INTRODUCTION: PUBLIC DEBATES ON FAMILY LAW REFORM
PARTICIPANTS, POSITIONS, AND STYLES OF
ARGUMENTATION IN THE 1990S

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SUBHI AL-ZOBAIDI’S FILM ‘Women in the Sun’ (1998) presents a number of scenes in which state officials and members of the shari‘a establishment as well as women’s rights activists and Islamists discuss proposals for a Palestinian family law.¹ Points of view and styles of presentation vary widely, with the most acrimonious exchanges taking place between supporters of the Islamist trend and women NGO activists. Differences of opinion concern not only matters of legal substance (such as whether a woman needs the permission of her marriage guardian to conclude a valid marriage contract), but also the question of who has the right to participate in debates about family law reform. The fact that such issues have become a topic for a documentary film is both an indication of, and contributes to, the development of a new sense of publicness.

In the 1990s family law reform has been hotly contested throughout the Muslim world. This special issue of Islamic Law and Society traces these debates in four Muslim majority countries: Morocco (Léon Buskens), Mali (Dorothea Schulz), Yemen (Anna Würth), and Palestine (Lynn Welchman).² While the period of decolonization and nation-

¹ The main focus of ‘Women in the Sun’ is violence against women, but this film also includes substantial sections on debates about family law reform. These debates took place within the framework of the ‘Palestinian Model Parliament: Women and Legislation’, a project organized by the Women’s Centre for Legal Aid and Counselling (WCLAC). The aim of this project was to identify legal provisions that discriminated against women’s rights and to debate and build consensus around proposals for legal change that were to be brought to the attention of the Palestinian Legislative Council.

² These four papers were selected from papers read at the workshop on Family, State and Civil Society in Islamic Communities: Legal and Sociological
state building witnessed strong alliances between state officials and reformist Muslim thinkers, resulting in the codification and reform of family law, from the late 1970s on Islamist activists also have entered this arena, arguing for the need to preserve the Islamic character of family law. In the 1990s some measure of political liberalization allowed for a greater publicness of these debates as well as for the involvement of a more varied field of participants with competing political agendas.

As Al-Zobaidi’s film documents, family law remains a highly sensitive topic. In many countries it is the only field of law still based on Islamic notions of morality; as such it is the last stronghold of the shari‘a establishment. Family law is central to the reproduction of the social and cultural order: it arranges for the transfer of material resources from one generation to the next (succession), it organizes care for, and socialization of, the next generation (custody and guardianship), and it regulates sexual relations (marriage and its effects). As these various fields are strongly gendered, debates about family law tie in with those on gender relations and ‘the position of women’, another highly controversial topic in both the colonial and post-colonial periods, often framed in terms of the desirability of westernization versus the call for cultural authenticity (Ahmed 1992).

**Historical Trajectories: Men of Religion, Secular Nationalists, and the Islamists**

It is true that in the heyday of classical Islam Muslim scholars were involved in the formation of legal schools and the canonization of their doctrines, with rulers selecting a particular school as authoritative and creating institutions, such as the courts, to enforce the shari‘a. Still, legal scholars trained in Islamic law were the agents who were authorized to formulate the law, legal texts were by and large open texts, the legitimacy of dissent was recognized as a principle of the legal system, and variations both between schools of jurisprudence and within them were acknowledged as legitimate. Thus, the shari‘a establishment had a relatively autonomous position vis-à-vis the rulers.