



# musawah

For Equality in the Muslim Family

## ***Qiwamah* and *Wilayah* as Legal Postulates in Muslim Family Laws** Lynn Welchman

In this chapter, Lynn Welchman examines ways in which current Muslim family laws have included or discarded the concepts of *qiwamah* and *wilayah* as informing doctrines, or legal postulates, that anchor and underlie the way in which the Muslim family is described and structured in these laws. Focusing on family laws in Arab states, primarily codes from Morocco and the United Arab Emirates, Welchman examines how countries have taken varying approaches in shaping areas of family laws related to *qiwamah* and *wilayah*, including spousal maintenance and obedience, divorce, guardianship, and the concept of the 'head of the family'.

Welchman first focuses on the most explicit articulation of *qiwamah*, namely the equation that sets the husband's obligation to maintain his wife against the wife's corresponding obligation to obey her husband. The new Moroccan family code, which was passed in 2004, departs from this juristic concept of *qiwamah*. The law replaces a gender-specific list of rights and duties with a single provision on 'mutual rights and duties of the spouses'. The husband's obligation to maintain his wife is retained, but the husband does not acquire authority through this provision and wives are not required to obey their husbands. Official explanations of the law insist that its provisions are based on 'the principle of equality (*musawah*)'. By contrast, the 2005 UAE law, like many modern codes, maintains the classical maintenance–obedience formulation. The law contains three lists of rights and duties: two specific to the husband and the wife, and one related to rights and duties shared by both spouses. A wife's rights include maintenance; a husband's rights include his wife's obedience and her management of the marital home. The law also calls for the wife to be physically available to her husband, with some exceptions.

In terms of divorce, Welchman explains that laws in Arab states have been reformed to expand wives' access to and rights on divorce and have sought to constrain husbands' facility of unilateral *talaq*. But the *qiwamah* postulate is considered under the most threat from judicial *khul'*, in which a wife can initiate divorce without showing fault on the part of the husband. This is exemplified by recent contentious debates over reform in Egypt and Jordan.

With regard to *wilayah*, Welchman surveys changes regarding guardianship and custody of parents over children as well as male guardianship over women at the time of marriage. Most codes continue to give the father primary institutional authority over his children. Many still require the consent of a guardian to a woman's marriage; some require the guardian to conclude the contract on the woman's behalf. The new Moroccan code allows women of legal majority to conclude their own marriage contracts, though many still choose to delegate this function.

Welchman concludes that there is a spectrum of approaches to the concepts of *qiwamah* and *wilayah*, and that the scope and nature of reforms may depend on multiple factors such as political will, effective and sustained advocacy, and an enabling societal environment.