted from any penalty if he was found to have acted in “legitimate defense of his honor” (Human Rights Watch 1995). The so-called defense of honor often involved the (actual or alleged) adultery of the wife, but it was also a successful defense for a playboy who had been kicked out by his wealthy girlfriend and responded by gunning her down in the street.²² It was not until 1991 that the Brazilian Supreme Court rejected such defenses (Brooke 1991), and reports suggest that in the interior regions of the country, trials often still incorporate them. Similarly, in Haiti, the current penal code provides that men who murder wives or their lovers upon discovering them committing adultery in the conjugal home are excused from penalty; wives who kill husbands under identical circumstances do not benefit from this excuse (U.S. Department of State 2003: Haiti). In both the Haitian and Brazilian cases, the origin of these provisions can be traced to the legal systems of the colonial European powers, France and Portugal respectively.²³

In addition to these examples of similar practices in non-Arab, non-Islamic countries, honor killings are also known among Christians in Jordan and other Arab countries, leading some observers to attribute it to a “tribal mentality” rather than religion or Arab culture as a whole.²⁴ However, despite its questionable position as an inherently Islamic or Arab practice, the question of whether the practice is appropriate on traditional or religious grounds is at the center of the social understanding and political relevance of honor crimes in the Jordanian case.

In Jordan, girls and women have been killed for adultery, premarital sex, flirtations, speaking to or corresponding with males outside their families, being seen in the presence of an unrelated male, and marrying against the wishes of their families. Honor killings are most often carried out by the brother or father of the victim, rather than the husband, but the decision to kill is often a family one. It is not uncommon for a family to have a minor,

²² Brooke (1981). The verdict was later overturned after loud public protests from women’s rights groups.

²³ The effect of French law in the origin of honor-crime statutes is also discussed below.

²⁴ Senator Leila Sharaf, interview, Amman, July 1999.

usually a brother of the victim, commit the killing because juveniles receive lighter penalties. There is little reliable demographic information on the victims and perpetrators, but the crime is often associated with conservative sectors of society, rural areas, and poor families. It is not limited to these groups, however, and anecdotal evidence suggests that the question comes up even in mainstream, urban, professional families. In conversation, those from Jordanian families sometimes told me that honor killings mostly take place among the Palestinian population,²⁵ while Palestinians were more likely to depict it as a “tribal Jordanian” phenomenon. People from educated backgrounds tended to attribute the phenomenon to the lower classes.

As with rape, reliable statistics are difficult to find, because such crimes often go unreported or masquerade as accidents or suicides.²⁶ Jordan’s official statistics place the honor killing rate at between 20 and 30 deaths per year, out of a total murder rate of approximately 100 per year.²⁷ Many observers, including the police, doubt the accuracy of these numbers and believe that the actual rate of honor killings is much higher.²⁸ Reports from other countries are occasionally provided by nongovernmental organizations (NGOs), although they acknowledge that the data are unreliable. A Palestinian NGO identified 20 honor murders in the West Bank and Gaza during 1996, but the (then) Attorney General of the Palestinian National Authority estimated that 70% of all murders in the Occupied Territories are honor killings (see Ruggi 1998). Lebanese Internal Security Force statistics reported 22 honor killings between 1995 and 1997 (Yehia 1999), while outside observers reported between 25 and 35 such crimes for 2001 alone (U.S. Department of State 2002: Lebanon). The practice is also known in Egypt, Syria, and Yemen, but reliable statistics are not available. Statistics of whatever quality are in any case available only for recent years; the very issues of honor and

²⁵ The most important demographic split in Jordanian society is between Palestinians and (East Bank) Jordanians. The Jordanian population is well more than half Palestinian, but East Bank Jordanians hold most of the political power.

²⁶ Jordanian medical examiner Dr. Hani Jahshan reports that many young female suicides are the result of direct pressure or threats by families who believe the girls have dishonored them (interview, June 1999). In addition, some alleged suicides are probably in reality homicides.

²⁷ Honor killings are not reported as a separate category in crime statistics, but a reliable source has for several years been provided by journalist Rana Hussein in the daily *Jordan Times*. Hussein tracks honor crimes by following police cases and court proceedings; she reports that officials believe that approximately 25 of the known murders in 1997 constituted honor killings, and she cites an average of 25–30 such killings per year (Hussein 1998).

²⁸ Interview with officers of the Family Protection Unit (1999) and numerous statements by activists.

shame that provoke honor killings have precluded the public discussion and tracking of such crimes until very recently.

The Jordanian, Egyptian, Syrian, and Lebanese penal codes²⁹ provide reductions or elimination of penalty for murders committed for reasons of honor. The statutes generally specify that the victim is female, that the perpetrator is a male relative of a certain degree (usually brother, father, or husband),³⁰ and the circumstances of the victim's behavior that justify the crime (catching a wife in the act of adultery, for example).³¹ Until recently,³² the Jordanian statute, Article 340 of the Penal Code, provided that

1. He benefits from an exculpatory excuse who surprises his wife or one of his female unlawfuls [*muharim*, a woman related to him by a close enough degree to preclude marriage between them] in the act of adultery with another man and kills, wounds, or injures one or both of them.
2. The perpetrator of a killing, wounding, or injury benefits from a mitigating excuse if he surprises his wife or one of his female ascendants or siblings with another in an unlawful bed (Jordanian Penal Code 1961: Art. 340 [author's translation]).³³

The terms of the law provide for reductions of penalty to male perpetrators only; women who discover husbands or relatives committing adultery were not accorded similar treatment, here or elsewhere in the law. Furthermore, the term *honor* is nowhere mentioned in the article, yet it is the basis of the social understanding of the law's role. It is widely understood that the behavior encompassed by the statute's description would discredit the honor of a woman's (male) relatives, and that the law is meant to account for the natural response to such a provocation.³⁴

²⁹ Article 340 of the Jordanian Penal Code, Article 237 of the Egyptian Penal Code, Article 548 of the Syrian code (1949), and Article 562 of the Lebanese code (1943, amended 1999).

³⁰ In the Jordanian case, perpetrators are usually brothers or fathers, and more rarely husbands. This differs from the examples cited of the United States, Brazil, and Haiti, where women killed for honor or sex-related reasons are nearly always killed by husbands or boyfriends.

³¹ A more detailed analysis of the statutes themselves can be found in two very useful articles by Abu-Odeh (1996, 1997).

³² In December 2001, the first clause of this article was annulled and the second amended. These changes are discussed in more detail in the text below.

³³ Section entitled "Excuse in Homicide." The items above are often translated as "benefits from an exemption from penalty" (paragraph 1) or "benefits from a reduction of penalty" (paragraph 2); while this is certainly the substantive outcome of the provision, the precise language of the law refers to the nature of the *excuse* as exculpatory (full) or mitigating (partial), and does not actually mention "penalty" or "punishment."

³⁴ In the words of parliamentary deputy Mahmoud Kharabsheh, "What do you expect from a man who walks into his house and finds his wife in bed with another man? Give her a rose?" (quoted in Husseini 2000f:n.p.).

This is the article of law around which the honor crimes debate in Jordan has been centered. However, it is interesting to note that this statute does not reflect the predominant social practice, nor is it legally relevant in terms of judicial practice. Abu-Odeh has investigated the issue of court practice and found that for much of the country's history, Article 340 was rarely if ever used in the courts (Abu Odeh 1996:157–9). This is no doubt in part because of the difficulty of meeting the circumstances required by the article, which refers to catching the couple in the act. In practice, women and girls are usually killed well after whatever act they are believed to have committed, and often merely upon the suspicion of bad behavior or for causing gossip that embarrasses the family. One man who suspected his sister, a married mother of five, of “immoral behavior” waited for her outside her home and shot her repeatedly (Husseini 2000f); a 13-year-old boy strangled his 14-year-old sister to death with a phone cord for “talking with men over the phone” (Husseini 2000c).

Also, by the terms of the statute, killing the male partner to the adulterous or indecent act would also qualify a man for a lighter or waived punishment, but in practice, it is almost invariably women who are killed. The law thus does not reflect the entirety of social understanding of the circumstances in which killing is a justifiable response to honor affronts, nor does it predominate in actual judicial treatments of honor killers. Nonetheless, its presence in the penal code has become a matter for political contestation and has provoked one of the most vibrant and widespread debates in Jordan in recent years.

These killings are crimes that would, under other circumstances, constitute murder. In most cases the acts are premeditated, and they are typically extremely violent: victims are not merely quietly done away with to restore family honor; instead they are killed with multiple stab wounds or gunshots, bludgeonings, or strangling, occasionally in public.³⁵ One case in the Jordan Valley involved a man who killed his pregnant sister by repeatedly running over her with a pickup truck (Husseini 1999e); another pregnant woman was stomped to death by her brother and (in an unusual twist) her sister-in-law (Husseini 2001). In many cases, the perpetrators present themselves to the authorities and announce what they have done, confident of a light penalty (if, indeed, they are prosecuted at all; see below). As with the marriage loophole for rapists, the law allows the crime victim to disappear; her death is

³⁵ A Jordanian medical examiner described honor killings as “more violent” than other murders (Dr. Hani Jahshan, interview, June 1999). One woman killed by her brothers and husband was reportedly stabbed 50 times (Husseini 1999c). In one unusually gruesome case in Egypt, a father beheaded his daughter and paraded her severed head down a village street (el-Tablawy 1997).

redefined as a justifiable homicide, her own actions (or alleged actions) become an element in the crime, and the murder victim vanishes, leaving in her place a wicked woman who had to be killed for the honor of her family and the morality of society.

The Political Debate over Article 340

In 2001, Article 340 was amended by the government. The first clause, providing for exculpatory excuses, was cancelled, the second was retained, and a new clause was added providing that a wife who surprises her husband committing adultery may also benefit from a mitigating excuse. As the discussion above suggests, these changes may have little effect in the actual exercise of law, as the article is virtually never used in criminal proceedings, and there is little expectation that the amendment will produce changes. One activist remarked that the change “is merely symbolic and will not . . . decrease the number of women killed in the kingdom for reasons of honour” (Emily Nafaa, quoted in Hussein 2002a:n.p.). This prediction was unfortunately borne out by the number of honor killings in 2002, which at 22 was the highest in four years (Human Rights Watch 2004).³⁶

Furthermore, the changes to Article 340 were made in the form of a “temporary law” issued by the government while Parliament was out of session; such laws must be reviewed and ratified by Parliament when it returns to session. The law has since been debated several times in the lower house, and each time it has been rejected (*Deutsche Presse-Agentur*, 4 August 2003, n.p.).

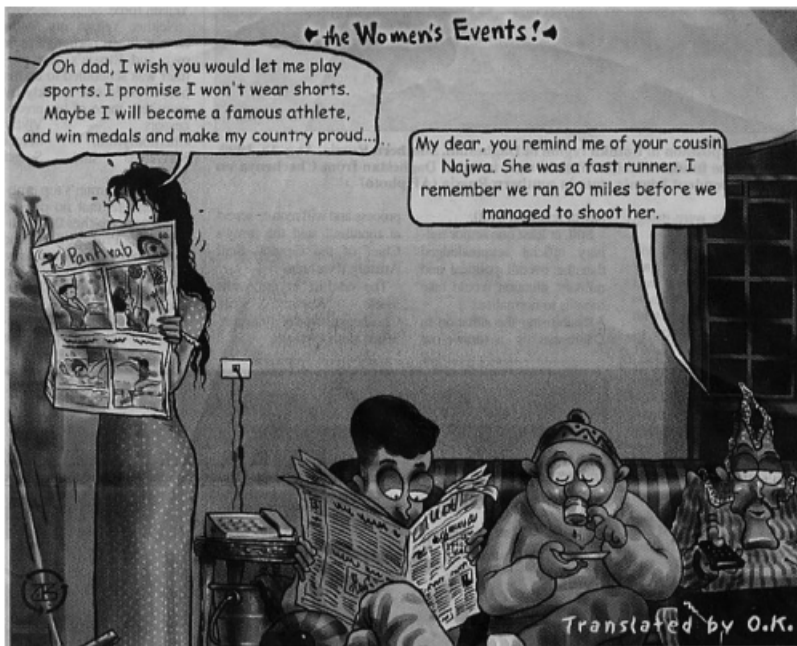
The tactic of “temporary laws” is generally used by the government to overcome parliamentary opposition to its plans and is seen as an authoritarian element of the Jordanian political system. Its use on this issue reflects both the opposition of Parliament (discussed below) to changing the law, and the possibly growing determination of the regime to settle what has become a thorny issue of political debate. The course of that debate, from its inception to the recent changes in law, provides a valuable perspective on political contestation, culture, and law in a developing system.

Honor crimes became an issue of public debate in Jordan in large part due to the attention the issue has received in the *Jordan*

³⁶ This is not, however, a clear indication that honor killings are on the rise. In 2003, the number of reported honor killings was 17, according to Amnesty International (2004). The annual official numbers are believed to represent only a fraction of the honor killings carried out each year; reporting and documentation of such killings remain incomplete at best.

Times, an English-language daily newspaper in Amman.³⁷ Reporter Rana Husseini has made a practice of reporting honor killings and the trials of such killers, relying on statements by police and court proceedings. Her reporting has become one of the most reliable sources of information on honor killings in Jordan and has helped spark public debate on the practice and the law. Other activists have also campaigned for changes in the law and in police and judicial practice, and once the issue began to receive significant attention, members of the royal family became involved as well.

An indication of the extent to which honor crimes have become a leading issue of public debate was the appearance in August 1999 of a political cartoon on the topic. This cartoon, drawn by leading editorial cartoonist Imad Hajjaj, was published both in the Arabic-language daily *Al-Rai* and, in English translation, in the *Jordan Times*. The English version is reproduced below³⁸:



³⁷ The Arabic-language press in Jordan has given much less attention to honor killings; when reported at all, they are usually limited to a small paragraph giving only the fact of the murder, the initials of the victim and perpetrators, and occasionally the relationship between them. The *Jordan Times*' audience is primarily well-educated Jordanians and foreigners, who are less likely to view it as a "private" matter that should remain hidden.

³⁸ An "Abu Mahjoub" cartoon by Imad Hajjaj, published in the *Jordan Times*, 19–20 August 1999, p. 6. Reprinted by permission of the artist.

The cartoon's appearance made quite an impact and was regarded as an indicator of the new public importance of the issue. Hajjaj's cartoon was also considered daring in its black-comedy take on honor killings, an approach very much in line with his other, extremely popular, editorial cartoons. When the cartoon appeared, the Arab Games were under way in Amman, accompanied by fervent expressions of national pride; Hajjaj effectively mocked the irony that people could be proud of a nation that condones the murder of its own women.

Once the public debate over honor killings was launched, it centered around the proposed elimination of Article 340 from the penal code. In 1998, the Jordanian National Committee for Women, which is headed by the sister of the late King Hussein, Princess Basma, appealed to the government to change the law. Later that year, a group called the Campaign for the Elimination of So-Called "Crimes of Honour" was formed by Rana Hussein and other young activists in Amman; this group led a petition drive to support the cancellation of Article 340.³⁹ While they collected more than 15,000 signatures (Hussein & Hamdan 2000), they also received condemnation from some quarters for embarrassing Jordan by inviting international criticism.

Support for the cancellation of Article 340 has come largely from liberal elites and the royal family, while opposition to it is centered in conservative sectors of society and the Islamic Action Front (IAF) party. The two camps on this issue reflect the two types of legitimation pursued by the Jordanian state; one appeals to the egalitarian-rights language of democracy, while the other appeals to the cultural authenticity of indigenous tradition, and to the principle of national self-determination. This is not to say, of course, that the liberal camp does not value tradition, or that the conservative camp does not value democracy; rather, the two positions represent a disagreement over how these should be incorporated into the political system. The debate over honor crimes has thus become a reflection of fundamental issues of Jordanian political development.

The arguments for canceling Article 340 included that it was inappropriate for a modern society, that it violated women's rights to equal treatment under the law, that it granted male relatives the power of extrajudicial execution, and that it violated Jordan's obligations under international law.⁴⁰ Some have pointed to the

³⁹ For an excellent description of the campaign and its political effect, see Nanes 2003.

⁴⁰ Jordan signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (United Nations 1980); upon ratification, this treaty became formally part of Jordanian law, although no one has yet sought legal redress under the terms of the treaty. (Professor Salah Bashir, interview, Amman, 1998).

occasions on which “innocent” women have been killed as a reason to change the law,⁴¹ but the predominant view among those who advocate change is that *no* such killings are justified, whatever the woman has done.

Not all those who advocate changing the law are secularists; the king’s adviser on Islamic Affairs, Sheikh Izzeddin al-Khatib al-Tamimi, has condemned Article 340 as contradicting *shari’a* (Islamic law) (Husseini 2000a), and Nawal Faouri, a prominent (and female) Islamist, has suggested that the law has encouraged misguided individuals to kill, an act forbidden by God (Husseini 2000e). In February 2000, the al-Azhar Ifta Council, a prominent Sunni religious law body, issued a *fatwa* (legal opinion) holding that individuals do not have the right to kill adulterous female relatives (Husseini 2000b).⁴² According to one religious scholar, honor killings are “the result of a deeply rooted tradition falsely attached to Islam” (Sheikh Hamdi Murad, in Husseini 2002c:n.p.). Religious arguments are deployed on both sides of the debate, and thus the issue does not necessarily represent a clash between Islam on the one hand and democracy or human rights on the other. Rather, both sides recognize the practice as a traditional one, and they differ in their views of the proper role of this tradition in society. Islam has become an important element in the debate because of views on both sides about the relationship of the traditional practice of honor killings to Islamic law and principles.

Although religious and other figures, including the late King Hussein, have condemned honor killings as contrary to Islamic law and principles, many of those who endorse the practice and advocate retaining Article 340 hold that the law is consonant with *shari’a* and suitable for an Islamic society. In February 2000, the newspaper *al-Sabeel*, a pro-Islamist daily, conducted a survey and found that 78% of female respondents and 77% of males were in favor of keeping Article 340 in its current form (Husseini 2000b). A majority of respondents agreed that the campaign against honor crimes was a result of international pressure, and 81% agreed that honor killings occur because *shari’a* is not implemented in Jordan (Husseini 2000b). The survey is not a reliable indicator of general public opinion in Jordan,⁴³ but it may well represent the opinions

⁴¹ For example, former deputy (member of the lower house of Parliament) Dr. Hammam Sa’eed cited the killing of innocent women in order “to silence the gossip” as a reason, along with its un-Islamic character, to eliminate Article 340 (Wazani 1999).

⁴² This condemnation of honor killings has precedent in Islamic legal history as well. Tucker cites the eighteenth-century mufti ‘Abd al-Fattah al-Tamimi as holding that brothers have no special role in the “chastisement of a sister suspected of *zin’a* (extramarital sex)” (1998:166).

⁴³ This survey appears to have a number of methodological shortcomings. Participants were said to be taken from a “random sample,” but the questionnaire was

of *al-Sabeel's* primary audience. It also conforms to the editorial position of *al-Sabeel*, which generally agrees with the IAF.

The IAF's position on the honor crimes issue has strongly favored retaining the article on the grounds that it promotes a virtuous society in accordance with the principles of shari'a. Specifically, the practice of honor killings is regarded as a roughly equivalent substitute for the shari'a's death penalty for adultery. It is important to note, however, that this penalty can be applied only at the direction of a judge, after a trial in court in which four reliable witnesses to the actual act of adultery are produced. The circumstances of honor killings do not meet these requirements, not only because of the invariable absence of four witnesses to an act of adultery, but because they are extra-judicial and often concern "damage to family honor" from some act other than adultery, as described above. Some of those who regard honor killings as justifiable on a shari'a basis are simply not clear on the stringent requirements of the law and so see the death of the "adulterous" woman as the meaningful element. Others, however, are perfectly aware of the difference between honor killings and the law on adultery; their endorsement of the practice of honor killings considers them "pro-shari'a" rather than part of the shari'a, on the grounds that they serve the same end of public morality. This may not be the self-serving disingenuity it first appears, as there is certainly a basis in Islamic thought for regarding the shari'a as a moral as well as a legal code. Coulson described it as follows:

The Islamic *Shari'a* is, in our terminology, both a code of law and a code of morals. It is a comprehensive scheme of human behavior which derives from the one ultimate authority of the will of Allah; so that the dividing line between law and morality is by no means so clearly drawn as it is in Western societies generally. (1969:79)

Thus honor killings are, like the penalties for adultery, a means by which to secure the morality of Islamic society. The shari'a's silence on what to do about immoral (female) behavior short of adultery is filled in with a traditional practice that seems, to its advocates, to reflect Islamic principles. Opponents of the practice may consider this a flawed argument, but it carries social weight nonetheless.

circulated partly via the Internet and partly in person, so the quality of the sample is questionable. (It is extremely difficult to get a random sample for a survey in Jordan, because of significant variation in people's access to communications media.) Also, of the five questions asked, four were worded to prompt responses consonant with *al-Sabeel's* editorial position on the issue. For example, participants were not asked what they believed causes honor killings, but whether they agreed that honor killings happen because the Islamic laws on adultery are not implemented in the Jordanian code.

These claims about the compatibility of honor killings with shari'a raise the broader issue of the relationship between Islamic law and custom. Islamic law, like other legal orders, does not exist in a cultural vacuum. Since its inception, Islamic law has existed alongside, and has sometimes consciously taken into account, cultural practices that did not originate within the Islamic system itself. The payment of diya, or blood money, for example, was a pre-Islamic practice modified by Qur'anic teaching, and the practice continues today, recognized as having both Islamic and customary authority. Coulson explained that in the first century-and-a-half of the Islamic era, existing customary law "remained the accepted standard of conduct unless it was expressly superseded in some particular by the dictates of divine revelation" (1969:4). This changed as Islamic theology and philosophy grew more sophisticated, and eventually classical legal theory (from the tenth century onward) "expresse[d] to perfection the notion of law as the comprehensive and preordained system of God's commands," independent (in theory) of both social practice and human reason (Coulson 1969:7). However, Islamic law in practice depended on the reasoning of jurists, which "served to perpetuate standards of the customary law if it did not expressly reject it" (Coulson 1969:19).

This inevitable role for human reason, situated in and reflecting real human contexts, helps explain the diversity in Islamic legal teaching and practice over time and from place to place. Coulson attributes, for example, the differences regarding women's legal capacity in the Hanafi and Maliki schools⁴⁴ to the different social environments in which they were developed (1969:27–8). Tucker describes the seventeenth-century mufti Khayr al-Din al-Ramli as "draw[ing] on his knowledge of local custom and human nature in order to fashion legal decisions that were well suited to the specific contexts of the cases at hand" (1998:16). Not only has Islamic law as practiced come to reflect and accommodate some customary practices, but the process was apparently at least at some points a deliberate one, with custom being accommodated by legal scholars and judges particularly where it seemed to serve the good of Islamic society.

Current claims about the compatibility of certain customs, such as honor killings, with Islamic law, therefore, cannot be dismissed as mere attempts to bestow an additional source of authority upon

⁴⁴ There are four schools of jurisprudence in Sunni Islam: Hanafi, Maliki, Shafi'i, and Hanbali. Hanafi was the predominant school of the Ottoman Empire and consequently predominates in Jordan, Egypt, Sudan, Syria, and Iraq, and among Sunnis in Lebanon. The Hanbali school predominates in the Gulf (except in Kuwait, which uses the Maliki school), the Maliki in North Africa, and the Shafi'i in Yemen. There are two Shi'a schools, the Ja'fari (predominant in Bahrain) and the Zaydi, which is used by Shi'a minorities in a few countries.

a challenged practice. Rather, we should examine these claims in the light of the history of the interaction between Islamic law and customary law. Efforts to “Islamize” a customary practice or rule are relevant here for their importance in politics rather than in the development of Islamic legal theory, and so I cannot fully address the question of the quality of historical precedents for specific claims, as these do not generally arise in the political context. Rather, the claims are interesting for what they reflect about understandings of Islam, authority, and social practice; the fact that the same custom can be both hailed as Islamic and condemned as un-Islamic reveals the contingent nature of the incorporation of both Islam and custom into politics and law.

Other arguments for the retention of Article 340 in whole or in part suggest that to remove it would usher in widespread general sexual immorality, that the proposed changes are a conspiracy by foreign interests who seek to destroy Jordanian society by dismantling its traditions, and that, in the frank words of one member of Parliament, “[i]f [Article 340] is canceled men will not have control over women” (Deputy Usama Malkawi, an attorney from Irbid, quoted in Husseini 2000d:n.p.). These elements seem to be linked around the issue of what constitutes authentic Jordanian culture: in this view, it is Islamic, has certain traditions of social control of women, and is non-Western, and thus those who would preserve Jordan must do what promotes Islam, what safeguards traditions, and what resists foreign influence. Several Islamists have denounced attempts to change the law on honor crimes as a “Zionist plot” (Husseini 2000d). Another argued that canceling the article was a “call to spread corrupt morals and obscenity and will bring total destruction to our society” (Mohammad Oweidah, quoted in Husseini 2000d:n.p.). Clearly, the stakes could hardly be higher.

The argument about a foreign conspiracy to destroy Jordanian tradition is one of the most popular components of the Islamist-led opposition to changing the honor crimes law; this is somewhat ironic, since the law itself is originally a product of the French criminal code. The Napoleonic Code contained a provision commuting the sentence of a man who killed his wife after catching her in the act of adultery in their home. This provision was eliminated from French law in 1975, long after having been incorporated into many legal systems in Europe and European colonies during the nineteenth and twentieth centuries. French law arrived in the Arab world in part through the Ottomans, who had reformed their legal system on the French model, and through French colonial involvement in Egypt.⁴⁵ The source of the early

⁴⁵ For the relationship between French and Ottoman law and the development of law in Arab states, see Brown (1997).

honor crimes provision in Egyptian criminal law can thus be traced to Article 324 of the 1816 French Penal Code;⁴⁶ Jordan and other countries of the region have laws heavily influenced by the Egyptian system and the Ottoman/French legal heritage.

When asked about the issue of the “Islamicness” of Article 340, Dr. Abdul Latif Arabiyyat, then Secretary-General of the IAF, made the following argument in favor of keeping the article: He insisted that it is an important marker of valuable traditions and religious prescriptions for behavior, while also arguing that the law is originally French and thus should not be characterized in the foreign press as an element of Islamic law.⁴⁷ Asked to reconcile the apparently contradictory positions that the law is essential to local culture and that it is foreign in origin, he argued that, in the absence of the adoption of full Islamic law, society must do what it can to control immoral behavior, and this law serves that purpose and so serves Jordanian culture. This view that the absence of shari‘a is to blame in honor killings is endorsed by other Islamists and even by the head of the Jordanian Bar Association, who went further to state that “the absence of full implementation of *shari‘a* is responsible for all corruption in our society” (Husseini 2000e:n.p.).

The Jordanian state, as embodied in the royal family and the king’s chosen prime minister, has advocated the elimination of this law. One reason for this is that members of the royal family have probably sincere principles regarding women’s rights. However, personal royal opinion would, in other political circumstances, be subjugated to interests of state, and so we can be confident that additional factors are at work in producing the state’s new position. Opposition to the honor crimes law has reached a point where legitimation needs are no longer well-served, and the issue has become a divisive one placing contradictory and very public demands on the state. If the law could be eliminated, the reform itself might serve to legitimate the regime and political system to another segment of society, those who have generally liberal outlooks.

The royal element of the state has consistently favored eliminating the law, and King Abdullah issued instructions to the

⁴⁶ I am grateful to Dr. George Sfeir of the Library of Congress for tracing this legal lineage for me (Personal communication, October 2000).

⁴⁷ Interview with Dr. Abdul Latif Arabiyyat, April 2000. It is not surprising, given this political characterization of the honor crimes law as Islamic, that Western observers often confuse the issue. See, for example, Spatz (1991). She writes, referring to honor crimes laws, that “as currently interpreted in many Islamic countries, Islamic law provides defenses for men who murder their wives for committing adultery” (1991:598–9). This is not accurate, as either an assessment of the provisions of honor crimes laws or an attribution of their Islamic origin. In all of the cases in which separate statutes exist, they are not part of the country’s shari‘a-based family law codes, but the state-created criminal code. Simply put, not all laws in Muslim countries are “Islamic law.”

Prime Ministry in 1999 to redraft the relevant section of the law and submit the changes to Parliament for approval (Husseini 1999d). The appointed upper house of Parliament endorsed the government's proposal. However, the popularly elected lower house repeatedly refused to make the proposed changes, going so far as to condemn the originally proposed change because it "legalises obscenity and is detrimental to the morals of women" (Hamdan 2000:n.p.). It is somewhat unusual for the typically docile Parliament to thwart the expressed will of the monarch and his government so openly, but members of Parliament were apparently confident that popular opinion favored keeping the law in place. The parliamentary debate centered not around the rights of women not to be killed for violating social norms, or around the number of women and girls killed who later prove to have been innocent of the acts attributed to them, but around the maintenance of legal protection for an established social custom.⁴⁸ It was not the rights of women, but the nature of society, which was the question considered relevant in evaluating the law and its purposes. As a result, proponents of eliminating Article 340 have constructed arguments along the same lines, and thus the prevalence of statements about the injustice of such killings from the point of view of shari'a (discussed above). However, despite these attempts, the ability to define cultural authenticity and claim to be its protector has been most successfully demonstrated by the Islamists and their allies on this issue. A government minister recently conceded that government efforts to change the law were being thwarted by "strong conservative powers in the Jordanian community that are fighting any efforts geared toward this problem" (Minister of Political Development and Minister of Parliamentary Affairs Mohammad Daoudiyeh, quoted in Husseini 2004a:n.p.).

Thus, despite its marginal utility in criminal law, Article 340 has become the locus of political debates over the proper role of tradition and the protection of culture in the criminal law system. At its creation, this statute served the legitimization interests of the state by permitting the continuation of a traditional practice without burdensome state interference; its amendment serves the state's legitimization interests with a different sector of society. Both the state and its opponents (internal and external) recognize that the debate over this article is a debate about cultural legitimacy, and the contestants each seek to claim it for themselves.

⁴⁸ That the legal issue arises at all is an indication of the contestability of the social practice; presumably a universally accepted practice would spark no such challenge. The dual nature of Jordan's legal system also raises the stakes in the legal debate, since challenges to the practice have a legal tradition of their own on which to base their authority.

Judicial and Police Practice

Legal systems are more than mere collections of statute; the practice of judges and police in investigating, prosecuting, ruling, and sentencing are a significant element of the legal order. For example, while criminal codes define crimes, police and prosecutors decide with which crime an alleged criminal is charged, and judges and attorneys make decisions about the laws that may apply in terms of mitigating or aggravating circumstances. Thus, in the area of judicial practice we find further elements of the gendered nature of the legal system.

As mentioned above, the recently famous Article 340 of the Jordanian Penal Code has not actually been used in court in many years.⁴⁹ Crimes of honor continue to occur, and perpetrators continue to receive light sentences (often a few months, or even less if the killer is a juvenile). However, few crimes meet the standard of Article 340, which refers to catching the woman in flagrante delicto of the act of adultery (*hal at-talabbus bil-zina*). Many, if not most, honor killings are carried out on the basis of suspicion, much of which proves later to have been unfounded.⁵⁰ Article 340 does not therefore apply, and killers and the courts have found another law much more useful in providing for reduced penalties: Article 98, which provides for a reduction of penalty for one who commits murder in a “furious passion.” The full text of the article reads: “The committer of a crime who undertakes it in a furious passion produced by a bad [*ghair muhiq*, lit. unrightful] or dangerous act performed by his victim, benefits from a mitigating excuse” (Jordanian Penal Code 1961: Art. 98; author’s translation).

This law is generally equivalent to the “crime of passion” laws found in many legal systems. Article 98 makes no mention of the sex of the victim or perpetrator and can apply to any case of murder carried out in the heat of furious passion. It has been widely applied in honor cases on the grounds that men (and boys) who suspect a female relative of shameful behavior would obviously be overcome with rage and unable to control their actions. I can find no evidence that the courts give critical consideration to the “bad or dangerous action on the part of the victim” that, according to the statute, must have occurred to justify

⁴⁹ Abu Odeh finds no evidence of the use of Article 340 after the late 1960s (1996, 1997). In addition, a Jordanian attorney interviewed said that he can recall perhaps two cases in the last 15 or so years in which Article 340 might have been used, and he agrees that it is no longer an active part of the criminal code (Professor Salah Bashir, October 1998).

⁵⁰ Conversation with Jordanian medical examiner Dr. Hani Jahshan, June 1999. He reported that young girls who have been accused of illicit sex nearly always prove during autopsy to have been virgins.

the fit of fury. Apparently, the suspicion of a bad act is sufficient to cause a murderous rage.

I believe that insufficient attention has been given to this statute thus far. A number of observers have noted that Article 98 is more important than Article 340 in the actual prosecution of honor killers, but an interesting point has generally been overlooked. The murder victim is essentially redefined by this law as a guilty party herself: the committer of a “bad or dangerous act.” In a 1999 case, the Criminal Court granted an Article 98–based reduction of penalty because the murdered woman engaged in “wrongdoing” by “going out with strangers and engaging in sexual activity, considered a risk in our conservative society” (Husseini 1999e:n.p.).⁵¹ In another case, a man with a long history of domestic conflict had an argument with his wife in which she threatened him with a knife if he did not leave the house. In response, he took the knife from her and stabbed her repeatedly, killing her. The court eventually decided that he should benefit from a reduced penalty, and held that “the victim’s actions violate the traditional and religious beliefs and marriage duties which stipulate that the wife should respect, obey and serve her husband, and thus constituted dangerous actions against her husband” (Husseini 1999a:n.p.).⁵² The husband’s act was not considered by the court to be one of self-defense in response to an assault with a knife, but one of justifiable rage at his wife’s violation of her proper role.

A victim need not even have been literally guilty of a “bad act,” as in many cases the woman or girl suspected of an affair later proves to have been a virgin. It is the man’s rage that is the active component of this law, and his suspicion of the woman’s guilt justifies that rage and its consequences. The victim becomes not only responsible for her own murder, but also a perpetrator of a “bad act” herself, and so no longer a real victim. This point was made explicitly by the chief judge of the High Criminal Court in Jordan, Mohammed Ajjarmeh, who said,

Nobody can really want to kill his wife or daughter or sister. But sometimes circumstances force him to do this. Sometimes, it’s society that forces him to do this, because people won’t forget. *Sometimes, there are two victims – the murdered and the murderer.* (quoted in Jehl 1999:1; emphasis added)

⁵¹ The woman in this case was killed by her uncle and father after being released from protective custody, an issue discussed in text below.

⁵² The Criminal Court originally found that the man did not benefit from an Article 98 excuse because he was known to have frequent violent quarrels with his wife. The Court of Cassation (appellate court) ruled that he should benefit from a reduced penalty and returned the case to the lower court, which issued the finding cited here. It is interesting to note that, in the judges’ view, the “danger” posed by the wife lay in her violating traditional norms about wifeliness, not in the physical harm posed by the weapon.

The effect of Article 98 on reducing penalties for honor-related murders is substantial. The penal code's rules regarding mitigating circumstances suggest that they should reduce a death sentence to imprisonment with hard labor or life imprisonment, a life imprisonment sentence to a limited-term imprisonment, etc.⁵³ However, in the cases involving "fit of fury" arguments that apply to honor killings of women, sentences are especially light, sometimes only a few months' imprisonment.⁵⁴ In addition, although the basis for an Article 98 claim concerns passion rather than honor, the distinction between the two is sometimes blurred by the courts. In one case, the court reduced a charge of premeditated murder to manslaughter because "the defendant committed his crime in a fit of fury to cleanse his honour" (Husseini 1999e:n.p.), suggesting that the fury and the honor problem are functionally, if not legally, linked.

This article continues to be the chief means of securing light sentences for perpetrators of honor killings, despite the revisions to Article 340 discussed above. In a recent case, a man who killed his pregnant unmarried sister by shooting and stabbing her was tried on misdemeanor rather than felony charges after the court determined that the perpetrator's actions were covered by Article 98.⁵⁵ In another case, a man killed his married sister after discovering that she had married her husband after having been raped and impregnated by him (Amnesty International 2004). In 2002, there were at least eight honor crime cases in which the killers were sentenced to short prison terms, ranging from one month to one year, based on the court's reliance on Article 98 mitigations (Husseini 2002c), and in 2003 there were at least five such cases (Amnesty International 2004).

In response to the increasing recognition of Article 98's role in the light sentences given to killers who use honor defenses, the government has recently proposed a change in the penal code (Husseini 2004c). This change, which had not been submitted for parliamentary debate as of this writing, would raise the minimum punishments allowed by Article 98 (the punishments themselves are specified in Article 97, which would also be amended). At present, the articles allow death or life imprisonment sentences to be reduced to one year's imprisonment, and lower sentences to be reduced to as

⁵³ Jordanian Penal Code, Article 99, regarding reasons for lightened sentences.

⁵⁴ An adult man killed his sister after hearing rumors about her "immoral behavior" and learning that her husband planned to divorce her; he served five months in prison. Sentences of a year or less are common in such cases (Husseini 1999b).

⁵⁵ The court sentenced the killer to seven months' imprisonment, only two of which were for the killing of his sister. Two months were for causing the death of her fetus, two for illegal possession of a weapon, and one for theft of the shotgun used in the crime (Husseini 2002b).

little as six months' imprisonment. The proposed changes would make the minimum penalty five years' imprisonment. While this change indicates an intent to treat honor murders more similarly to other homicides and would be welcomed by those battling honor killings in the kingdom, it addresses only one aspect of the legal issues: the light sentences given to killers. The definition and judicial use of the "crime of passion" defense would remain unaltered, and the legal treatment of murdered women as culpable in their own homicides can be expected to continue as described above.

In the Jordanian legal system, as in others, judicial practice is shaped by both text and context; the interpretation of statutes is inevitably affected by dominant social mores and the shared values of a culture. This is perhaps even more evident in countries such as Jordan, which operates largely within the civil law tradition and thus does not rely on precedent as a controlling factor in judicial decisions. Earlier court decisions can have an advisory effect on a case, but not a binding one.⁵⁶ This is meant, in civil law countries, to give the (legislatively created) text of the law a paramount role, in order to limit the undemocratic power of judges to make law (see Merryman 1985). However, judges' decisions are not made in a vacuum containing only the facts of the event and the text of the law, and so it is to be expected that judges' own attitudes and principles, shaped not only by their profession but by their social surroundings, will affect the treatment of crimes in the courtroom. This has long been a complaint of those concerned with honor killings, for example, who attribute the light sentences for such murders to judicial discretion as much as legal text.⁵⁷ There is also a widespread perception that judges must make decisions consonant with the wishes of the regime; one rare attempt at judicial review, in which a judge criticized the regime's handling of a "temporary law," resulted in the judge's subsequent removal from the bench.⁵⁸ In short, judges do not enjoy a great deal of independence; consequently, judicial decisions are believed to represent the interests of the politically powerful as well as the social force of traditional values. Given the lack of judicial

⁵⁶ Information on the role of precedent in the Jordanian system was provided by attorney Salah Bashir (1998, 1999) and retired judge Farouk Kilani (March 1999).

⁵⁷ Lawyer Asma Khader and medical examiner Dr. Hani Jahshan, among others, attributed the lenient treatment of honor killers to attitudes of judges (interviews with Khader, April 1998, and Jahshan, June 1999).

⁵⁸ This was the well-publicized 1998 case involving the Press and Publications Law. Judge Farouk Kilani of the Court of Cassation was transferred and then "involuntarily retired" after he ruled that the law was invalid because the government had exceeded its authority in enacting it while Parliament was out of session. Government statements denied that Kilani's retirement was a punishment for the ruling, but it was generally regarded as such, and as an example of the lack of judicial independence from the executive power (interview with Farouk Kilani, March 1999).

independence and the royal family's clear position on honor killings, it is somewhat interesting that judges have not tended to assign harsher penalties in such cases. This is not really an example of judicial independence, however, but of the degree to which powerful conservative interests are reflected in the judiciary.

Another element of criminal procedure of interest here is the combined public and private elements of criminal prosecution. Even in cases of murder, the state does not pursue prosecutions solely on the public's behalf. Rather, the victim (or victim's family, in homicide cases) can "drop the charges," which automatically results in a reduction of penalty after conviction. Generally, the penalty is reduced by one half.⁵⁹ In honor killings, this practice has an even more interesting twist: the victim's family is also the perpetrator's family. Thus a young man or boy who is chosen by his family to carry out the killing of his sister for "honor" reasons can be confident that the victim's nearest male relative, that is, his own father, will drop the charges against him and he will receive a minimal sentence. In a case where a father kills his daughter, the person who can decide to drop the charges is generally the victim's paternal grandfather, who is the perpetrator's father. A number of observers have recognized the conflict of interest at work in such cases, but the practice continues to contribute to the light sentences imposed in honor killings. The effect of the state's approach here privileges the interests of private actors, rather than treating these crimes as public offenses that affect all of society and that touch on fundamental rights that the state has a duty to protect.

A final example of judicial or prosecutorial redefinition of the victim concerns the issue of protective custody. As a matter of police and government practice, a woman or girl who is believed to be a likely victim of an honor crime (for example, one who has run away from home or who has engaged in premarital sex) can be placed in protective custody to prevent her relatives from harming her. (This decision is made by the district governor and not by the courts.) After a period of time, her father or other male guardian may be allowed to sign a statement for the governor promising not to harm his daughter, and she will be released into his custody. In practice, women and girls are sometimes killed after being returned to their families.⁶⁰ In a 1998 case, a 17-year-old girl ran away from home in connection with an affair with her boyfriend (who was later

⁵⁹ Proposed changes to Article 98 would not alter this element of the legal system. See Husseini 2004c.

⁶⁰ For example, a woman was shot repeatedly by her brother after being released from police custody resulting from allegations of an extramarital affair (Husseini 1999f). In another case, a girl was kept in protective custody at the Juweideh prison for three years, until her father signed a pledge not to harm her and she was released into his custody. One month later she was murdered in her sleep by her brother, who claimed to have been

charged with statutory rape).⁶¹ When her father came to claim her from police custody, they were reluctant to release her because it was believed that he would kill her. Despite police objections, the governor released the girl to her father, who took her to a park and slit her throat and then turned himself in to the police, claiming that he had killed his daughter in the name of family honor. One police officer involved in the case deplored the lack of effective protection for such girls, saying that she would like to ask the governor how he felt now that the girl was dead.

Women and girls who are not released into a relative's custody must remain in detention, even if they are adults and wish to be released. The police officers currently responsible for many cases of protective custody report that most girls and women in this situation are detained willingly, as they have no other option.⁶² However, some are held for a period of several years and have little hope of release; honor killings have been known to occur many years after the original offending incident, which makes releasing these women from custody at any point a risky option in many cases.

The legal basis for this practice is not entirely clear. A legal statute gives district governors the power of preventive detention to temporarily incarcerate persons believed to be on the point of committing a crime.⁶³ However, the text of this statute clearly refers to the prevention of crime by detaining the potential perpetrator, not his potential victim. That this statute is the legal basis for the practice has been confirmed by several observers, who attribute the broadening of the law's application to both the power of governors to order administrative detentions and to the lack of practical options that police and other authorities have in such cases. Jordan has had no women's shelters (a single shelter recently opened in the capital), and it is generally believed that if the police detain one male relative to prevent an honor crime, the killing will simply be carried out by someone else. It is therefore far easier to detain the woman herself. As the interior minister recently remarked in response to a question about the practice, "We cannot

acting on his father's instructions and to protect the family's honor ("Brother waits three years to cleanse family honor," *Arab Daily* (Amman), 23 May 1999, n.p.).

⁶¹ Lt. Taghreed Abu-Sarhan, Public Security Department's Family Protection Unit, interview, November 1998. The lieutenant expected the man to receive a penalty of approximately three months' imprisonment for the murder. This story was also reported in the *Jordan Times* (Husseini 1999b); the father was found guilty of manslaughter and sentenced to nine months in prison.

⁶² Lt. Taghreed Abu-Sarhan, Public Security Department's Family Protection Unit, interview, November 1998.

⁶³ This is among several executive powers held by governors that enable them to enforce social order and prevent conflicts from spreading, as when one family retaliates against another and personal incidents become grounds for communal strife.

lock up an entire tribe or family. We really do not like or want to imprison women, but what can we do? The concept of [family] honour is socially imbedded [*sic*] in our society” (Husseini 2004b:n.p.). Placing the woman in custody requires, in order to conform to the letter of the law, that she be redefined as the potential criminal, rather than the potential victim. While it is clear that the specially trained police of the new Family Protection Unit do see these women as victims, it is also acknowledged that in most cases the woman has done something to have caused her family to want her dead. This negotiated understanding of the victim as criminal goes well beyond the rhetorical—women and girls in protective custody are held at a women’s prison, and until very recently were simply mixed in with the regular female criminal population. Again, the victim vanishes, this time literally, as she disappears behind the walls of a prison, administratively if not legally reconstructed as a perpetrator rather than a victim.

Conclusion

An analysis of criminal law and judicial practice demonstrates the persistence of areas of law that disadvantage women by privileging social interests, including the interest in maintaining traditions, over the interests of the individual crime victim when that victim is female. While traditional elements of culture necessarily, and perhaps properly, affect the legal system governing a society, it is notable that in regard to gender issues, cultural practices generally trump legal rights that would otherwise operate. In order to preserve specific cultural practices regarding the social control of women, female crime victims are essentially redefined as perpetrators or as a means of social problem resolution, such that the victim disappears and her interests can be sublimated to those of other actors. The state not only permits these practices to continue, but it also creates and manages the legal system in such a way as to seek legitimacy from the combination of different kinds of legal authority. Other actors, such as the state’s opponents, make use of these legal elements in similar ways. Thus we find that the law on murder does not merely serve the interest of public safety; it also feeds a debate about the permissibility of the extrajudicial killing of women in order to benefit society by preserving certain norms of sexual behavior and social control.

The purpose of this article is not merely to describe the deplorable condition of women in the area of criminal law. The legal treatments of rape and honor killing also tell us something about law’s constitutive role in the political system. Law is not the

sole constitutive foundation of politics, of course, as much of politics is not law in either the positive or the anthropological sense. However, law plays a particularly important role in the political aspects of hegemony and legitimation, and those are exemplified by the issues discussed above. The criminal law discussed here is a subject of contestation among political actors with different interests, and it is a tool of the state in the promotion of the state's own interests. It is common for law to play these roles in any system, but in this case the politics of law extends even further, combining the two roles in a way that has great potential for defining the political landscape. The state's regulation of law partakes of the contestation among other political actors, in order to address the risk (or benefit) to the state arising from these conflicting social forces. In other words, responding to the competition over the definition of hegemonic norms in society is important for the state's pursuit of legitimacy.

The relationship between law and hegemony is well-recognized in recent literature (see Lazarus-Black & Hirsch 1994; Massad 2001). The cases above demonstrate, however, that this hegemony should not be understood as a reflection of a single dominant interest. If it were, then honor killings might simply be defined in law as justifiable homicides, or the "shameful" conduct of women later killed for honor would itself be criminalized. The law as it stands represents hegemonic values, but it also indicates that those values are at times ambiguous or even conflicting. This allows, or even necessitates, contestation over the content and use of the law to work out its social meaning, which presents the possibility of changing not only the law but also the broader social understanding of acceptable behavior and rights. This is what we see when different political actors debate changes to, or preservation of, the law.

If the example of law's hegemonic role focuses on society, then the issue of legitimation brings the role of the state to the forefront. It has perhaps always been recognized that law can be used to serve the interests of the state, whether through the antique notion that the law *is* the interest of the state (*"l'état, c'est moi"*) or the more modern notion of political crimes that is so useful to authoritarian regimes. Law also "tends to legitimate the existing social order," but as one scholar puts it, "we don't know . . . the mechanics of law's constitution (the 'how' it happens as opposed to 'that' it happens)" (Nourse 2002:36). This article cannot answer the question of "how," but perhaps it can suggest a place to look for the answer. I argue that the Jordanian state has, with regard to gender and law, staked out a tenuous position based on its need to balance two not-always-compatible sources of legitimacy: claims about cultural authenticity and claims about democracy and human rights. If the state wants to take advantage of the legitimating effects of law, it

must align itself with the “existing social order” being legitimated. The problem, again, is that social orders are not static and not univocal (and neither are states, for that matter). The social order is fluid and its features and prescriptions are contested, as in the honor killings debate. Therefore the state balances different sources of legitimation, and both are evident in the legal issues described above. The Jordanian state wants to claim the mantle of cultural authenticity by allying itself with traditional practices, and it wants to claim the mantle of democracy by redressing legal inequalities and rights violations. One arm of the state seeks to preserve the law for the former purpose, while another seeks to change it for the latter.⁶⁴

Thus the topic of gender and criminal law has implications well beyond “women’s issues” and goes to the heart of the development of the Jordanian political system. The principles and practices enshrined in law are important for the political system, and not merely because the preservation of traditional social hierarchies in special areas of law contradicts the logic of democracy. The contestation over which conception of rights and freedoms should serve as the foundation of the political order is more than merely a negotiation of the “rules of the game.” Rather, it is a determinative element in the character of the system itself; the nature of the system will be a product of the legitimacy upon which it rests.

Many readers will have noticed the parallel between victim-blaming in Western societies, particularly in the case of rape, and the treatment of victims of rape and honor crimes in the cases discussed here. This demonstrates that while the practices described above may seem completely foreign to a Western observer, the legal and political phenomena are in fact quite comparable across systems. Thus the lessons of this case tell us something not only about law in Jordan or the Arab world, but about the nature of law in political systems more generally. In particular, the extent to which gendered legal systems serve legitimation claims has important implications for the process and outcome of the development of political systems. Personal rights and freedoms, equality before the law, and the proper sources of authority in the legal and political order are contested issues whose resolution will be strongly determinative of chances for the future of political liberalization and democratization in Jordan.⁶⁵

⁶⁴ For an extensive treatment of the relationship between law and state interests in the Jordanian case, see Massad 2001, in particular his discussion of the state’s use of juridical discourse in fundamental constitutive issues such as national identity.

⁶⁵ Of course, the existence of legal discrimination against women does not preclude the eventual development of democracy in a political system. The extension of rights to women long after they have been secured by men is a pattern long established in other countries; throughout Europe, the Americas, and elsewhere, legal systems have shed their

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discriminatory elements only gradually. However, this is a circumstance of history and not integral to the development of democracy itself; there is no logical necessity for women's rights to appear only after those of men. The current process of development in the Jordanian system is based upon political demands for individual rights, participation, and the transfer of political power to the people. To perpetuate legal disadvantages of the female half of the population can only undermine the very logic of the development process itself.

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