# LEGAL PLURALISM INCARNATE: AN INSTITUTIONAL PERSPECTIVE ON COURTS OF LAW IN COLONIAL AND POSTCOLONIAL SETTINGS[1]

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## Introduction

Recent decades have witnessed a shift in the study of legal pluralism from a focus on legal pluralism in colonial and post-colonial settings, to a focus on legal pluralism in the Western, industrialized world (Merry 1988), and later on to legal pluralism stemming from globalization and trans-nationalism (see e.g.: Merry 2007; Tamanaha 2007, Berman 2007, 2009). And yet, legal pluralism in colonial and post-colonial settings is still one of the most prevalent and well-studied forms of this phenomenon. This form of legal pluralism was dubbed by Merry (1988: 872) 'classic', to denote the fact that it was the first type of legal pluralism to be studied systematically, and that it was in the context of colonial and post-colonial studies that the theoretical notion of legal pluralism was first developed.[2]

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[1] Early versions of the article were presented at Tel Aviv University (in a seminar series on the Anthropology of Organizations) and at the workshop *Dynamics of Muslim Legal Pluralism under Colonial Rule* convened 9-10 December 2010 in Halle/Saale at the Institute of Oriental Studies of the Martin-Luther University (Halle-Wittenberg). I would like to thank the participants at these events for their helpful comments. My thanks go also to Gordon Woodman and Moussa Abou Ramadan for their valuable suggestions.

[2] For broad historical and conceptual discussions of legal pluralism, see: Griffiths 1986; Merry 1988; Woodman 1998; F von Benda-Beckmann 2002; Tamanaha 2007.

A situation of 'classic' legal pluralism occurs when a sovereign commands different bodies of law to different groups of the population according to their ethnicity, religion or geographic location. Surely, a wide variety of cases fall under this rubric.[3] Nevertheless, some general characteristics of 'classic' legal pluralism can be discerned:

1. This type of legal pluralism is usually the outcome of a colonial encounter in which a Western/colonial/statal body of law incorporates an indigenous/customary/religious body of law (Hooker 1975).

2. Since the incorporation of the indigenous/religious/customary body of law is always performed from a position of power, the status and jurisdiction of this body of law is determined by legal arrangements controlled by the colonial authorities. This is why the incorporated body of law always has, according to Hooker (1975), a 'servient' position vis-à-vis the 'dominant' position of the Western/colonial/statal body of law.[4]

3. The degree of state intervention in the 'servient' or subaltern body of law may range from the most minimal to the most extensive, and so does the degree of autonomy enjoyed by the courts that apply this incorporated body of law. Nevertheless, even when intervention is minimal (or allegedly minimal), the subservient body of law should not be seen as a pristine authentic remnant of a traditional legal system, representing the 'real' norms, values and ways of life of the indigenous culture. Rather, this body of law should be viewed as a product of the encounter between the colonized and the colonizer and of the asymmetrical

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[3] Hooker's *Legal Pluralism: An Introduction to Colonial and New-colonial Laws* (1975) is still the most comprehensive review of "classic" legal pluralism in Asia and Africa. For a review of this type of legal pluralism in South America, see Sieder 2002.

[4] It is important to note, however, that the formal legal hierarchy of 'servient' and 'dominant' bodies of law does not always apply in concrete social situations. It may very well be that in specific contexts, the indigenous body of law would have the upper hand, in terms of the regulation of behavior, rather than the Western/colonial/statal body of law.

power relations between them (see e.g.: Snyder 1981; Chanock 1985; Moore 1986; Merry 1991). Similarly, the courts that apply this subservient, incorporated body of law are usually 'hybrid institutions', combining different legal cultures (Santos 2006).

A vast body of literature dealing with classic legal pluralism has accumulated since the 1970s. Nevertheless, in this article I would like to point toward a significant lacuna in this body of research and attempt to redress it. Specifically, I highlight the lack of attention in this literature to the *organizational and institutional levels of analysis*, that is, to courts of law as organizations that operate within multiple organizational and institutional environments. Indeed, apart from a few notable exceptions (see e.g.: Moore 1973; K von Benda-Beckmann 1981; Spierz 1991; Santos 2006), most of the literature on classic legal pluralism – from the 1970s until this very day – has failed to consider these levels of analysis.

This article aims, therefore, to provide a fresh look at a well-studied phenomenon. It seeks to demonstrate that, by focusing on courts as organizations that are embedded within organizational and institutional contexts, one may gain new insights into classic legal pluralism. More specifically, I examine 'servient' or 'subaltern' courts in situations of classic legal pluralism and argue that these courts often operate within two different institutional fields: an indigenous one and a colonial/statal one. Each of the fields exerts different influences on these courts and places different demands on them. In terms of new institutional theory in organization studies (e.g.: Meyer and Rowan 1977; DiMaggio and Powell 1983; Scott 1995), these courts operate in an environment that is characterized not only by legal pluralism but also by institutional pluralism (Kraatz and Block 2008). Consequently, they develop pliable and dynamic legal cultures that reflect their bifurcated environment. In a sense, they embody the very essence of legal pluralism: they are shaped by the pluralistic nature of their environment, and at the same time they create and enact legally pluralistic arrangements through their rulings and practices. They represent, in other words, 'legal pluralism incarnate'.

To illustrate and develop this argument, the paper presents an empirical case study of sharī'a courts in present-day Israel. For the purposes of this research, I treat legal pluralism in contemporary Israel as 'colonial-like', that is, as similar to the legal pluralism we encounter in colonial and post-colonial settings. Many characteristics of classic legal pluralism can be identified in this case: The sharī'a body of law and the sharī'a court system have been incorporated into the Israeli legal system; within this system, sharī'a courts have been given jurisdiction over

matters related to the personal status of one particular group, Muslim residents of Israel;[5] the Israeli sharī'a courts operate parallel to civil family courts, which undoubtedly occupy a more dominant position within the Israeli legal system, and their legal culture undeniably combines Palestinian-Islamic and Israeli elements (see Shahar 2000). Thus, although most scholars of post-colonialism would probably agree that the Israeli case differs from more 'ordinary' cases of colonial/post-colonial states,[6] the form of legal pluralism that can be observed in Israel today clearly belongs to the 'classic', post-colonial type.

I argue that Israeli sharī'a courts operate, simultaneously, in two different institutional fields. On the one hand, they belong to the field of Israeli state law, interact closely with other organizations in this field such as the High Court of Justice and the Ministry of Justice, and must gain legitimacy and acceptance within this field. On the other hand, they belong to the shar'ī (Palestinian) institutional field in Israel and the West Bank, interact with other organizations populating this field, and must adapt to its distinct norms, values and ideologies. I further contend that Israeli sharī'a courts cope with the contradictory pressures exerted by these two institutional fields by developing flexible, dynamic judicial policies and legal culture, which both reflect their pluralistic environment and reproduce it.

The article unfolds as follows. The next section briefly introduces the basic tenets of new institutional theory in organization studies and discusses the applicability of this theory to the study of legal pluralism. This is followed by a socio-legal review of Israeli sharī'a courts, their legal status, and the two different institutional fields within which they operate. The bulk of the analysis then dwells on two judicial reforms that were introduced into these courts in recent years, which are traced back to contradictory influences and pressures exerted within the two institutional fields. Finally, the empirical and theoretical implications of this research are elaborated.

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[5] In fact, they also have jurisdiction in matters of personal status of foreign Muslim citizens sojourning in Israel, whose states also apply Islamic law in these matters.

[6] During the 1980s and 1990s, a lively academic debate took place among historians, sociologists, and political scientists concerning the identification of Zionism as a colonial movement and of Israel as a colonial state (see e.g.: Rodinson 1973; Schoenman 1988; Shafir 1996; Ghanem 1998). Referring to this debate extensively is beyond the scope of this paper, as for our purpose here it is sufficient to state that *legal pluralism* in Israel is indeed "colonial-like".

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## New Institutional Theory in Organization Studies and the Study of Legal Pluralism

New institutional theory has been one of the most influential organizational theories in the last four decades.[7] At its core lies an underlying skepticism toward atomistic explanations of social processes (Wooten and Hoffman 2008) and a belief that organizations, like individuals, are constituted through their embeddedness within broader systems of meanings and networks of relationships. Accordingly, a central construct in new institutional theory has been the notion of 'organizational field'. Each organization, according to new institutionalists, operates within one or more organizational fields, and cannot be understood outside of this context. An organizational field is defined as "a community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside of the field" (Scott 1995: 6).[8] Thus, for example, Israeli courts, as organizations, can only be understood in light of their relations with other organizations they interact with, and/or that are related to the Israeli legal system as a recognized area of institutional life. These may include other courts (e.g., magistrate's courts, district courts, the High Court of Justice, religious courts); state organizations such as the State Advocacy, the Ministry of Justice, and the Israeli parliament (the Knesset); state agencies outside the strict boundaries of the legal system that interact with it and affect it, such as the police, the prison administration; professional associations such as the Bar; and civil society groups such as human rights and women's rights organizations.[9]

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[7] Indeed, its influence may also be detected in the law and society field of research (see e.g. Suchman and Edelman 1996). Several scholars applied the new institutional theoretical framework for the study of courts of law (e.g.: Epstein et al. 1989; Hall and Brace 1989; Brace and Hall 1995; Cohen 2002), yet, as far as I know, this approach was never applied in the context of legal pluralism.

[8] A different conceptualization was suggested by DiMaggio and Powell (1983: 148), who define an 'organizational field' as consisting of "those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products". Obviously, there are no objective, absolute boundaries to organizational fields; rather, the demarcation of the boundaries in specific cases is relative and operational, and depends on both empirical investigation and the researcher's goals and perspectives.

[9] Researchers have often debated the relationship between the theoretical construct

A basic tenet of new institutional theory is that organizations within an organizational field are under constant pressure to conform to the rules and models that prevail within this field. Such conformism is necessary for an organization to gain legitimacy as a rational, effective and fair organization, whereas failure to conform to accepted rules, norms and models means loss of legitimacy. Since organizations depend on their environments for obtaining resources, they, or more precisely, the staff or the personnel working in them, cannot afford to lose their legitimacy in the organizational field.

According to DiMaggio and Powell (1983), organizations are therefore exposed to strong *isomorphic* pressures operating within the organizational field. They identify three different sources of isomorphism in organizational fields:

1.  *Coercive isomorphism.* This kind of isomorphism results, according to DiMaggio and Powell, "from both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function" (DiMaggio and Powell 1983: 67).

2.  *Mimetic isomorphism.* This kind of isomorphism is based on imitation, and is intensified under conditions of uncertainty: "[W]hen organizational technologies are poorly understood, when goals are ambiguous, or when the environment creates symbolic

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of 'organizational field' and other sociological notions of fields, especially that of Bourdieu (e.g.: Fourcade 2007; Emirbayer and Johnson 2008). Unlike Bourdieu's notion of field, the construct of 'organizational field' naturally focuses on organizations as predominant field actors. In recent years, however, this focus has somewhat eroded, and today the term 'institutional field' is often used interchangeably with 'organizational field' (as will also be done in this paper). Another major difference has to do with underlying assumptions concerning power and conflict: while for Bourdieu the field is a terrain of ongoing contestation and struggle for domination, early versions of new institutional theory tended to draw attention away from conflict within organizational fields. Instead, they were interested primarily in the processes whereby fields stabilize and coalesce around accepted, taken for granted structures, norms and 'rules of the game' (see Wooten and Hoffman 2008). This tendency has been somewhat mitigated, however, in recent new institutional literature (see e.g. Greenwood et. el 2008).

uncertainty, organizations may model themselves on other organizations" (DiMaggio and Powell 1983: 69). Such mimetic modeling occurs when other organizations in the organizational field are perceived as more legitimate or more successful.

3. *Normative isomorphism*. This kind of isomorphism is related to the diffusion of norms in organizational fields, and is attributed primarily to the presence of professionals and of professional networks in such fields. Professionals share common formal education and common codes of behavior, and are connected by professional networks that span organizational boundaries. They therefore constitute a significant conduit for the dissemination of rules, norms and cultural models between organizations.

DiMaggio and Powell contend that these isomorphic pressures push organizations pertaining to an organizational field towards becoming increasingly similar to one other; they also push the organizational field as a whole to homogenization and stabilization as it matures. Yet, what happens when an organization is active in more than one organizational field? This question has attracted growing attention among organizational scholars in recent years. Kraatz and Block (2008) observe that some organizations operate in environments characterized by 'institutional pluralism': they are active in multiple institutional spheres, are subject to multiple regulatory regimes, must conform to multiple normative orders, and are constituted by more than one 'institutional logic'. This situation poses many challenges in terms of the legitimacy of these organizations, their identity and status within the different organizational fields they belong to, and the consistency of their actions and policies.

New institutional theory provides us, therefore, with an interesting perspective and with useful analytical tools for studying courts of law in situations of legal pluralism, and especially for studying 'subaltern courts' in situations of 'classic' legal pluralism. How do such courts cope with their often multiple membership in more than one organizational or institutional field? How do they manage to maintain their legitimacy in two or more different fields, which may exert different and even contradictory demands and pressures? How does the pluralistic environment affect the judicial policies and decisions of these courts? And what legal and organizational cultures do these courts develop under such circumstances? In the pages below, I address these questions in a concrete socio-legal case study – that of sharī‘a courts in Israel.

## Sharī'a Courts in Israel: An Overview[10]

The system of sharī'a courts in Israel consists of eight courts of first instance, which are spread in Palestinian-Muslim towns (Tayyibe, Bāqa al-Gharbiya, Nazareth) and in mixed Jewish-Palestinian cities (Jerusalem, Haifa, Jaffa, Beer-Sheva, Acre). In addition, a sharī'a court of appeals sits in Jerusalem. Except for the first instance court in Jerusalem, all other courts serve communities of Palestinian-Israelis, who are full citizens of Israel and dwell within the 1948 borders.[11] Israeli sharī'a courts are presided over by Muslim judges (qāḍīs), who are chosen by a public committee and appointed by the President of Israel. The courts conduct hearings and produce court records in Arabic, but their senior staff (the qāḍīs and the chief secretaries) must have good command of Hebrew as well, so that they can communicate with other governmental, municipal and professional functionaries.

The origins of the sharī'a court system in contemporary Israel are to be found in the legal systems of the late-Ottoman and Mandate periods. Indeed, one of the most significant vestiges of the Ottoman Empire in contemporary Israel is the preservation of a *millet*-like legal system in the domain of family law (Friedmann 1975: 206). The millet system of the Ottoman Empire was a system of 'classic' legal pluralism, under which some non-Muslim religious minorities (Jews and several Christian denominations) were granted extensive legal, religious and cultural autonomy. These religious communities were allowed to establish their own autonomous courts, which employed religious law, and which had jurisdiction in matters of personal status relating to their respective community members (Ursinus 1993; see also: Braude 1982; Davidson 1982).

Under the British Mandate in Palestine (1917-1948), the millet system was largely preserved. Nevertheless, Muslim sharī'a courts, which had previously been considered state courts, were now introduced as autonomous religious courts into the Millet-like personal status regime. This new arrangement was later inherited by

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[10] For detailed discussions of Israeli sharī'a courts – their history, status and jurisdiction – see: Eisenman 1978; Layish 1965, 1971, 1975, 2006; Peled 2001a; Abou Ramadan 2008.

[11] The sharī'a court in West Jerusalem is unique in providing services to a population of non-citizens, namely, Muslim residents of East Jerusalem, which was occupied and annexed in 1967.

the state of Israel (see Layish 1965). Notably, until November 2001,[12] sharī'a courts had maintained greater jurisdiction than any other religious courts in Israel. They had enjoyed a virtual monopoly over the determination of the personal status of Israeli Muslim citizens – e.g., their identity as Muslims, bachelors, married, divorcees and parents of children.[13]

Like many other situations of classic legal pluralism, legal pluralism in Israel centers, therefore, on family law and personal status matters.[14] Another salient resemblance between the Israeli case and colonial/post-colonial cases is that the autonomous position granted to the subaltern body of law within the legal system is all but unlimited. Like the British colonial officers, who "generally recognized indigenous law, with the exception of laws that violated British law or were 'repugnant to natural justice, equity or good conscience'" (Merry 1991: 897), the Israeli parliament generally refrained from interfering with religious laws, unless their provisions were in direct contradiction to Israeli statutes (see Layish 2006). Indeed, although the Ottoman Law of Family Rights of 1917 (OLFR) and the Ottoman Law of Procedure for Sharī'a Courts[15] still apply to date in Israeli sharī'a courts, these laws have been curtailed to a significant extent by several Israeli statutes.

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[12] On November 7, 2001, the Knesset passed Amendment No. 5 of the Family Courts Law, 5755–1995, which gave jurisdiction to the civil family courts in all matters of personal status affecting Muslims, except for marriage and divorce. By this Act, the Israeli legislator made the jurisdiction of sharī'a courts equal to that of the other religious courts in Israel. About the long political struggle that preceded the affirmation of this legislative amendment, see Shahar 2007.

[13] The jurisdiction of the sharī'a courts had been broad not only compared with that of Christian and Druze courts, but also compared with that of rabbinical courts (Layish 1965).

[14] Indeed, since colonial officers perceived personal status matters as most sensitive in terms of cultural identity (see Chanock 1985: 145), they were particularly inclined to incorporate religious/indigenous courts, dealing with these matters, into the colonial legal system. As noted by many observers, this policy characterized colonial rule in general (see, e.g.: Bohannan 1957: 72; Gluckman 1965: 64), and it is the main source of legal pluralism in post-colonial states until this very day (Hooker 1975; Benton 2002: 127).

[15] These sharī'a codes were promulgated by the Ottoman Empire at the very final moments of its existence. On OLFR, see Tucker 1996.

For example, the Israeli legislator, who was not indifferent to some elements of discrimination against women in sharīʻa courts, saw fit to criminalize certain acts that are sanctioned by the OLFR. Thus, Polygamy, unilateral repudiation of a wife without her consent, and marrying off a minor girl are all considered, according to Israeli Penal Law, as criminal offences, which are liable to severe punishments.[16] The Knesset also promulgated several statutes that were directed specifically to religious courts (e.g., The Succession Law [1965], The Spouses (Property Relations) Law [1973], The Prevention of Violence in the Family Law [1991]), and that are therefore applied in Israeli sharīʻa courts alongside the Ottoman sharīʻa codes.[17]

The relations between these highly diversified sources of law are far from being well-defined. Rather, they are characterized by ambiguity and equivocality. Consequently, the qāḍīs are able to employ the various sources of law at their disposal in a relatively free manner (see below). Like other subaltern courts in situations of classic legal pluralism, Israeli sharʻīa courts can therefore be described as 'hybrid institutions,' which employ norms and values originating from very different social philosophies. This 'norm pluralism' (Bowen 2003: 257) finds its expression in these courts' decisions.

Yet, as I aim to illustrate in this article, in order to better understand the hybrid character of these courts, it is not enough to analyze how they combine different bodies of laws and legal traditions. Rather, it is important to observe that they are located at the intersection of two different organizational fields, and thus operate within two different institutional settings. On the one hand, they belong to a broad organizational field – as defined above – which is structured around the Israeli state-legal system. On the other hand, and at the very same time, they belong to another organizational field, which is constructed around Palestinian-sharʻī

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[16] Nevertheless, since the religious law itself has not been amended, such acts have become liable to civil and/or penal suits while still valid and approved by the religious law. See discussion of this issue below.

[17] See the website of the Israeli sharīʻa court system: http://www.justice.gov.il/MOJHeb/BatiDinHashreim/ The Israeli High Court of Justice has recently ruled that the Capacity and Guardianship Law (1962) is also applicable in sharīʻa courts (see, H.C.J 9740/05, X v. The Sharīʻa Court of Appeals in Jerusalem, P.D. 06(1) 1541 (2006); H.C.J 1129/06, X. v. The Sharīʻa Court of Appeals, P.D. 06 (2) 3313 (2006)). About these HCJ decisions, see also Abou Ramadan 2006.

organizations and institutions.

The first organizational field nurtures a strong Zionist, civil, and gender-equalizing ethos, which is very much alien to sharī'a courts. Thus, although Israeli sharī'a courts are part and parcel of this organizational field, their position within it is distinctly marginal: they are perceived as 'non-organic elements' in this field, and since they serve a population (Israeli Muslim-Palestinians) that is always looked upon with deep suspicion in the Israeli context, they are also suspicious in the eyes of most Israeli governmental functionaries.[18]

In comparison to the Israeli state-law organizational field, the second field – the Palestinian – sharī'a organizational field – is not well-defined. It is constructed around institutions related to Islamic law, Islamic education and 'Islamic religious affairs' in Israel/Palestine, but since it includes institutions that operate in three distinct political environments (Israel, the West Bank and the Gaza Strip), its boundaries are rather blurred. This field, as I define it, includes Islamic institutions in Israel such as Israeli sharī'a courts, sharī'a colleges and universities,[19] muftis, imams and preachers (who may be regarded as religious institutions, not only as individuals), the waqf establishment in Israel, Islamic almsgiving associations and non-governmental Islamic organizations such as the Islamic movement in Israel.[20] It also includes, however, similar institutions that operate in the West Bank, in East Jerusalem and to some extent in the Gaza Strip as well.

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[18]  It is not surprising, therefore, that other actors within this field tend to refer to the rulings of Israeli sharī'a courts with manifest suspicion. For example, in recent years, the National Insurance Institute has implemented a new policy with regard to children maintenance orders issued by sharī'a courts: The Institute now demands that women who were awarded child maintenance payments in sharī'a courts first present a court ruling confirming that they have custody over their children. The very fact that this measure was not implemented with regard to maintenance orders issued by other courts (e.g., family courts, rabbinical courts), reflects the distrust with which sharī'a courts are regarded within the Israeli state-law organizational field.

[19]  For example, the Umm al-Faḥm College of Preaching and Canonic Studies (*Kuliyyat Umm al-Faḥm li'l-Da'wa wa'l-'Ulūm al-Shar'iyya*).

[20] On the Islamic Movement in Israel, see Meir 1998; Peled 2001b.

As shown by many scholars studying Palestinian society, following the 1967 war the national, familial and political ties between the Palestinians in Israel and their co-patriots in the West Bank and the Gaza Strip were reestablished (Rouhana 1989; Rekhess 1989; Smooha 1992). These ties were particularly firm in the case of Islamic religious services and Islamic institutions, as the development of such institutions within Israel was held at bay by the authorities until the late 1980s (Peled 2001a). Some of the leaders of the Islamic movement in Israel, for example, were educated in Islamic universities at the West Bank in the 1970s and 1980s, and still maintain very close relationships with various Islamic elements in the West Bank (see: Rekhess 1993; Louër 2007: 70, 158).

Likewise, Israeli qāḍīs maintain close relationships with their Palestinian and Jordanian counterparts. This is especially pronounced in Jerusalem, where many of the functionaries of the waqf establishment in *al-Ḥaram al-sharīf* (Temple Mount), serve as mediators and arbiters (*ahl al-khayr, muḥakkamin*)[21] on behalf of the Israeli shari'a court. Some of these people have even agreed to serve as marriage registrars (*ma'adhūnin*) by appointment of this court. The Israeli qāḍīs in Jerusalem do not hesitate to seek the advice of their Jordanian and Palestinian colleagues in the most prestigious cases which are brought to their deliberation (cases involving waqf disputes); and they tend to refer with pronounced respect to *fatwās* that were issued by the Jordanian-appointed (and later on, the Palestinian-appointed) mufti of Jerusalem.[22] It is not surprising, perhaps, that in recent years Israeli qāḍīs have become honored guests, regularly invited to participate in prayers on Muslim holidays and during the month of *Ramadan* at the *Ḥaram al-Sharīf* (Shahar n.d.).

We may therefore conclude that from the point of view of Israeli qāḍīs, the two fields – the Israeli state-law organizational field and the Palestinian-shar'ī organizational field – are both important and tangible. These two fields nurture, however, very different values, norms, bureaucratic traditions, organizational cultures and, of course, political inclinations. Whereas the organizational field associated with the Israeli state legal system is characterized by a strong Zionist,

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[21] The role of these professional mediators is to intervene – by formal nomination of the qāḍī – in matrimonial disputes and to try and resolve them outside of the court (Layish 1975: 106).

[22] See for example, cases no. 985/2002; 112/1998; 404/1999, Israeli sharī'a court in Jerusalem.

civil, and gender-equalizing ethos, the shar'ī (Palestinian) organizational field is generally characterized by a national-Palestinian, religious-Islamic, and patriarchal ethos.[23]

This structural positioning of Israeli sharī'a courts at the intersection of two different organizational fields, poses exceptional challenges. Simply put, in order to continue functioning, the qāḍīs and personnel of these courts need to maneuver between the contradictory influences, pressures and expectations originating from the two opposing organizational fields to which these courts belong. To exemplify how such maneuvering may look, let us turn now to an analysis of two judicial reforms which have been introduced in these courts in recent years. At first glance, these two reforms – when viewed together - seem to indicate an incoherent judicial policy. However, I will show that they represent, in fact, a persistent effort to accommodate to conflicting demands exerted within two very different organizational fields.

## The Judicial Policy of Israeli Sharī'a Courts: Coping with Contradictory Isomorphic Pressures

From the many judicial, procedural, and administrative reforms that have been implemented in the Israeli sharī'a courts in recent years (see Abou Ramadan 2003a, 2003b), I focus in this section on two specific judicial reforms: a reform in maintenance claims and a reform in the treatment of Israeli statutes. My discussion of these reforms is based on an analysis of sharī'a courts' decisions, especially those issued by the sharī'a court of appeals, as well as on fieldwork that I conducted in the Israeli sharī'a court in West Jerusalem during the years 2000-2004.

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[23] This is not to say, however, that these organizational fields should be seen as monolithic, well-defined and static. Undoubtedly, each of these fields comprises not only diverse organizations, but also diverse legal philosophies, bureaucratic traditions, and political tendencies. And yet, as assumed by new institutional theorists, these organizational fields are characterized by 'dominant' or commonly accepted 'institutional logics,' and organizations that belong to them are expected to conform to these commonly accepted logics.

*(a) Reform in Maintenance Claims*

In the mid-1990s, the Israeli sharī'a court system found itself under mounting pressures: voices – originating primarily from liberal and feminist circles in Israeli society – began to express public criticism of the sharī'a courts. Specifically, they called for the equalization of the status of Muslim women to that of Jewish, Christian and Druze women. These feminist activists argued that Muslim women were discriminated against, since unlike women from other religious communities, they were not allowed to file maintenance suits against their husbands in civil courts, and had no choice but to appeal to sharī'a courts. This limitation, in their view, prevented Muslim women from improving their position within the traditional patriarchal family (see e.g. Ibrahim 1993: 26-27).

Blaming the qāḍīs presiding in shari'a courts for being 'conservative', and viewing the procedural and material laws employed by sharī'a courts as inherently discriminatory against women (Bishara and Toma-Suliman 1997), feminist activists demanded that jurisdictions in matters pertaining to the personal status of Muslims be conferred upon civil family courts. In other words, they demanded that the jurisdiction of sharī'a courts be reduced and equalized to the jurisdiction of the other religious courts in Israel. Several women's organizations and civil rights organizations had joined hands in this struggle, and by 1995, a 'Working Group for Equality in Personal Status Issues' had been established.[24]

This ad-hoc coalition of civil society organizations waged a public and political campaign promoting its cause. The group initiated a bill for the amendment of the Family Courts Law,[25] with the purpose of granting Muslim women the option of recourse to civil family courts in maintenance suits, as well as in all other matters of personal status except for marriage and divorce.[26] This enterprise was met with

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[24] This working group consisted of the following organizations: Women Against Violence; The Association for Human Rights in Israel; The Arab Association for Human Rights; Al- ufūla: Pedagogical and Multipurpose Women's Center; Israel's Women Network; Shatil: Equal Access Project; Al-Siwar: Arab Feminist Movement in Support of Victims of Sexual Violence; Haifa Women's Shelter; The Association for Nurturing Family Relations; The Social Workers' Association.

[25] See report in the website of the Association for Human Rights in Israel. Available at: http://www.acri.org.il/he/?p=5593 (Accessed 20.7.2012).

[26] In a clarification annexed to the legislative bill, the drafters presented statistical data from the database of the National Insurance Institute, which indicated that the

fierce opposition on the part of Israeli qāḍīs. Realizing the danger for sharī'a rule, and aiming to prevent any detraction of their status and authority, the qāḍīs – led by the charismatic president of the sharī'a court of appeals, Aḥmad Naṭūr[27] – initiated a legal reform of their own.

Striving to take the sting out of the bite of the feminist-liberal initiative, qāḍī Naṭūr sought a method that would yield a systematic increase in the sums of maintenance payments adjudicated in shari'a courts. The solution he found was to initiate a reform that transferred the authority to determine the sums of maintenance from appointed informants (*mukhbirūn*) to the qāḍīs themselves. Instead of relying on informants for the purpose of gathering information concerning the husband's financial state, as the OLFR provisioned,[28] Naṭūr suggested that the qāḍīs themselves determine the sums of maintenance payments, relying, for that purpose, on official state documents such as income tax and national insurance forms.

Interestingly, in order to achieve this reform, the qāḍīs made a creative use of a unique judicial mechanism: the legal circular (*marsūm qāḍā'ī*).[29] All the qāḍīs holding office in Israeli sharī'a courts signed the circular, thereby committing themselves to apply the procedural reform that it suggested. It seems, however, that the qāḍīs committed themselves not only to the procedural reform, but also to the notion of allotting more generous sums as maintenance payments to women. In the

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sums of wives' maintenance and child maintenance payments adjudicated by sharī'a courts are significantly lower than the sums adjudicated by family courts. They therefore concluded that to improve the status of Muslim and Christian women, it is mandatory to grant these women better access to civil family courts. The implicit underlying assumption was that substantial and comprehensive legal equality between men and women can only be achieved in the civil courts, and not in the patriarchal sharī'a courts (a bill draft prepared by the Working Group for Equality in Personal Status Issues, no author, no date is mentioned).

[27] On the growing influence of qāḍi Naṭūr in the sharī'a court system, see Abou Ramadan 2003b.

[28] Article 31 of the OLFR.

[29] The circular, titled '*marsūm qāḍa'i Raqam 2: Wazifat al-Mukhbirin fi Qāḍaya al-Nafaqa*' was published in 1995. Available at: http://www.justice.gov.il/NR/rdonlyres/1A2E05D7-6731-4804-B28A-D52B6350CD13/0/MRASEEM02.pdf (Accessed: 17.3.2012).

years following the promulgation of the circular, a 50% rise in the sums of maintenance has been noted in the sharīʿa court in West Jerusalem.[30] Indeed, a report issued by the National Insurance Institute in 2003 further supports these findings, and shows that a similar process took place at the national level as well. According to the data gathered by the National Insurance Institute, in 2002 sharīʿa courts granted women higher maintenance sums than any other court system in Israel – higher even than civil family courts.[31] Nevertheless, despite the impressive efforts made by the qāḍīs, and despite the substantial increase in the average maintenance sums determined by sharīʿa courts, the 'legislation train' did not stop, and the amendment to the Family Court Law passed in the Knesset in November 2001.[32]

For our purpose, however, the most important aspect of this episode is the direct link between the pro-women judicial reform initiated by the qāḍīs and the pressures exerted on sharīʿa courts within the Israeli state-law organizational field. The judicial reform led by qāḍī Naṭūr was a direct response to a threat to the status of Israeli sharīʿa courts within this field, i.e., to the threat that their jurisdiction would be reduced. This threat was created by civil society organizations, which also belonged to the Israeli state-law organizational field, as this field was defined above. These organizations – most of which were dominated by liberal circles in Jewish Israeli society – tried to mobilize this field, and eventually the Knesset, for improving the status of women in Israeli sharīʿa courts. Put differently, they sought to harness the coercive power of the state for promoting their agenda.

To prevent this danger, sharīʿa courts had to accommodate to the dominant norms,

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[30] My data is based on a sample of maintenance files that were adjudicated by the sharīʿa court in West Jerusalem between the years 1994-1998. The sample includes: 6 files from 1994; 5 files from 1995; 5 files from 1996; 8 files from 1997; 6 files from 1998. I do not have systematic estimates of the maintenance sums adjudicated by other sharīʿa courts in Israel, but I was told (proudly) by qāḍī Naṭūr, who was the leading author of the legal circular, that the sums of maintenance payments have increased significantly following the issuance of the circular (interview with qāḍī Naṭūr, January 1998). It is therefore reasonable to assume that the same rise in maintenance payments also occurred in other courts (see also Reiter 1997: 226).

[31] See Toledano 2003: 19, table 12.

[32] For a much more detailed discussion of this episode and of this legal circular, see Shahar 2007.

values and logics of the Israeli state-law organizational field, and especially to its gender-equalizing ethos. This sort of adjustment was deemed necessary for sharī'a courts to maintain their legitimacy and status within this field. Moreover, to achieve this goal these courts had to become more similar to the civil family courts, which are more central actors in this field and which better represent its ethos. In terms of new institutional theory, processes of mimetic isomorphism also contributed, therefore, to the pro-women judicial reform initiated by Israeli sharī'a courts. These courts were pushed to imitate civil family courts and to determine similar maintenance sums to women, as a means for gaining legitimacy within the Israeli state-law organizational field. The fact that even this incredibly effective internal reform could not prevent the diminution of sharī'a courts' jurisdiction testifies, perhaps, to the relatively marginal position of these courts in the state-law organizational field, and to their relative lack of political power.

*(b) Taking 'Earthly Laws' Out of Sharī'a Courts' Rulings*

During the second half of the 1990s – at about the same time that the sharī'a court system had been entangled in the bitter struggle described above, and not at all unrelated to this struggle – the sharī'a court of appeals had begun promoting a surprising new judicial policy. Under the leadership of qāḍī Naṭūr, the sharī'a court of appeals embarked on an effort to distance the sharī'a court system from Israeli law. In numerous appellate decisions, phrased in sharp rhetoric, the sharī'a court of appeals admonished the first instance sharī'a courts for relying in their judgments on Israeli law. Thus, for example, qāḍī Naṭūr stated, with regard to a decision concerning temporary maintenance:

> [I]t should be mentioned that the civil law that the lower court draws on, with regard to temporary maintenance, is unrelated to the law applied by sharī'a courts. The lower court ruling does not apply to Muslims, given that the sharī'a court is prohibited from ruling in accordance with laws that are not grounded in Islamic law, and must only rule in accordance with the sharī'a law.[33]

And in another decision, dealing with the Capacity and Guardianship Law:

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[33] Case no. 191/1997, the Israeli sharī'a court of appeal, quoted in Abou Ramadan 2003b: 277.

> The sharī'a courts must not rely on the Capacity and Guardianship Law, 1962 [...] the noble sharī'a constituted a complete judicial system before [this law was promulgated], and will remain such after [it will change or disappear]. The sharī'a does not require any positive secular rules.[34]

This new emphasis on Islamic sources – and only on Islamic sources – stands in sharp contrast to the judicial policy of previous generations of Israeli sharī'a judges, who had no inhibitions with regard to reliance on Israeli statutes (Layish 1975).

These new directives to first instance sharī'a courts resulted in substantial confusion, and yet this did not deter the sharī'a court of appeals, which was determined, so it seems, to create a symbolic – if not real – buffer between the sharī'a court system and Israeli law. This policy was taken one step forward when the sharī'a court of appeals directed qāḍīs that even when they find out, during their hearings, that litigants had violated Israeli statutes, they should avoid mentioning these violations in their rulings.

To better understand the meaning of this last reform, some background information is necessary. Until the late 1990s, when Israeli qāḍīs had encountered a case of polygamous marriage or of marrying off a minor girl, they naturally ratified these marriages, as these are perfectly legitimate practices according to the Ottoman sharī'a code.[35] Nevertheless, they also added a note to the file, stating that a felony had been committed.[36] Moreover, the file was sent to the sharī'a court

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[34] Case no. 55/2001, quoted in Abou Ramadan 2003b: 278. For similar statements, see also cases no. 294/1998; 194/1999.

[35] The OLFR determines that a man is allowed to marry up to four wives at the same time (article 14), and that a guardian may marry off a girl 15 years of age (article 35). If it can be proved that the girl is mature enough, it is allowed to marry her off from the age of 11.

[36] As mentioned above, such social practices were criminalized by the Israeli legislator. A Muslim man who wishes to marry more than one wife, or to marry off his minor daughter, or, to mention another such category – to repudiate his wife without her consent for divorce, may certainly do so, and this act will be valid from a religious (and legal) point of view. Nevertheless, by performing any of these acts, this man takes the risk that the Israeli prosecution service will prosecute him for a criminal offence.

administration for further handling.[37] As described above, since the mid 1990s, the Israeli sharī'a court of appeals has determined in several decisions that it is not for the sharī'a courts to make any notes or indications concerning violations of Knesset legislation. In line with its directives concerning the prohibition of reference to Israeli statutes, the sharī'a court of appeals stressed that the only duty of sharī'a courts is to rule according to Islamic principles. Thus, as long as sharī'a rules had not been violated, any offence against "earthly" legislation was of no interest to these courts.[38]

This new policy, which was, again, in total contradiction to previous practices, emphasizes the far-reaching judicial agency enjoyed by the qāḍīs presiding in Israeli sharī'a courts. For the purposes of this paper, however, the question 'how was such a reform introduced?', is less interesting than the question 'why was it introduced?'

The answer to this latter question, I argue, is that this reform constitutes an attempt, led by the Israeli sharī'a court of appeals, to gain support and legitimacy in the shar'ī (Palestinian) organizational field. I contend that there is a close link between the pressures exerted on Israeli sharī'a courts in the state law organizational field during the mid-1990s and the (almost) unconcealed efforts made by the sharī'a court of appeals to gain status and legitimacy in the opposing, shar'ī (Palestinian) field. In other words, the more alienated Israeli sharī'a courts became within the Israeli field, the more prone they were to seek legitimacy and support within the shar'ī (Palestinian) organizational field.

Admittedly, gaining legitimacy in this latter field was not a trivial task for Israeli sharī'a courts. During the 1970s and 1980s, these courts were usually seen by Islamic elements – even within Israel – in highly critical terms,[39] and all the more

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[37] Moreover, until 1998 Israeli sharī'a courts used to issue an annual report on cases in which offences against state law had been committed. It is noteworthy, however, that legal procedures had almost never been taken in such cases (see Shahar 2004: 204-205).

[38] See, for example, Sharī'a Court of Appeals Files: 128/1997; 9/1999; 263/2003.

[39] See, for example, the harsh criticism expressed by Shaykh Hāshim 'Abd al-Raḥman, speaker of the Islamic Movement in Israel, concerning the fact that qāḍis presiding in Israeli sharī'a courts lack Islamic education (Ṣawt al-Ḥaqq wa'l-Ḥūrriyya, 1/7/1994, 28). See also: Landau 1969: 10; Dumper 1994; Peled 2001b: 121.

so in the eyes of non-Israeli constituencies. Until the 1990s Israeli sharī'a courts were perceived as 'contaminated' courts, guilty of collaboration with the Zionist regime and of the corruption of Islamic law. A good illustration of the hostility toward Israeli sharī'a courts in the shar'ī (Palestinian) organizational field can be found, I believe, in a fatwā[40] that was issued in the mid-eighties by the late sheikh Sa'd al-dīn al-'Alamī, the acting Jordanian qāḍī al-quḍā' (chief qāḍī) and the Mufti of Jerusalem. This man – surely, a respectable and highly esteemed functionary, who held a senior position in the shar'ī (Palestinian) field – issued a fatwā that literally permitted the killing of the president of the Israeli sharī'a court of appeals, sheikh Tawfīq 'Asliyya, who was allegedly guilty of selling waqf property to Israeli official and semi-official elements.[41]

It may be argued, therefore, that Israeli sharī'a courts suffered from a chronic lack of legitimacy in the shar'ī (Palestinian) organizational field. Seeking to improve their reputation within this field, Natūr and the other qāḍīs did exactly what new institutional theorists would predict them to do under conditions of uncertainty and loss of legitimacy: they imitated other, more prestigious organizations in the field, and tried to implement practices which were perceived in the field as worthwhile and normative. Indeed, it appears that this exact policy – a refusal to indicate offenses against civil statutes – had been exercised before in this field. Specifically, after the Israeli occupation of 1967, the Jordanian sharī'a courts in the West Bank declared that they would not cooperate with the Israeli authorities. Whereas prior to the occupation these courts used to inform the Jordanian authorities of breaches of civil statutes that came to light during shar'ī proceedings,[42] after the occupation they refrained from such action, to avoid Israeli

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[40] An opinion or a ruling issued by an Islamic jurisconsult (muftī) on a point of Islamic law.

[41] I was unable to locate this fatwā, but I heard this story on two different occasions from two different informants. One of the informants even claimed that following the issuance of this fatwa, close quarters protection was provided to sheikh 'Asliyya by the Israeli General Security Services. At the same time, other informants were unable to remember such a fatwā, and raised doubts concerning the authenticity of this story. For a critical discussion of the role played by Israeli qāḍīs in selling waqf property to Jewish elements, see Dumper 1994: 32.

[42] Like the Israeli law, the Jordanian law criminalized certain offenses arising from family law (e.g., non-registration of a divorce pronounced out of court; involvement in the marriage of an under-aged woman). See Welchman 2000: 73-74, n. 136.

persecution of litigants (see Welchman 2000: 73-74).

The directives of the Israeli sharī'a court of appeals to stop referring to Israeli statutes and to stop acknowledging offences against these statutes should be seen, therefore, as a case of mimetic isomorphism, designed to increase the legitimacy of Israeli sharī'a courts in the shar'ī (Palestinian) organizational field. Indeed, this policy appears to have been quite successful: since the mid 1990s, slowly but confidently, the reputation of Israeli sharī'a courts – and particularly of the sharī'a court in West Jerusalem – has improved, and these courts gained considerable legitimacy within the shar'ī (Palestinian) field.

A good indication of this improved position can be found in another fatwā, which was again issued by the Muftī of Jerusalem (this time it was sheikh 'Akrama Ṣabrī). In this fatwā (which in fact brings us back to the previously discussed reform), the Muftī responded to a query (istiftā') asking for his opinion on the proposed legislation amendment that threatened to reduce the jurisdiction of Israeli sharī'a courts. The muftī's opinion was clear-cut:[43]

> Matters of personal status – which include in addition to the issue of waqf such issues as marriage and divorce, maintenance, guardianship, bequests and so forth – belong to the domain of acts of worship ('ibadāt). Therefore Muslims are forbidden to act in discordance [with sharī'a rules] in these matters. A Muslim must perform God's directives with regard to maintenance or bequests, just as he must perform God's directives with regard to the duties of prayer, alms giving and the Hajj, even if he lives in a non-Muslim state. [....] The implementation of non-Islamic laws in matters of personal status is hence considered a direct assault on the realm of worship [...] and therefore it is forbidden for Muslims to resort to courts which adjudicate in these matters in a non-Islamic manner. What we need is to safeguard the sharī'a courts, and to invest effort in broadening their jurisdiction so that it will include all aspects of life, and not in reducing it.[44]

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[43] I am thankful to Dr. Moussa Abou Ramadan, who brought this fatwā to my attention and provided me with a facsimile copy of it.

[44] The istiftā' was posed in July 21, 2001, by Zahī al-Majīdāt, a lawyer, who is also Secretary of the Mizzān Association – an association affiliated with the Islamic Movement in Israel. The fatwā was issued ten days later, in July 31.

Fatwās issued by this muftī have no legal standing in Israel, as he is not recognized by the Israeli legal system. His unequivocal stand in support of the Israeli qāḍīs therefore had no effect whatsoever on the legislation process, and the bill indeed passed in the Knesset a few months after this fatwā had been issued. Nevertheless, the Israeli qāḍīs could probably find some comfort in the implicit – yet clear – message that the fatwā conveyed: The muftī regards Israeli sharī'a courts as legitimate tribunals, which appropriately implement the sacred laws of the sharī'a. Undoubtedly, in terms of their legitimacy in the shar'ī (Palestinian) field, the Israeli courts have gone a long way. Whereas only 15 years earlier the muftī of Jerusalem issued a fatwā permitting the assassination of the president of the Israeli sharī'a court of appeals, this new fatwā fully acknowledged the legitimacy of these courts as esteemed sharī'a courts.


## Conclusion

The institutional-organizational level of analysis has rarely been visited by scholars of legal pluralism. The prime purpose of this article was therefore to demonstrate the usefulness of an organizational-institutional perspective on legal pluralism. I contend that a great deal of the 'dynamics of legal pluralism' (Yilmaz 2005; F and K von Benda-Beckmann 2006) takes place in organizational arenas such as courts of laws and other mechanisms of dispute resolution, and that in order to better understand these dynamics we must direct scholarly attention to these loci of pluralism. Furthermore, we may draw, for that purpose, on theories and analytical tools developed in the field of organization studies.

To illustrate that, the article has dwelt on the empirical case study of sharī'a courts in contemporary Israel. I have shown that these courts operate, at one and the same time, within two different organizational fields: an organizational field structured around Israeli state-law, and an organizational field structured around shar'ī (Palestinian) institutions. These courts can therefore be described as "pluralistic organizations" (Kraatz and Block 2008), in the sense that they operate within a pluralistic, complex and bifurcated institutional environment. As such, they are exposed to very different, and often contradictory, influences and demands originating from the two organizational fields they belong to. While they need to maintain their legitimacy in both of these fields, any accommodation to the norms and expectations in one field might risk their status in the other. I contend that this situation is not unique to Israeli sharī'a courts, but rather is characteristic of many subaltern courts under conditions of classic legal pluralism. We can therefore generalize – to an extent – from the case of Israeli sharī'a courts to other

similar 'hybrid' courts.

How do such subservient courts cope with their pluralistic environment? How do they handle the conflicting demands and expectations directed towards them? While they cannot exit any of the organizational fields they partake in, they can certainly maneuver between them as the need arises.[45] The case study of Israeli sharī'a courts illustrates how this maneuvering may look. It appears that these courts maneuver between the two organizational fields in a way that is reminiscent of the maneuvering of individual litigants, who switch between one normative order and another. Thus, just like individual actors, who in their search for normative anchors may choose from among the various normative orders available to them (Pospisil 1978: 102-3; see also Benton 2002), or in their search for favorable judgments may shop for a forum (K von Benda-Beckmann 1981) – just like them, "pluralistic courts" in situations of classic legal pluralism appear to be able to shift, in their quest for legitimacy and resources, from conformity to one organizational field to conformity to the other.

This maneuvering capacity turns pluralistic organizations into exceptionally dynamic, adaptive and pliable organizations (Kraatz and Block 2008). Indeed, as I have tried to show in this article, the Israeli sharī'a courts have developed a dynamic legal culture, which may be described as a "culture of change" – a culture that embraces adaptations, organizational transformations and reforms, and which views them in highly positive terms.

We may further speculate that in the context of legal pluralism, the inherent dynamism of such pluralistic courts is an important source of social change, far beyond the courts themselves. Since these courts serve as meeting points between cultures, normative orders and social practices, as well as between 'the state' and its subjects, they transfer their dynamism farther on. Such courts – with their highly transformative judicial policies, which continuously fluctuate between normative orders and between institutional logics – both *constitute* legal pluralism and *are constituted* by it.

This dynamism, however, does not come cheap. From the point of view of the

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[45] In fact, as argued by Kraatz and Block (2008: 244), this ability to maneuver between conflicting demands is a critical organizational capability of pluralistic organizations.

pluralistic court (or more accurately, from the point of view of its staff), there are two noticeable drawbacks for this positioning betwixt and between organizational fields. First, pluralistic organizations, which "play simultaneously in two games, with two different sets of rules", to use a metaphor suggested by Kraatz and Block (2008: 243), might end up marginalized on both game boards. In other words, they might suffer from low status and weak legitimacy in both organizational fields. This might occur if an act of conformity with the demands originating from one field entails an estrangement from the other. In such cases, the pluralistic organization, which by definition needs to fluctuate between opposing demands, will inevitably be seen in both organizational fields as a dubious organization. Moreover, as argued by new institutional theorists, the weaker the legitimacy of an organization, the stronger its tendency to adapt to the rules and requirements set by its environment (Scott and Mayer 1991). Thus, the pluralistic organization may find itself in a vicious circle: the more it is marginalized within its surrounding organizational fields, the more exposed it is to contradictory isomorphic pressures; and the more it strives to conform to these contradictory pressures, the more marginalized it is.

The second price to be paid for "excessive" dynamism has to do with the danger of losing one's organizational integrity. Indeed, the conspicuous dynamism displayed by Israeli sharī'a courts was perceived as irrational, incoherent and arbitrary not only by some academic critics of this system,[46] but also by some of my interlocutors during my fieldwork at the West Jerusalem first instance court. This is what one of the lawyers, working regularly in this court, had to tell me in this regard:

> Here [in the Israeli shari'a court] you have no order (*ni m*). One day is like this, and the other day like that. One day they say that civil laws apply here, the other day they say they don't apply. This is no way to run a court (conversation with N.S, June 8, 2004).

From a new institutional perspective, however, the judicial policy of Israeli sharī'a courts is far from being erratic or irrational. Rather, their policy is perfectly explainable in the context of their pluralistic legal and organizational environment, and of their simultaneous belonging to two different organizational fields. New institutional theory thus helps to identify the organizational motives and the

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[46] See, for example, Abou Ramadan 2003a, 2003b.

organizational mechanisms that bring about this far reaching judicial dynamism – and here lies its explanatory power.

As I tried to illustrate by introducing this case study, shifting our attention from the normative-orders level of analysis to the institutional-organizational level of analysis, may break new grounds in research into legal pluralism. Indeed, it may take our analysis of legal pluralism a step further than simply denoting the plurality of normative orders or acknowledging the hybridity of legal institutions, and into the realm of causational explanations. This move may provide us, therefore, not only with insights into concrete empirical cases, but also, at last, with an adequate answer to the generation-old quandary concerning the theoretical utility of the concept legal pluralism (see e.g.: Twining 2000: 87; Teubner 1997; Tamanaha 1993).

# References

ABOU RAMADAN, Moussa

2003a    'Transition from Tradition to Reform: The Shari'a Appeals Court Rulings on Child Custody.' *Fordham International Law Journal* 26(3): 595-655.

2003b    'Judicial Activism of the Shari'a Appeal Court in Israel 1994-2001: Rise and Crisis.' *Fordham International Law Journal* 27(1): 254-303.

2006    'Islamic Legal Reform: The Alimony of Muslim Wife in the Shari'a Court of Appeals.' *HAWWA: Journal of the Women of the Middle East and the Islamic World* 4(1): 29-75.

2008    'Notes on the Anomaly of the Sharī'a Field in Israel.' *Islamic Law and Society* 15: 84-111.

BENDA-BECKMANN, Franz von

2002    'Who's Afraid of Legal Pluralism?' *Journal of Legal Pluralism* 47: 37-82.

BENDA-BECKMANN, Franz von, and Keebet von BENDA-BECKMANN

2006    'The Dynamics of Change and Continuity in Plural Legal Orders.' *Journal of Legal Pluralism* 53-4: 1-44.

BENDA-BECKMANN, Keebet von

1981    'Forum Shopping and Shopping Forums – Dispute Settlement in a Minangkabau Village in West Sumatra.' *Journal of Legal Pluralism* 19: 117-153.

BENTON, Lauren

2002    *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*. New York: Cambridge University Press.

BERMAN, Paul S.
2007    'Global Legal Pluralism.' *Southern California Law Review* 80: 1138-255.
2009    'The New Legal Pluralism.' *Annual Review of Law and Social Sciences* 5: 225-242.

BISHARA, Suhad and Aida TOMA-SULIMAN
1997    'Personal Status and Family Laws.' Pp. 66-73 in *NGO Report: The Status of Palestinian Women Citizens of Israel*, The Working Group on the Status of Palestinian Women in Israel. Available at http://www.arabhra.org/HraAdmin/UserImages/Files/CedawReport1997English.pdf. Last accessed on 20.7.2012.

BOHANNAN, Paul J.
1957    *Justice and Judgment among the Tiv*. London: Oxford University Press.

BOWEN, John R.
2003    *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press.

BRACE, Paul and Melinda G. HALL
1995    'Studying Courts Comparatively: The View from the American States.' *Political Research Quarterly* 48(1): 5-29.

BRAUDE, Benjamin
1982    'Foundation Myths of the Millet System.' Vol. 1, Pp. 69-88 in Benjamin Braude and Bernard Lewis (eds.), *Christians and Jews in the Ottoman Empire*. New York and London: Holmes and Meier Publishers.

CHANOCK, Martin
1985    *Law Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.

COHEN, Jonathan, M.
2002    *Inside Appellate Courts: The Impact of Court Organization on Judicial Decision Making in the United States Courts of Appeal*. Ann Arbor: The University of Michigan Press.

DAVIDSON, Roderic H.
1982    'The *Millets* as Agents of Change in the Nineteenth-Century Ottoman Empire.' Vol. 1, pp. 319-337 in Benjamin Braude and Bernard Lewis (eds.), *Christians and Jews  in the Ottoman Empire*. New York and London: Holmes and Meier Publishers.

DIMAGGIO, Paul J. and Walter W. POWELL
1983    'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields.' *American Sociological Review* 48: 147-160.

_____

DUMPER, Michael
1994     *Islam and Israel: Muslim Religious Endowments and the Jewish State*.
         Washington, D.C.: Institute for Palestine Studies.
EISENMAN, Robert H.
1978     *Islamic Law in Palestine and Israel*. Leiden: Brill.
EMIRBAYER, Mustafa and Victoria JOHNSON
2008     'Bourdieu and Organizational Analysis.' *Theory and Society* 37 (1): 1-44.
EPSTEIN, Lee, Thomas G. WALKER and William J. DIXON
1989     'The Supreme Court and Criminal Justice Disputes: A New Institutional
         Perspective.' *American Journal of Political Science* 33: 825-841.
FOURCADE, Marion
2007     'Theories of Markets and Theories of Society.' *American Behavioral
         Scientist* 50: 1015-1034.
FRIEDMANN, Daniel
1975     'The Effect of Foreign Law on the Law of Israel: Remnants of the
         Ottoman Period.' *Israel Law Review* 10: 192-206.
GHANEM, As'ad
1998     'State and minority in Israel: The case of ethnic state and the predicament
         of its minority.' *Ethnic and Racial Studies* 29: 428-448.
GLUCKMAN, Max
1965     *The Ideas in Barotse Jurisprudence*. New Haven: Yale University Press.
GREENWOOD, Royston, Christine OLIVER, Kerstin SAHLIN and Roy
SUDDABY (eds.)
2008     *The Sage Handbook of Organizational Institutionalism*. LA, London, New
         Delhi and Singapore: Sage.
GRIFFITHS, John
1986     'What Is Legal Pluralism?.' *Journal of Legal Pluralism* 24: 1-55.
HALL, Melinda, G. and Paul BRACE
1989     'Order in the Court: A New Institutional Approach to Judicial
         Consensus.' *Political Research Quarterly* 42: 391-407.
HOOKER, M. Barry
1975     *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*.
         Oxford: The Clarendon Press.
IBRAHIM, Ibtisam
1993     *The Status of Arab Women in Israel*. Jerusalem: Sikkuy [in Hebrew].
KRAATZ, Matthew S. and Emily S. BLOCK
2008     'Organizational Implications of Institutional Pluralism.' Pp. 243-275 in
         Royston Greenwood et al. (eds.), *The Sage Handbook of Organizational
         Institutionalism*. LA, London, New Delhi and Singapore: Sage.

LANDAU, Jacob M.
1969     *The Arabs in Israel*. Oxford: Oxford University Press.
LAYISH, Aharon
1965     'Muslim Religious Jurisdiction in Israel.' *Asian and African Studies* 1: 49-
         79.
1971     'Qāḍīs and Shari'a in Israel.' *Asian and African Studies* 7: 237-272.
1975     *Women and Islamic Law in a Non-Muslim State*. Jerusalem: Israel
         University Press.
2006     'Adaptation of a Jurists' Law to Modern Times in an Alien Environment:
         The Case of the Shari'a in Israel.' *Die Welt Des Islams* 46: 168-191.
LOUËR, Laurence
2007     *To Be an Arab in Israel*. New York: Columbia University Press.
MEIR, Thomas
1998     *The Resurgence of the Moslems in Israel*. Givat Haviva: Center for Arab
         Studies.
MERRY, Sally E.
1988     'Legal Pluralism.' *Law and Society Review* 22(4): 869-896.
1991     'Law and Colonialism.' *Law and Society Review* 25(4): 889-922.
2007     'International law and sociolegal scholarship: towards a spatial global
         legal pluralism.' *Studies in Law, Politics and Society* 41:149–68
MEYER, John W. and Brian ROWAN
1977     'Institutionalized Organizations: Formal Structure as Myth and
         Ceremony.' *American Journal of Sociology* 83(2): 340-363.
MOORE, Sally F.
1973     'Law and Social Change: The Semi-Autonomous Social Field as an
         Appropriate Subject of Study.' *Law and Society Review* 7: 719-746.
1986     *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880-
         1980*. Cambridge: Cambridge University Press.
PELED, Alisa, R.
2001a    *Debating Islam in the Jewish State: The Development of Policy Toward
         Islamic Institutions in Israel*. New York: SUNY Press.
2001b    'Towards autonomy? The Islamist movement's quest for control of
         Islamic Institutions in Israel.' *The Middle East Journal* 55(3): 378-398.
POSPISIL, Leopold
1978     'The Structure of Society and its Multiple Legal Systems.' Pp. 96-109 in
         Philip H. Gulliver (ed.), *Cross-Examinations: Essays in Memory of Max
         Gluckman*. Leiden: E.J. Brill.
REITER, Yitzhak
1997     'Qāḍīs and the Implementation of Islamic Law in Present Day Israel.' Pp.
         205-231 in Gleave and Eugenia Kermeli (eds.), *Islamic Law: Theory and*

*Practice*. London and New York: I.B. Tauris.

REKHESS, Elie

1989    'Israeli Arabs and the Arabs of the West Bank and Gaza: Political affinity and national Solidarity.' *Asian and African Studies* 23:119-54.

1993    'Resurgent Islam in Israel.' *Asian and African Studies* 27: 191-210.

RODINSON, Maxime

1973    *Israel: A Colonial Settler State?* New York: Monad Press.

ROUHANA, Nadim

1989    'The Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge.' *Journal of Palestine Studies* 18(3): 38-59.

SANTOS, Boaventura de Sousa

2006    'The Heterogeneous State and Legal Pluralism in Mozambique.' *Law and Society Review* 40: 39-75.

SCHOENMAN, Ralf

1988    *The Hidden History of Zionism*. Santa Barbara: Veritas Press.

SCOTT, Richard W. and John W. MAYER

1991    'The Organization of Societal Sectors: Propositions and Early Evidence.' Pp. 108-140 in Walter W. Powell and Paul D. DiMaggio (eds.), *The New Institutionalism in Organizational Analysis*. Chicago: The University of Chicago Press.

SCOTT, Richard W.

1995    *Institutions and Organizations*. CA, Thousand Oaks: Sage.

SHAFIR, Gershon

1996    'Zionism and Colonialism: A Comparative Approach.' Pp. 227-244 in M. N. Barnett  (ed.), *Israeli in Comparative Perspective*. Albany: SUNY Press.

SHAHAR, Ido

2000    'Palestinians in Israeli Courts: Culture, Control, and Resistance in the Shari'a Court of West Jerusalem.' Unpublished Master's thesis, The Hebrew University of Jerusalem [in Hebrew].

2004    'Modernizer and Guardian of Tradition: The Shariʻa Court and Women's Status.' *Hamizrah Hehadash* 44: 195-211 [in Hebrew].

2007    'Legal Reform, Interpretive Communities and the Quest for Legitimacy: A Contextual Analysis of a Legal Circular.' Pp. 198-227 in Ron Shaham (ed.), Law, Custom and  Statute in the Muslim World: Studies in Honor of Aharon         Layish. Leiden: Brill.

n.d.    'A Tale of Two Courts: How Organizational Ethnography Can Shed New Light on Legal Pluralism.' *PoLAR* (forthcoming).

SIEDER, Rachel (ed.)

2002    *Multiculturalism in Latin America: Indigenous Rights, Diversity and*

*Democracy*. Houndmill and N.Y.: Palgrave and MacMillan.

SMOOHA, Sami
1992    *Arabs and Jews in Israel: Change and Continuity in Mutual Intolerance*.
        Boulder, Co: Westview.

SNYDER, Francis G.
1981    'Colonialism and Legal Form: The Creation of 'Customary Law' in
        Senegal.' *Journal of Legal Pluralism and Unofficial Law* 19: 49-76.

SPIERTZ, Joep H. L.
1991    'The Transformation of Traditional Law: A Tale of People's Participation
        in Irrigation Management on Bali.' *Landscape and Urban Planning* 20:
        189-196.

SUCHMAN, Mark and Lauren B. EDELMAN
1996    'Legal Rational Myths: The New Institutionalism and the Law and Society
        Tradition.' *Law and Social Enquiry* 21:903-966.

TAMANAHA, Brian Z.
1993    'The Folly of the "Social Scientific" Concept of Legal Pluralism.'
        *Journal of Law and Society* 20: 192-217.
2007    'Understanding Legal Pluralism: Past to Present, Local to Global.' *Sydney
        Law Review* 30: 375-411.

TEUBNER, Gunther
1997    'Global Bukowina: Legal Pluralism in the World Society.' Pp. 3-28 in
        Gunther Teubner (ed.), *Global Law Without a State*. Brookfield:
        Dartmouth.

TOLEDANO, Esther
2003    'Periodic Report on Women Granted Maintenance Payments by The
        National Insurance Institute in 2002.' Jerusalem: The National Insurance
        Institute, publication no. 185 [in Hebrew]. Available at
        http://www.btl.gov.il/SiteCollectionDocuments/btl/Publications/seker_18
        5.pdf. Last accessed: 17.6.2012.

TUCKER, Judith E.
1996    'Revisiting Reform: Women and the Ottoman Law of Family Rights,
        1917.' *Arab Studies Journal* 4: 4-18.

TWINING, William
2000    *Globalisation and Legal Theory*. Cambridge: Cambridge University
        Press.

URSINUS, Michael O. H.
1993    'Millet.' Pp. 61-64 in C.E. Bosworth et al. (eds.), *Encyclopaedia of
        Islam,* 2nd ed. (*EI2*), Vol. 7.

WELCHMAN, Lynn
2000    *Beyond the Code: Muslim Family Law and the Shari'a Judiciary in the*