Methods of legal reform

By 1900, the Shari’a in the vast majority of Muslim lands had been reduced in scope of application to the area of personal status, including child custody, inheritance, gifts and, to some extent, waqf. In the Malay states and the Indonesian Archipelago, its sphere was even narrower, partly because of the adat which had long prevailed in some of these domains, and partly because of massive Westernization of its contents and form. The present chapter therefore focuses on personal status, following the fortunes (indeed misfortunes) of Islamic law roughly from the end of World War I until the dawn of the twenty-first century.

The Islamic law of personal status was saved from the death blows dealt to other Shari’a laws (except rituals) by virtue of the fact that it was of no use to the colonial powers as a tool of domination. Even this disinterest was turned into an advantage, however, for coloniast Europe and its academics promoted the idea that the personal law was sacred to Muslims and that, out of sensitivity and respect, colonial powers left it alone. However, once the laws of personal status were culturally marked as such, they were taken as the point of reference for the modern politics of identity. If family law emerged as “the preferential symbol of Islamic identity,” it did so not only because it was built into Muslim knowledge as an area of a sensitive nature, but also because it represented what was taken to be the last fortress of the Shari’a to survive the ravages of modernization.

While the popular Muslim imagination, even today, appears to hold these remnants of the Shari’a to be an authentic and genuine expression of

traditional family law, the fact of the matter is that even this sphere of law underwent structural and fundamental changes that ultimately resulted in its being severed from both the substance of classical religious law and the methodology by which this law had operated. For to maintain this methodology would have amounted not only to maintaining the linguistic and legal interpretive system, but also the human and institutional bearers of this complex tradition. This, in other words, would have required the maintenance of the very system that produced the entire sociology of legal knowledge, including the institutions of waqf and madrasa. But we have seen that these otherwise independent institutions stood in the way of the emerging state and its culture, which is to say that they represented an impediment to centralization, be it fiscal, legal or otherwise. Thus, it was both essential to and an inevitable consequence of the ways of the nation-state that personal status had to be severed from its own, indigenous jural system, its own ecological environment, so to speak.

This severance was effected through various devices that included both administrative and interpretive techniques. Attributed to nebulous origins in Islamic tradition and history, these devices were cultivated and augmented to yield results that had never been entertained before. The first of these devices was a concept that has come to be used, often implicitly, to justify any and all change in the law. In traditional Islamic law, one was permitted to avoid harm to oneself even if this entailed a violation of the law, e.g., consuming ritually impure food if one is threatened with starvation. This substantive legal principle, the concept of “necessity” (DARURA), was fundamentally transformed by modern legists in two ways: first, it was transposed from the domain of substantive law (where it regulated relatively few cases) to the realm of legal theory that in turn came to regulate the construction and operation of POSITIVE LAW generally. Second – and partly derivative of the first – the scope of the principle was widened beyond recognition, so that instead of delimiting the boundaries of “necessity” within those of the law, the law in its entirety was (re)defined within utilitarian principles of necessity. The legal principle was thus turned on its head, from being subordinate to the larger imperative of the law to being the dominating and all-encompassing principle.

The second device was procedural, which is to say that, without changing certain parts of Islamic substantive law, it was possible through this device to exclude particular claims from judicial enforcement, thus in effect leaving significant provisions of Islamic law mere ink on dusty paper. For instance, for many decades during the reform period, child marriage was not explicitly outlawed, but to cancel the effects of this law, the bureaucratic offices – which now in effect possessed the authority to declare what was legal and what was not – were instructed not to register
any contract in which the parties to it had not attained the age of majority. A similar change was effected in the area of oral testimony and oral evidence, where the courts were instructed not to hear claims lacking documentary or written evidence.

The third device, one of the most effective methods by which new positive law was created from the virtual dispersal-cum-restructuring of Shari’a law, consisted of an eclectic approach that operated on two levels: **Takhayyur** and **Tal’fiq** (lit. “selection” and “amalgamation,” respectively). The former involved the adoption as law not only of “weak” and discredited opinions from the school, but also of opinions held by other schools. The options created by this device seemed boundless, since not only could Twelver-Shi’i opinions be absorbed by the codes of Sunni countries, but so also could those of long defunct schools. *Tal’fiq* involved an even more daring technique. While *takhayyur* required the harvesting of opinions, for a single code, from various schools, *tal’fiq* amounted to combining elements of one opinion from various quarters within and without the school. In some countries, notably Egypt and Iraq, this double-tiered device was used to produce radical changes even in inheritance law, e.g., making lawful a bequest in favor of an heir (prohibited in Sunni but not in Shi’i law), with the proviso that the total bulk of the bequeathed property not exceed one-third of the estate. The consent of the other heirs was furthermore no longer required. It may be noted that traditional Islamic law made it forbidden for both the jurists and “state authorities” to resort to such devices.

The fourth device is the so-called neo-ijtihad, an interpretive approach that is largely free of traditional legal interpretation. In a sense, the device of *takhayyur*-cum-*tal’fiq* rests on this general approach, since the act of combining different, if not divergent, elements of one opinion entails a measure of interpretive freedom. But there are other examples of a new kind of interpretation, such as limiting the period of pregnancy to one year, a period which some authoritative classical jurists, attempting to keep conceptions out of wedlock within family bounds, had extended at times to up to four years. Another example is the 1956 Tunisian Code of Personal Status which prohibits polygamy on the grounds that the Quran explicitly predicated the permission to marry up to four wives on the man’s ability to treat them with complete fairness and justice, a requirement that was interpreted by modern law-makers as essentially idealistic and impossible to achieve.

The fifth and final device, much like the first, represents a new application of the old but restricted principle that any law that does not contradict the Shari’a may be deemed lawful. Prohibition of child marriage and of unilateral divorce by the husband are seen as belonging to this category of law.
In their entirety, these devices, directly as well as obliquely, did the bidding of the state in absorbing the Islamic legal tradition into its well-defined structures of codification. But the most substantive of these devices were the third and the fourth, with the former literally supplying much of the law, remolding it with a view to producing particular, intended effects. We will discuss the most important of these effects in the next section, but for now we must note the most salient byproduct of this structural difference between the traditional law and the codified law of modern states. As we have seen, one of the hallmarks of the Shari’a is its plurality of opinion (at times reaching a dozen viewpoints on one and the same case or issue). This plurality was in part responsible not only for legal change, but also for flexibility in the application of the law. Women, for example, could resort to any school, and the qadi in actual practice could apply any opinion from within that school to accommodate a particular situation. Codification, on the other hand, eliminates almost all such juristic and hermeneutical possibilities, leaving both the litigants and the judge with a single formulation and, in all likelihood, a single mode of judicial application. For it is eminently arguable that unifying and homogenizing the law is one of the primary concerns of the modern state.

**Family law and a new patriarchy**

The engineering of these devices and their orchestration to produce particular effects was the work of the modern state, the appropriator and possessor of the law. That this institution was the most central and commanding modern project ever to enter the world of Islam is nothing short of a truism. As the primary and leading institution of European modernity, it constantly defined, redefined and influenced nearly every entity with which it came into contact. Whether incorporated into the Muslim world by imposition or by mimesis, its defining, constitutive and fundamental features were nearly identical everywhere. It claimed the exclusive right to wage war outside and, with the same exclusivity, to exercise violence within its own domains; it declared itself sovereign while developing systemic mechanisms of surveillance and discipline; it lived on nationalism as the body lives on circulated blood; it appropriated the exclusive right to make and enforce law; and in all of this it was the “big father” of the citizen. As a man was head of the family, the state was the head of society. The nation-state thus combined among its attributes the power to rule and subdue, and the right and duty to defend, promote, and claim possession of the nation, nationhood, nationality, and their subject—the citizen.
Nationalism has always been a masculine conception subordinating the feminine. It is, at one and the same time, a distinctly racial conception that stems from a certain assumption, if not a “scientific” premise, of purity of blood. The conception would evaporate into absurdity if the French nation were to be seen to have been formed with the assistance of Italian, Arab or Chinese sperm. And yet it was this conception of biological workings that maintained the uniqueness of nations. From this logic followed the idea that it is the man, not the woman, who determined national attributes, which is another way of saying that man defined and literally constituted the nation as the subject of the state. As an archetypal figure, he likewise constituted it as an object of sovereignty. In this design, women became instruments of reproduction, while the modern state appropriated the right to determine “the uses of women’s reproductive skills.”

The nation-state that the Muslims encountered was – and continues to be – a masculine entity and, in its nineteenth- and early twentieth-century form, a thoroughgoing patriarchal order. And it was the French legal model that dominated the colonialist scene in the Middle Eastern (and African) countries. Even Egypt, an otherwise British protectorate, opted for that model. Nor is it difficult to see why this should have been the case. One of the most salient features of the nation-state is its totalistic appropriation of the domain of law, an appropriation that presupposed centralization and bureaucratization of the legal system. There was no room for judges’ law-making, otherwise a defining attribute of the British case law system. Case law is a diffused phenomenon, lacking in concentricity, a clear voice of authority and a textual homogeneity that can pronounce the laws of the state in an authoritatively clear and unmistakable fashion. A strong colonialist regime (and later nationalist governance) thus required the code, the statute and the act as tools of total control. Even the British engaged in this form of legislation in their legal reconstruction of the colonies.

It was no coincidence that the code, the very tool that represented and embodied the agendas of the nation-state, was also the chief method by which the legal systems of the Orient were reengineered. And the French model not only supplied the political form of the nation-state’s hegemony; it also – and importantly – furnished the legal content that bolstered this hegemony. If blood and sperm were seen to constitute the nation, so was the state’s law. But for it to make the nation, shape it and represent it, the

law had to be equally national, the very embodiment of the nation’s will, aspirations and worldview. In the final analysis, the law is and must be the quintessential expression of the state’s will.

Inasmuch as the law is a manifestation of the state and its will to power, the family, as a prototype of the nation, is the reconstituted invention of the state, whether in Europe or the Muslim world. The ideal family, consisting of a two-parent household, lacks the complex social networks that otherwise engender loyalty among and between the many members of the extended family and clan. The nuclear family, constituted by national ideology and a capitalist mode of production (both inherent to the structures of European and most other states), is thus the object of the social engineering project; it is, in fact, quintessential to the imagining of the state and its ideological and political practices. And having been assigned to fulfill this role, the family is shaped by the state’s law through regulation of marriage, divorce and inheritance, as well as an array of practices that define and dictate those relationships producing the family. Yet, the family itself arguably stands with the state in a mutually constitutive relationship where the state’s power to authorize and dissolve marriage manifests itself as a set of practices from which it derives its own sovereignty, while the family has thus contributed to shaping the modern state, though on terms that suit the state and its systematic and systemic programs to reengineer (or sanction preexisting parts of) the social order, among others.

During the colonial period, when the nation-state was being imported into the Muslim world from Europe, the agenda of the colonial powers did not extend to the reengineering of the Muslim family, since the construction of states qua states in the lands of Islam was not what the colonists originally aimed to accomplish. Material exploitation, the quintessential project of colonialism, did not require this reengineering, a situation that allowed (as we saw earlier) colonial apologists to make a virtue of non-necessity. As we will see in due course, many Islamic countries indirectly embarked on modifying family law as early as the second decade of the twentieth century, but the project of reengineering the family via legal mechanisms did not begin in earnest until the colonies acquired autonomy or independence. Nevertheless, as we saw earlier, the colonial powers did, directly and obliquely, cause the dismantling of the waqf institution, which was undoubtedly linked in numerous structural ways with family life and the laws that regulated that life. Furthermore, when France developed the unique colonial idea of absorbing Algeria into the French nation, it repeatedly attempted to alter the personal laws of the Shari‘a and replace them with what was seen as more progressive and civilized rules. From the middle of the nineteenth century onward, the French
attempted to enforce many codes and decrees, most notably the *Code Morand*, a code that was devised, inter alia, to redesign the Muslim family along lines conceived by the *état suprême* of post-Revolutionary France. In the end it was due to the determined resistance of the Algerians that such attempts resulted in failure, and surely not to the lack of French effort.

As the nationalist elites slowly began to displace the colonists, the project of governance could no longer be limited to the unidimensional aim of material exploitation. The basic structures of the state apparatus were already in place, and the goal would now become total rule, a desideratum that all nineteenth-century European states had already attained at home. This type of rule, together with what the French had attempted to do in Algeria, would become one of the primary objectives of the new nationalist elites. The recently independent states in the Islamic world would continue a project of governance that the colonists had little motive to pursue in the colonies, for the project, in its full manifestation, did not serve colonialist goals. But once political independence was secured, the nationalist leadership pursued state-building in earnest. Tellingly, what this leadership had resisted under colonial rule, it would insist upon after independence. For instance, under the French, the Tunisian and Algerian nationalists vehemently opposed any change in the law of personal status, but as soon as the French were made to leave, and as soon as the former assumed power, they almost immediately embarked on a program of “reform” in this presumably sensitive legal sphere.

The early, half-hearted Ottoman codification of personal status, as well as the later nationalist codification projects, found their inspiration in the only available model of governance: the European nation-state in general, and the French version of it in particular. The French Civil Codes (from 1804 until the middle of the twentieth century), to which the Ottoman Empire, the post-colonial nation-states and so much of Africa owed a debt, did not hesitate to declare the man to be the predominant figure in the home. In the 1804 Civil Code, and thereafter until its 1938 successor, it was unambiguously stated that the “husband owes protection to his wife, the wife obedience to her husband.” Even as late as 1970, in French law the husband still stood as “the head of the family.” (Similarly, until 1949, the West German Civil Code granted the husband the right to “decide all matters of matrimonial rights” while the so-called Equality Law of 1957 [art. 1356.I] opens with the statement that “The wife’s

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responsibility is to run the household.” Therefore it was this legal culture, directly arising from the nation and its state, that defined the parameters of post-colonial nationalism. Partha Chatterjee’s apt description of the Indian context equally applies to others: nationalism, Chatterjee observed, “conferred upon women the honor of a new social responsibility and by associating the task of female emancipation with the historical goal of sovereign nationhood, bound them to a narrow, and yet entirely legitimate, subordination.”

This subordination finds ample manifestation in the provisions of the Ottoman Law of Family Rights of 1917, a law that represented in the Ottoman domains the first state-sponsored codification of the Islamic law of personal status. The significance of this Law lay not only in the fact that it was the first attempt of this kind, but, more importantly, in its spatiotemporal propagation. For whereas Turkey seceded from the entire edifice of Islamic law in 1926, the Law of 1917 remains in effect as the Muslim denominational law of Lebanon and Israel to this day, and continued to be the official law of Syria until 1949 and Jordan until 1951. What adds to the significance of this Law is not only the fact that it is the major survival of the Shari’a in the post-Ottoman era, but that it purportedly set out to improve the lot of Muslim women. But did it?

The Family Law of 1917 generally did not depart from the provisions of the Shari’a, but it did codify them, and thus subjected them to the rigidity of a single linear language devoid of the plurality and multiple juristic nuances and variations that the traditional law had afforded. The hallmark of this codifying transmutation was, as we have repeatedly noted, the appropriation of the law by the nation-state, a transmutation that announced the clear message that even when the law was both substantively and substantially that of the Shari’a, it was ultimately the state that determined this fact and what part – or what combination thereof – was or was not law. This precisely is the meaning of sovereignty, and sovereignty is no one else’s business but the state’s.

Yet, in the very process of reenacting Islamic law into a codified body of rules, linguistic presentation, focus, brevity, detail and attention, all played a significant part in recasting and remolding the law, all of which factors entered into the calculation of what effects the law was supposed to produce. Thus, while the traditional law provides a staggering body of discourse respecting the wife’s right to various types of support from her husband, the 1917 Law reduces this discourse to two articles whose brevity deprives the modern court of the full view of these rights.

(In pre-modern Hanafi law, by contrast, the wife’s rights to support were extensive and her treatment as a juristic topic often occupied dozens of pages.) All that emerges from the multiplicity of pre-modern rights is that she is entitled by law to a “house,” language that might be interpreted by modern judges in light of customary practice (thus maintaining a measure of continuity), but a practice that was constantly shifting in favor of new realities that tended, with time, to supersede the earlier ones, if not remove them from judicial memory. Affording a “house,” together with the provision (art. 72) stressing the wife’s right to refuse living with the family of her husband, seems to be a recognition of the rising importance of privacy and companionate marriage, but it simultaneously takes away, again through silence, the pre-modern set of rights that “constructed the wife as a social being with needs for companionship that must be accommodated by the presence of relatives, neighbors, or even hired companions.”

Yet, the legal reduction of the matrimonial relationship (formerly predicated upon complex social relations within an extended family structure) to companionate marriage simultaneously constituted a step toward constructing the wife as a housewife in a family unit headed by the husband, a notion that is entirely absent from the traditional religious law. Indeed, article 73 of the 1917 Law requires the husband to treat his wife kindly, but imposes on her the obligation of obedience. The latter, in Shari‘a narrowly defined in terms of sexual availability, is now dissociated from an intricate system of obligations to which the husband too was bound. “Obedience” has undergone abstraction and expansion, and has furthermore been merged into the highly unrestricted French civil notion of wifely obedience marshaled to produce an effective means of subordination. Little of this changed even much later. A recent study of the 1957 Moroccan family law convincingly argues that the so-called reforms in that country have indeed produced a consolidated patriarchal hold within a reinterpreted field of the Shari‘a, while simultaneously undermining the intricate guarantees and multi-layered safety nets that the Shari‘a had provided in practice before the dawn of modernity and its nation-state.

A further index of women’s subordination relates to the post-colonial promotion of the man/husband as head of the family, to be obeyed and even revered. The pre-modern Muslim jurists regarded the inability of the husband to fulfill his marital duties as constituting disobedience, in which

case he was required to grant his wife a *khulʿ* without remuneration to him. Husbands, in other words, were almost as much subject to the charge of disobedience as wives, although their liabilities were assumed to take different forms. In modern national codes, disobedience becomes exclusively a woman’s liability, the result of failure to perform a variety of functions assigned to her by the law. Thus, in the Algerian code, the wife can be accused of disobedience simply for failure to accord the husband respect as head of the family; in Libya and Yemen, disobedience arises for failing to attend to the needs and affairs of the matrimonial home; in Morocco, it arises even for failure to show respect to the husband’s parents.

These grounds for obedience were clearly not so expansive in pre-modern Islamic law, having been mainly limited to sexual inaccessibility. In traditional law, the family was constructed as a social group based on kinship, a group whose members had rights and duties, but where no one was *legally* designated as head. Materially and economically (a wide scope of social existence), women were legally independent, having the same rights as men. Husbands could not legally control their wives’ property. Nor was the woman required to respect her husband’s parents any more than he was required to respect hers. Nor, moreover, was she required by law to attend to the affairs and daily needs of the matrimonial home (much less her husband’s family), it being explicitly stipulated as the husband’s duty. But this is not all. A host of rights that women enjoyed in traditional law were entirely lost in modern legislation, not the least of which was the husband’s responsibility to pay for suckling his own children, for the cleaning and cooking expenses of the matrimonial household, and for servants to attend to his wife’s personal needs.

These gender-based transformations were made possible by several factors that combined to produce multiple effects in different sites, effects that invariably served to increase the subordination of women. One of the crucial factors was the collapse during the nineteenth century of local markets in most countries of the Muslim world, a far-reaching phenomenon causally linked to the European domination of the newly created open markets in these countries. Integral to this economic transformation, which led to the rise of alternative modes of economic production, was the disappearance of the home economy (involving, inter alia, weaving and spinning), in which women had not only played a crucial role, but also, through their economic performance, benefited from the financial independence that this afforded.

A second factor was the rise of new political, legal, economic and bureaucratic elites that were either essential to building the new state system or subordinated to its structures. Taking as their model late nineteenth-century Europe – which had barely begun to grant its
women the right to full personhood (be it in terms of suffrage or owning property in marriage) – the new Muslim elites (almost exclusively male) filled the gaps in the changing structures of power through mimesis.

Third, and arising from the second factor, was the importation by the new national elite of European systems and philosophies of education which assigned to women the role of raising the national citizen of the future. Women, important and sublime as their role was in manufacturing the successful and productive nation, were nonetheless expected to stay at home, with their children.

Yet another factor enhancing this prejudicial transformation was the gradual rise of a new and anomic psycho-social order, one that grew concomitantly with the continual reduction of the extended family and the simultaneous increase in the prominence of the nuclear family. That this socio-familial transformation – to which we shall return later – was due to the changing modes of economic production is clear, but what has not been sufficiently taken into account is the dialectical relationship between these social and economic transformations and the new notion of individualism. While the incomes of extended family members largely belonged to an indistinguishable fiscal pool that was often perceived as group-owned and that consisted of goods and commodities along with cash, in the emerging nuclear family, and because of the rise of a massive bureaucratic elite, the man’s salaried income was an individualized act of remuneration, an income earned through a narrowly defined job in which no other family member took part. An increasing sense of individualism, combined with a male-oriented national state, a new male-oriented economy and bureaucracy, and a wholesale collapse of the domestic economies that had been the exclusive domain of women, all combined to produce legal codes and legal cultures that, under the banner of modernity, tended to subordinate women rather than liberate them.

Equally important in the 1917 Law, and analyzable in the same fashion, is its haunting brevity in dealing with the modes of marital dissolution afforded to the wife. The Law quietly affirmed the husband’s absolute right to effect unilateral divorce by his own accord while, at the same time, severely abridging the discourse about *khulʿ*, formerly a common recourse available to women who wished to rid themselves of a bad marriage. Article 116 makes mention of it in passing, without describing any of the substantive or procedural legalities associated with it. As one scholar has perceptively noted, “[o]nly the closest reader of the Law would notice that such a divorce had legal standing.”7 By contrast, traditional law

consecrated pages upon pages to discussing this form of marital repudiation. Furthermore, while Islamic law had in practice permitted women to sue for marital annulment only after one year of a husband’s failure to provide support (due, inter alia, to insolvency, desertion or disappearance), the 1917 Law expanded this period to four years (art. 127), thus exacerbating the wife’s plight. On the whole, the 1917 Law reduced the multiple and multi-layered traditional legal rights of women instead of expanding them.

Yet, while maintaining many of the male legal prerogatives versus the female, the new law restricted male rights in other respects, though all in favor of closer state control and surveillance over family life. The overall result was one that intercalated women into a regimented domestic sphere, and all this on the ruins of what had once been a largely open social public space that allowed extraordinarily free latitude to economic transactions in both the private and public domains.

The rise of proto-feminist movements in Euro-America during the first half of the twentieth century redefined colonial cultural discourse, with the result that promoting the feminist agenda immediately resounded in the Muslim world at large. Whereas the “segregated Muslim woman” had, in the nineteenth century, been the focus of European and American commentary and criticism, in the twentieth century she had become in this critical commentary the victim of a merciless patriarchy, from which she had to be rescued. Yet there was little, if any, recognition that the new forms of patriarchy were directly caused by the displacements/transformations just outlined. As part of the cultural discourse of domination, the critique chimed with the agenda of the ruling elites of the Muslim states, and was reflected in the changes that these states made to the substance of the law. Women had become a priority in fashioning the new nation, and redesigning the law was yet one more means of achieving this end.

Reengineering family law

Integral to the project of social engineering was a specific effort to increase the contractual options of the wife. Through the methods of takhayyur and talfiq, most states reconstituted the marriage contract along the lines of Hanbali doctrine, which permitted the inclusion of as many terms as the parties might wish to stipulate, as long as no term was contrary to the aims of the contract. By implication, this reconstitution also meant that the terms and conditions could not violate the established principles of the law or the parties’ interests as ensured by the contract itself. This widely adopted contractual doctrine permitted women to include stipulations that served to protect their own interests within marriage, such as the right
to work outside the marital home; to divorce her husband; to forbid him from taking a second wife; or, on penalty of divorce, to prohibit him from moving the marital home to another locale without her consent.

These terms, apart from the first, had for centuries been included in marriage contracts, but this was not a systematic practice. Only some people had recourse to it. What the twentieth-century state accomplished in this respect was to systematize (through state, centralized action) the right to these inclusions, thereby raising the minimal scale of women’s rights. Yet, Muslim women did not leap to take advantage of the newly available contractual options. In an effort to increase this proportion, the state began actively to encourage the use of such options by women. In 1995, for instance, the Egyptian Ministry of Justice prepared a draft marriage contract that could be used by couples as a model and be modified in accordance with their wishes and needs – this contract’s purpose was to make the entire range of legal possibilities known to the average citizen.

Furthermore, by setting the terms and conditions in a ubiquitously available and standard document, the conditions would acquire a routine-like character, thereby making them in effect an integral part of the law rather than an addendum that women would have to negotiate or for which they would have to bargain. A similar, standard contract had been drafted in Iran in 1975, and reformulated under the Islamic Republic in 1982. The new model contract, reflecting changes in positive law, contained several standard conditions, including the wife’s right to take half of her husband’s assets that he had accumulated during marriage, provided that he divorced her for no fault of hers. (The 1982 Law also gave the woman the right to the value of all her labor during the marriage, if she were determined by the court not to be at fault in the breakdown of the marriage.) By the terms of the model contract, she would also be entitled to divorce him should he abandon or mistreat her, marry another, or default on maintenance. This standard(ized) contract had something of a Shari’a-law appearance, since the husband, by accepting these conditions – which he now had to – could be said to have delegated to his wife the power to divorce herself from him should he default on any of the stipulated conditions. (Incidentally, these powers of “delegated divorce” were fully recognized and intricately elaborated in the Shari’a, but never integrated into any standard contract, an unknown practice in the first place.)

As we said earlier, the insertion of such conditions was nothing new, and the traditional Shari’a courts of virtually all schools have in practice accepted the inclusion of such conditions. But this inclusion had been the exclusive prerogative of the wife, a piece of ammunition with which she
was supplied as a matter of protection. Nevertheless, in many modern “reforms,” partly out of a preoccupation to equalize the rights of men and women, this prerogative of inserting conditions has now been bestowed on men in several Muslim countries, thereby enhancing the subordination of women in the name of equality.

Financially, marriage in the nation-state was to be reengineered supposedly in order to strengthen the position of women. Integrated into the legal institution of marriage were guarantees as to the maintenance to which wives are entitled by operation of the law, i.e., even if the guarantees were not stipulated as part of any agreement. This is classical doctrine reenacted. As the Shariʿa had done for centuries, the modern reforms made maintenance (which consists of provisions of clothing, shelter and food) an inextinguishable obligation on the part of the husband toward his wife—which means that failure to provide maintenance would render his estate liable for seizure by the court in order to defray these costs.

Likewise, a wife was contractually entitled to a dower. This remained both a legal requirement and a social and customary practice. Although in India and Pakistan the extravagant stipulations of dower caused legislation to counter abuses in this domain (forcing the parties to stipulate reasonable amounts of dower), most states, especially in the Arab world, continued to enhance this feature of the marriage contract. In Egypt, for instance, not only did dower continue to be an essential feature in the validity of the marriage contract, arising by operation of the law, but the wife also retained priority of claim over all other claims of debt against the husband’s estate. Her right to dower is inextinguishable, and the husband’s failure to pay it could land him in prison. And in order to enhance the husband’s ability to surrender the amount of the dower to his wife, he is required to provide a guarantor, who will be equally culpable upon failure to pay. (It is remarkable that these rights continue to be stated according to a logic and language that is highly gendered. In a world where an increasing number of Muslim women nowadays hold more lucrative jobs than their husbands, who may occasionally be unemployed, the law has not yet managed to neutralize its language to reflect the rights of the husband in cases where women are the breadwinners.)

In the great majority of Muslim states, especially those traditionally of Maliki affiliation, several restrictions were placed on the powers of the marriage guardian who was normatively defined as a male relative who had significant powers in determining who his ward should or would marry. Some of these male prerogatives were maintained until about the middle of the twentieth century, but they have increasingly come under attack since. Under pressure from feminist groups, the Moroccan government, for instance, came to change some of the assumptions about
guardianship by proclaiming it “the woman’s right,” a change that actually reflects a reversal of rights. In the Shari‘a, the guardianship of the senior male agnate amounted to a representational right whereby the interests of the family and the group would be considered together with the marital interests of the ward. The Moroccan legislature sought to guarantee this right by stipulating that marriage could not be concluded “without her consent,” but it also found it impossible to ignore the fact that Moroccan society, like nearly every other Muslim society, places a premium on the family as well as on inter-familial relations. Article 12 of the Code of Personal Status thus offers a guarantee for the family, as represented by the guardian, to the effect that the social network within which the marriage is embedded must play a role in the contractual process. While her consent is indispensable, the guardian, this article stipulates, “concludes the marriage on her behalf.”

Guarantees were also installed in favor of a woman whose guardian might refuse to conclude a marriage that she desired. Several states thus permit women of marrying age to petition the courts to obtain permission to marry against the objections of relatives, including male guardians. On the other hand, according to the laws of Pakistan and India, a minor girl married by her father or grandfather must wait until the age of eighteen before she can seek judicial dissolution of her marriage.

The Moroccan case exemplifies what may be called the transitional problematics of modernizing societies, where traditional communal norms coexist alongside, yet simultaneously oppose, modern notions of individualism. Expanding the freedom of the individual within the interests of the enveloping group – however modified these interests may be – appears to represent a new stage in the transition toward more individualism and less communalism. It may be a matter of time before the law moves on to the sphere of exclusive individualism, where the extended family and community can be declared, for legal purposes at least, defunct. It is always worth remembering that while the institution of guardianship represented – even in practice – a certain power of patriarchy, it was not only about that power, as modern scholarship often makes it out to be. The guardian, we recall, also represented the voice of the nuclear and extended family, and even the immediate community. For marriage in Muslim societies, past and present, has never been an affair relevant only to the couple.

Together with changing notions of community and individualism came another transformation in the social values that define adulthood, a transformation that has largely been due to major shifts in economic structures and modes of production. Early in the twentieth century, most Muslim states raised the age of marriage (generally prescribed in classical texts to
start with puberty), and some have criminalized the marriage of minors. The 1929 Indian Child Marriage Restraint Act prescribed penalties for any marriage where the bridegroom had not reached eighteen or the bride fifteen. The latter was raised to sixteen in Pakistan’s 1961 Muslim Family Laws Ordinance. In other countries, such as Egypt, no code (yet) explicitly prohibits marriage of minors, but by instituting strict registration requirements (see p. 116 above) severe restrictions were placed on such practices. All countries in the Middle East now prescribe the age of eighteen for bridegrooms, but the age has varied in the case of brides: Iraq requires eighteen, Jordan and Syria seventeen, Algeria sixteen, and Tunisia and Morocco fifteen.

None of these areas of the law was so politically charged as that of polygamy, however. The first step taken in further limiting the scope of this practice was the Ottoman Law of 1917 which provided that, in her marriage contract, a wife might stipulate that, should her husband take a co-wife, she had the right to claim a judicial divorce. This device, centuries old, became commonplace in subsequent legislation throughout the Muslim world, but was often combined with other measures – also centuries old – empowering wives to sue for dissolution should certain unfavorable conditions arise in their marriage. These means consisted of (a) predicking the husband’s unilateral divorce upon the occurrence of certain conditions (i.e., if X happens, then divorce shall take effect), and (b) delegating the husband’s power to divorce to the wife herself (as well as to a third party). This delegated power was to be exercised by her upon the occurrence of particular conditions that she construed as disadvantageous to her, including her husband taking a co-wife.

Yet another approach to curbing polygamy was taken in a number of Egyptian legislative proposals during the 1920s, but these were not to become actual law until the 1950s and 1960s, and in such countries as Syria and Tunisia before Egypt itself. The device was administrative in nature, requiring any man desiring to take a co-wife to petition the court for permission. The 1961 Muslim Family Law Ordinance of Pakistan made the consent of the wife a further requirement alongside the court’s permission. The court, however, could still refuse his request independently of the wishes of the wife, and this on either of two grounds: his financial inability to support two wives, or his inability to treat them in an equally just manner. These considerations, especially the latter, were based on the Quranic verse 4:3, which enjoins a husband to treat his wives justly and equitably. Some countries, such as Syria, opted for financial considerations as the chief grounds for a decision, while other countries deemed the notion of justice (which does not, in its widest interpretation, preclude financial considerations) as paramount. The
most drastic position taken on the issue of justice was that of Tunisia. In the 1956 Law of Personal Status, polygamy was declared a criminal infraction, categorically prohibited on the grounds that it is impossible for any man to be just, as the Quran requires, in the same manner to two wives.

Equally fundamental changes to the law were effected in the sphere of paternity. In the interest of preserving social harmony and the integrity of the family, the Shari’a stretched the limits of conception and pregnancy with a view to ascribing children, as much as possible, to the “marriage bed.” The basic and primary legal assumption was that “children belong to the marriage bed.” The Islamic legal schools differed with regard to the minimal period in which, after the marriage begins, the child may be deemed legitimate, as well as in regard to the maximum period after the marriage is dissolved or the mother widowed. The former period, in minimalistic doctrine, was fixed at six months, while the latter extended to between two and five years, depending on the particular school. The Twelver-Shi’is constituted an exception in fixing it at ten months, although they were a numerical and doctrinal minority. In general, therefore, the Shari’a promoted the integration of children into family units, discouraging any tendency to single out children as illegitimate. To prove a child illegitimate, evidence had to be beyond any doubt, “reasonable doubt” being insufficient. In other words, there could not exist even a semblance of doubt. Furthermore, mere acknowledgment by the father that the child was his was deemed conclusive, even if the physical union of the parents may have been impossible for any period prior to six months before the birth.

Much of this has been changed in favor of, first, limiting the scope of legitimacy, and, second, the de-privatizing of paternity claims and declarations. In India and Pakistan, following English law, the father’s acknowledgment is inadmissible if physical union between him and the mother was impossible before the marriage took place, and if the child is not born within 280 days of that marriage. The Arab states have preserved some elements of Shari’a doctrine, while at the same time rejecting the highly tolerant limits that it stipulated and that must have significantly conducd to resolving disputes that might otherwise have arisen. Thus, the Egyptian Law of 1929 places a one-year limit on the determination of legitimacy after divorce or after the death of the husband, declaring the period of gestation to be no longer than one year.

Although prior to the nineteenth century unilateral divorce by the husband was not the most common form of dissolving marriage, the culture of modernity has made it a morally repugnant instrument, associated with male domination, capriciousness and downright oppression.
Associated and combined with the exclusive male right to polygamy (a relatively infrequent practice), this type of divorce came to symbolize, on the one hand, the tyranny of the Eastern male and, on the other, the wretched existence of the Muslim female. The male’s absolute right to divorce was therefore to be curbed, in whole, and, if this proved impossible, at least in part. The foremost of these reforms was the declaration as invalid of any pronouncement of divorce made as an oath, under duress, in a fit of anger, while intoxicated, or – in some countries – during the menstruation period of the wife. Only statements made with the intent to dissolve a problematic marriage were now deemed valid, although they might not necessarily lead to dissolution. Also abolished in most Muslim countries was the so-called “triple divorce,” a formula that abridges into a single statement the three pronouncements by the husband of his will to divorce, each of which should be made during a period when the wife is free from menstruation.

In most Muslim countries, the mere declaration of unilateral divorce by the husband (valid and effective in traditional jurisprudence) has been held ineffective without its being registered in court. In Morocco, for instance, a husband need not petition the court for such a divorce, nor, therefore, does he need to vindicate it on any grounds, but he must register it. On the other hand, a woman who seeks a judicial divorce must (consistent with traditional law) explain to the court the reasons for her petition. In some countries, the husband may apply for divorce without having to state any grounds, while in other countries both parties are equally obliged to state the grounds for their request. In Iranian law under the Shah (1967), while both parties faced the same procedural obligation, women’s scope for these grounds was expanded beyond that available for husbands. Under the Islamic Republic of Iran, the 1967 Law was struck down, but several elements of it survived in the Special Civil Courts Act. A wife’s consent to the husband’s divorce continues to be a requirement, although the husband no longer needs to provide grounds for his wish to divorce when petitioning the court.

In the great majority of Muslim countries, wives are now said to be able to file for marital dissolution on two additional grounds, namely, the husband’s failure to provide spousal or family support, or his taking another wife. This does not mean, however, that such rights were not available to women before the twentieth century, for, as we saw earlier, it was in fact the common practice of both the courts and society in the case of the first grounds (i.e., failure to maintain) and a contractual option available to women in the case of the second (i.e., taking on another wife) that guaranteed such rights. The difference now is that the law is declared, made explicit and sanctioned by the state, the procedure having been
bureaucratized and formalized. Most importantly, perhaps, it allows state officials to wrap themselves in the robes of reform, though the substance has surely not changed to any notable extent.

In the same vein, much of the Shari‘a law of marital dissolution was integrated into the civil codes of Muslim states in the name of reform, but a reform deprived of the complex system of checks and balances that Islamic law had extensively supplied. In addition to the two grounds for judicial divorce listed in the previous paragraph, the legislators included the following: defect in body or in mind that makes married life intolerable or dangerous; impotence that renders normal sexual relations impossible; cruelty and maltreatment, which included – depending on the definition of the particular state – anything from physical abuse to taking on another wife; absence for a prolonged period of time; and, finally, marital discord. As we saw, a woman in the Shari‘a could petition the qadi for dissolution of her marriage for almost any reason, including all of the above, as well as for such reasons as “disliking her husband due to his ugly appearance or as a result of discord between the two.”8 The Egyptian Law of 1929 stipulates that “if a wife claims that her husband is causing her harm in such a way as to make it impossible for people of her social class to continue the marital relationship, she may petition the judge to dissolve the marriage, whereupon he shall grant her a single, irrevocable divorce, provided that the abuse is proven and he has failed in reconciling them. If, however, the judge denies her petition and she subsequently reiterates the allegation but cannot prove the abuse, the judge shall appoint two arbitrators.”9 Thus, in the modern system, the procedural requirement of proving maltreatment must obtain before a wife is liberated from a bad marriage. Moreover, in some Muslim countries, while a woman can sue for, and obtain, divorce on any of these grounds, she is obligated to pay the husband a consideration decided upon by the court. Islamic law, by contrast, acknowledged the woman’s inability to cohabit as intrinsic grounds for dissolution, although arbitration and reconciliation before a final verdict remained, in effect, a mandatory requirement.

Modern Muslim codes continue to affirm the importance of the traditional Islamic concept of mediation between husband and wife, a necessary step before the dissolution of a marriage is effected. In

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twentieth-century codes, it has become formalized and homogenized in almost every country, and it has become an official requirement to be fulfilled before effecting any type of divorce, including – perhaps especially – unilateral divorce by the husband. Needless to say, the necessity for mediation in pre-modern law was normative, both in the sphere of the qadi and in the social site in which the marital conflict occurred. We simply do not know whether mediation was involved in the social context of a husband’s unilateral divorce, although in all probability this form of divorce did not reach the qadi in his official capacity as judge, and thus it would be difficult to see how the latter’s official mediation (directly or by proxy) was involved. In today’s civil codes, on the other hand, mediation appears as a ubiquitous stipulation, formalized in specific procedural requirements.

The method of takhāyyūr was also deployed to effect changes in the law pertaining to the mother’s right to child custody, which extended, according to the Hanafi school, to seven years for boys and nine for girls. Traditionally Hanafi countries have raised this bar to some extent. For example, the 1929 Egyptian Law stipulated ten years for boys and twelve years for girls, and the 2005 Law (No. 4) has further raised the age to fifteen years for both. But these countries could have adopted a more significant change, as the Maliki school already granted the mother the right to custody of boys until puberty and girls until marriage. While most of North Africa and the Sudan have adopted this Maliki doctrine, Tunisia, a traditionally Maliki country, has opted for a policy more in line with the Hanafi doctrine. In the Iranian Civil Code of 1382 H (2003), the age was raised to seven for both boys and girls, this being based on a minority view in Twelver-Shi‘i law. At the same time, many other Muslim countries left to the qadi’s discretion decisions on custody according to the best interests of the child. Yet, irrespective of where the children live, the father remains responsible for their maintenance, and, in several countries, for their education. In this respect, there was little to no change from the rules of Islamic law.

The sphere of inheritance, on the other hand, was subjected to significant changes. The Sunni system of succession in effect arose from a modified tribal system that served the interests of the extended, agnatic relations, i.e., those who guaranteed the survival of the group and whose entitlement to the estate of the deceased was repayment for the security they extended to the propositus and to his/her immediate relatives while he or she was alive. The Quran incorporated into this system much to serve the interests of mothers, daughters, wives, sisters and sons’ daughters. But the system remained, in a particular way, largely patriarchal, and the emphasis continued to be focused on agnatic relations that guaranteed
the group’s security. The concatenation formed by these relations translated into an extended family that permeated the Bedouin as well as the urban environment. The extended family, in other words, was the relevant unit of social and economic support within both the clan and the neighborhood.

The introduction of modern forms of capitalism and the attendant fundamental changes in modes of production have led, inter alia, not only to the collapse of the earlier modes of production but also to a transformation in the social map: a society whose typical family structure was of the extended type has become characterized by the widespread and growing phenomenon of the nuclear family. Loyalties are no longer to fathers, uncles and the other “patriarchs” of the family who once formed a veritable safety net for the needy of the family: the ill and the infirm, and orphans, and divorcees and their children. Each family unit was henceforth “on its own,” the unit having become the parents, their children and grandchildren, and their fathers and mothers, whenever all these coexisted. It is this unit that reflects the “model family” promoted by the modern state, not only because this is the predominant European model – the exporter of this state – but also because the new “Islamic” nation-state could more easily secure the loyalty of such a nuclear family as the defined and articulated site of the good citizen. The loyalties within clans and tribes, being quasi-political, can hardly be divided. Thus, the modern nation-state, which also was fundamentally engaged in, and intertwined with, the new forms of capitalism and new economic modes of production, had a profound interest in refashioning the modern family into a family that is distinctly nuclear.

In reengineering the law of inheritance, the legislators of the modern state leaned heavily on the method of takhayyur, combining elements from various schools to produce effects that were inconceivable under the traditional legal system. An important material source on which the legislators drew was Twelver-Shi‘i law, regarded for centuries as unorthodox and even antithetical to Sunni doctrine and practice. The Twelver-Shi‘i system of succession drastically departs from agnatic arrangements as conceived by Sunni law. It just so happens that the Shi‘i system of succession – which represents the site of the greatest difference between Sunni and Twelver-Shi‘i legal conceptions – has become more suitable to the realities and demands of the modern nuclear family than any configuration that its Sunni counterpart can produce. Accordingly, many of its elements were introduced in several Sunni countries, and in Iraq it was made the law of the entire population, including Sunnis and Kurds. Twelver-Shi‘i law favors a nuclear conception of the family and pays special attention to the females in it. Thus, in the case of a daughter who
survives her father together with an uncle, the father’s estate in Sunni law will be divided into two equal shares between the two heirs. In Twelver-Shi‘i law, on the other hand, the daughter inherits the entire estate, certainly a modern way of devolving family property.

Some legislators, such as those of Tunisia, opted to modify and augment the Maliki system of succession while drawing on complex principles of other Sunni legal schools, avoided in countries that traditionally followed these schools. But the results were virtually identical to the effects produced in the Twelver-Shi‘i system, in that daughters were given precedence over agnates. Also of Twelver-Shi‘i inspiration was the unrestricted principle – adopted in Egypt, Iraq and Sudan – that while the bequest cannot exceed one-third of the testator’s total inheritable wealth, the latter can choose an heir whose normal share will then be augmented with the additional one-third.

The modern permissibility of “bequeathing to an heir” has also afforded a solution to the problem of the son of a predeceased son who, according to Islamic law, was entirely excluded from his grandfather’s inheritance. The nature of the support dynamics within the extended family was such that an orphaned grandson was usually taken care of by his grandparents, uncles and aunts, which explains why Islamic law did not see good reason to allot the deceased father’s share to his surviving son by representation. Orphans were routinely and as a matter of course absorbed by the family unit in which their parents had lived, which also explains why the relatives continued, over the centuries, to be the recipients of the deceased’s share. With the emergence in modernity of the nuclear family as an archetype, and with the exponential rise in mobility, such orphans needed protection, as the extended family which used to take care of them has suffered a major decline (in many areas disappearing entirely). No solution from within Islamic law was forthcoming, since inserting the orphaned grandson into the equation of Islamic inheritance would wreak havoc with the entire system. The solution was instead pioneered by Egyptian legislators and consisted in the statutory decree that any grandfather who has orphaned grandsons must make a will that allots them what their father would have inherited had he been alive, with the proviso that such an allotment not exceed one-third of the grandfather’s total estate. In the event that the latter did not make such a bequest, or if his bequest did not observe the decreed rule, the court had to rectify the will accordingly.

By the year 2000 no fewer than eight countries in the Middle East had made the estate of the grandparent liable for an obligatory bequest in favor of the orphaned grandchild. This solution was not welcomed in all Muslim states, however, with Pakistan voicing strong opposition on the
grounds that such legislation makes compulsory what the Quran intended to be a freely chosen act. We shall discuss the case of Pakistan in the next chapter.

The laws of succession and bequests were closely tied in with reengineering the law of *waqf*, especially in the Middle East and North Africa. In the previous chapter, we saw that *waqf* was a prime target of attack in the modernizing project initiated by both the colonialist powers and the native nationalist elites. The discourse generated by the French Orientalists during the 1840s filtered through to the Ottoman territories and, later, to the successor states. This discourse – aided by both the nationalist elite and native scholars who had studied at the feet of the European Orientalists – manufactured a distinction between family and public *waqfs*, a distinction that Muslim cultures had not made. It further injected into the nationalist ideology the notion that family *waqf* was a development in Islamic history from after the Formative Period, and therefore without legitimacy, since it was based neither on Prophetic tradition nor even on that of the Companions; the implication here being that later developments, modern ones included, were as good as any other, especially if the “modern” developments excelled earlier ones in “civilizational sophistication.”

Even more remarkable was the creation in this discourse of a causal link between the “invention” of family endowments and an attempt by Muslim societies over the centuries to circumvent the stipulations of the Quranic law of inheritance, which operates by the principle of shares and which, therefore, leads to the fragmentation of property. What is noteworthy about this discourse in the context of mid-twentieth-century nation-states is that the *waqf*’s “betrayal” of the Quranic spirit was one that – ironically – contradicted an invented spirit designed to promote the nuclear family and, unwittingly, to conform to Shi’i law.

As if this did not furnish them with enough ammunition for the attack on *waqfs*, the French colonists, the Ottoman ruling elite and the counterparts of the latter in the successor nation-states furthermore blamed economic malaise on the *waqf* since, it was argued, family endowments inherently tie up property in perpetuity and prevent it from efficient development in a free market economy. And since the economy is indispensable to modern development, then impeding material progress amounts to halting the march toward civilization. Thus *waqf*, the main prop of civil society in Islamic civilization for over a millennium, and a chief instrument of its social welfare and safety-net, became synonymous with civilizational retardation and regress. In Kemalist Turkey, the entire institution of family *waqf* was abolished in 1926, while charitable non-family *waqfs* were nationalized as public welfare institutions.
The process of eradicating waqf was nowhere as sudden as it was in Turkey, however. Before the elimination of family waqfs altogether in a number of other Muslim countries, the nationalist governments attempted to restrict the scope of the Shari’a laws of waqf by aligning them with their policies of refashioning the “model (nuclear) family.” But in order to accomplish this, the waqf administration was not allowed to continue in accordance with its former independent practices, where private administrators acted independently of the “state” although they were generally supervised and occasionally inspected, or audited, by the qadis.

With their centralization within the framework of government ministries, the waqfs were subjected to unprecedented rules, foremost among which was the requirement of registration for any act pertaining to the creation, revocation, renovation or alteration in the income distribution of any waqf. Egypt led the way in the Middle East region. It declared in 1946 that religious waqfs, especially mosques, would be henceforth designated as perpetual, as had been the case under the Shari’a; but not so private or family waqfs, which were now limited to sixty years (as in Lebanon) or to the lifetimes of two series of beneficiaries. Upon the dissolution of the waqf, the property would have to revert either to the beneficiaries or to the founders’ heirs, depending on the particular conditions the law set for each circumstance.

There was, in both Egypt and Lebanon, yet another major limitation on the freedom of waqf founders to establish a foundation whose value was larger than one-third of their inheritable estate. In the event that the waqf did exceed the one-third limitation, then the excess on the one-third had to be divided among the heirs according to their shares in the inheritance of that property. This limitation soon became common legislation, having been passed as recently as 1992 in the Yemen.

In 1949, Syria went even further, centralizing the administration of all public waqfs in a government ministry, and abolishing all waqfs whose beneficiaries were in whole or in part members of a family. The same drastic measure was enacted in Egypt in 1954, and in 1957 all agricultural lands that had been established as waqf were confiscated as part of Nasser’s nationalization program. A similar program of nationalizing land was undertaken in Algeria in 1971. A number of other countries also followed suit in abolishing family waqfs, some of the last being Libya, in 1973, and the United Arab Emirates, in 1980.

Yet another method devised to reduce the family waqfs was the lifting of several restrictions that ensured perpetuity under traditional Islamic law. The 1991 Algerian Law stipulated (in addition to abolishing family waqfs) that a founder may revoke his own waqf deed or change any of its terms. The 1992 Yemeni Law went so far as to bestow on the beneficiaries of a
family *waqf* the right to revoke the deed and to distribute the property according to their shares in the inheritance.

In South-East Asia, there were fewer changes in the *waqf* law, since by the dawn of the twentieth century the fundamentals of that law had already changed in the region, as they had in the Indian subcontinent. In the Malay States and the Straits Settlements, much of the *waqf* had been transformed into what were in effect English trusts, a fact that significantly reduced the interest of donors, which in turn drastically diminished the size of family and even public endowments. In Indonesia, the basic law that regulated *waqf* was promulgated in 1937 under Dutch colonial rule, but its effects on the *waqf* and its administration have been purely procedural, regulating the modalities of founding and registering *waqfs*. Generally speaking, the economic role of *waqf* in South-East Asia does not seem to have been as central as it was throughout Central Asia, the Middle East and North Africa; which explains why colonialist pressures to abolish so much of the *waqf* did not arise in South East Asia as they did in other parts of the Muslim world.