The Marriage Dower: Essential Guarantor of Women's Rights in the West Bank and Gaza Strip

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THE MARRIAGE DOWER:
ESSENTIAL GUARANTOR OF WOMEN’S RIGHTS
IN THE WEST BANK AND GAZA STRIP

Heather Jacobson

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Through the dower, women gain access to property, yet at
the same time it is part of a legal system which defines
women as protected dependents. It can simultaneously be a
power resource for women and the expression of their gender
subordination. It underlines gender differences, yet it is also a
system which recognizes the importance of social ‘sameness’
of men and women as marital partners.

This Article evaluates the impact that eliminating or reducing the
marriage dower would have on the well-being of Muslim women in
the West Bank and Gaza Strip. Although Palestinian women’s rights
organizations seek to eliminate dower on the grounds that it is a

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tance.

"burdensome custom" that is "inconsistent with the intifada's stated goal of improving women's status," in fact, the interaction between dower and other laws relating to marriage and divorce is such that the majority of women would be materially harmed by its discontinuance. Therefore, while the movement to eliminate dower may benefit the financially secure upper class women at its vanguard, it results in financial insecurity and impoverishment for poor and particularly, rural women. This Article, therefore, recommends that women's movements in Palestine take greater heed of the class-differentiated effects of dower, and protect the right of poor and rural women to their only means of financial security.

Section I of the paper introduces the concept of dower and the legal rules governing its use, and briefly discusses the forms and amounts that dower takes in Palestinian marriage contracts. Section II discusses the feminist movement to eliminate dower, and the movement among educated Palestinian women to register a token prompt dower in protest of the transactional flavor (money for sex) of the traditional marriage paradigm. Section III then challenges the feminist opposition to dower, first by arguing that the movement reflects a nationalist rather than a feminist agenda, and second by demonstrating that since dower is the only significant source of income available to women outside of the maintenance-obedience relationship of marriage, decreasing dower actually increases the dependence of poor women on their husbands, rather than increasing female autonomy. Finally, Section IV examines the interaction between the laws of dower and other personal status laws in the Palestinian Authority, and shows that eliminating or reducing the dower reduces a wife's bargaining power within marriage and her financial security outside of marriage.

I. INTRODUCTION TO DOWER IN PALESTINIAN FAMILY LAW

This section introduces the general Palestinian system of family law, and discusses the particular laws that relate to the marriage dower. Palestinian family law is not found in any Palestinian code of law; due to Palestine's modern history of statelessness, the territories are governed by the laws of the states that administered them during the

period between 1948 and 1967. Therefore, the West Bank is governed according to Jordanian law, while Gaza is governed according to Egyptian law, both of which adopted the Islamic system of personal status law. Following the Oslo Accords, the Palestinian Authority ("PA") asserted jurisdiction over lawmaking and the court system, including the shari'a (religious) courts; however, continuing instability has prevented the PA from promulgating its own personal status code. Palestinian personal status law is therefore still found in the Jordanian and Egyptian codes. To avoid unnecessary duplication, this Article cites to the Jordanian Personal Status Law of 1976 ("JLPS"), and discusses Egyptian law only where it is in conflict with Jordanian law.

Marriage under Muslim law is governed by the marriage contract, which, like any commercial contract, is a binding offer and agreement that gives rise to reciprocal rights and obligations. Article 35 of the JLPS states that, "If the contract is valid then the wife is due maintenance and dower from her husband, and mutual inheritance is established." The husband, in return, has a unilateral right to no-fault divorce, and is entitled to obedience from his wife so long as he performs his duty to pay her dower and maintenance.

4. While the Palestinian Qadi al-Quda has issued some personal status regulations that are binding on the entire PA, these regulations are largely procedural. See id. The draft Basic Law for the Palestinian Authority, which is seen by many as a good indicator of the legal structure that the eventual Palestinian state will take (despite the fact that Arafat never ratified the document), provides that "the principles of the Islamic shari'a are a principal source of legislation" (Art.4/2) and that 'matters of personal status are to be dealt with by shari'a and religious courts' (Art.92/1)." Id.
5. The Jordanian Law on Personal Status is based largely on the Hanafi school of law, and lacks many of the more moderate changes made to other Hanafi-based codes, such as that of Egypt. See LYNN WELCHMAN, BEYOND THE CODE: MUSLIM FAMILY LAW AND THE SHARI'A JUDICIARY IN THE PALESTINIAN WEST BANK 10-15 (2000).
6. Id. at 196.
7. Obedience is a term of art in Islamic family law, and refers only to the fact that a wife must obtain her husband's permission to leave the house. See id. at 198. Under Articles 37 and 47 of the Jordanian Law on Personal Status ("JLPS"), the wife is not required to be obedient until the prompt dower has been paid—if the husband has not paid in full all that he has agreed to in the marital contract, then he cannot force his wife to remain in, or return to, the marital home. However, once prompt dower has been paid, the wife may not refuse obedience on the grounds that deferred dower has not yet been paid. Id. at 200.
Dower, or *mahr*, is thus an essential part of marriage. In an exchange for her agreement to enter into an intimate relationship with her husband and to offer him obedience, a wife is entitled to receive from her husband a dower of money or goods (usually jewelry), which is hers to keep for her own use. Dower is owed whether or not it is specified in the marital contract; if the contract does not specify an agreed-upon sum, the husband still owes his wife “proper dower” even if the marriage contract or other document contains a *written* agreement by the wife to forego *mahr*.

One of the most important aspects of dower for the purposes of this Article is the legally recognized distinction between “prompt” and “deferred” dower. According to Article 45 of the JLPS, “The specified dower may be paid promptly, or some or all of it may be deferred, provided that this is supported by written document.” Unless otherwise specified, the dower agreed upon in the marriage contract is prompt, and must be paid immediately on signing. If deferred dower is specified, the law presumes it to be due “on the termination of the marriage by death or divorce,” unless some other legally permissible date is stated in the marriage contract.

8. *See id.* at 139–57.
9. *See id.* at 137. Furthermore, the dower is generally considered “an inalienable effect of the contract.” The official marriage contract issued by the Palestinian Authority includes a section in which the contracting parties may specify in detail how much dowry is to be paid, when, and in what form. *See id.* at 135.
10. *See id.* at 139–40; JLPS, Article 44 (stating that the proper dower is the amount appropriate to the social status of the wife and “her peers from among her paternal relatives,”), quoted in Welchman, *supra* note 5, at 139–40.
11. *Id.* at 200.
12. *See JLPS, Article 45 (“If the deferral is not explicitly stated, then the dower shall be held to be prompt”), quoted in Welchman, supra note 5, at 200. Some authorities contend that prompt dower only comes due at consummation of the marriage, rather than at the signing of the marriage contract. Furthermore, since prompt dower is the default assumption, if dowry is deferred in an illegal manner (such as dower that is deferred “until wealth”), it is deemed to be prompt dower. *See id.* at 141.
13. *See id. See also JLPS, Article 46, quoted in Welchman, supra note 5, at 200, which places the following further restrictions on the use of deferred dower:

If the date of the deferred dower (falling due) is specified, then the wife may not claim it before the set time has come, even if *talaq* occurs, while if the husband dies, then the delay lapses. If the set time is absurd, such as ‘*till wealth*’ or ‘*until demand*’ (*li-hayn al-talab*) or ‘until the wedding procession’ (*zifas*) then the set time is irregular and the dower shall be prompt. If the set time is not specified, the dower shall be considered deferred until *talaq* or the death of one of the spouses.
Unfortunately, researchers have had great difficulty determining how much dower Palestinian brides receive for several reasons. First, few court cases involve disputes over the amount of proper dower paid, so there are few records of the amount considered appropriate for any particular woman’s education level and social status. Second, analysis of the specified dower is complicated by the prevalence of “secret dowers,” in which families announce a large dower to the public and put that public dower in the marriage contract, but secretly agree that the actual dower paid will be lower. Thus, registered figures may not accurately portray dower levels in Palestine. Nevertheless, dower (excepting contracts that register a token dower) is widely considered to be a significant sum; in 1985, those contracts in the West Bank that did not register a token prompt dower were generally over 1,000 dinars.

II. The Feminist Campaign Against the Dower

At first glance, it is difficult to understand why feminists would object to a rule that results in a direct payment of wealth into the hands of women. This section shows that the feminist movement to eliminate mahr is associated with the desire of educated women to have “modern” marriages. As will be shown, the movement began among the upper class, secularized women of the West Bank, who used the intifada as an escape route out of the traditional roles assigned to them. These women, financially secure enough to do without mahr, see the dower as a symbol of the traditional role their society expects them to play. By eliminating dower, they hope to modernize gender relations and free women from their subjugation to men. However, Section III demonstrates that for women outside this narrow social class, the opposite would in fact be true.

The Palestinian women’s rights movement, which had existed for decades as a persecuted minority movement, achieved true legitimacy during the first intifada in the late 1980s and early 1990s. First, the

14. See id. at 140.
15. See id. at 203. This agreement is often recorded in a separate court document, in order to prevent a bride’s family from claiming a right to the publicly-recorded dower. See JLPS, Article 59, quoted in Welchman, supra note 5, at 203.
17. See Welchman, supra note 5, at 153–54.
pressing need for activists to fill the shoes of those captured or killed\(^{18}\) led the secular leadership to woo female supporters and to portray the intifada as a struggle for female liberation as well as national liberation, and to offer women many tasks that traditionally were the province of men: "Women collected donations, ran blood banks, passed out leaflets, watched for soldiers, and looked after families of the arrested, wounded, and dead. In this capacity, women themselves were arrested, wounded, and killed."\(^{19}\) The political organizations of the resistance invited female membership and encouraged female activism,\(^{20}\) and the Draft Palestinian Basic Law declared all Palestinians to be equal under the law "without discrimination on any grounds," including gender.\(^{21}\)

Second, the intifada's disruption of the traditional social structure\(^{22}\) provided Palestinian women with far more opportunities for education and participation in public life than they had ever had before.\(^{23}\) Women voted in large numbers in 1996, and twenty-eight

18. See Wing, supra note 2, at 187 ("It was clearly out of necessity that Palestinian women took on responsibilities and issues that pre-intifada Palestinian culture did not include in the definition of the female gender role.").

19. Id. at 186.

20. See id. at 186–87. "Women became the core of the movement to develop Palestinian self-sufficiency and boycott Israeli goods." Id. at 186.


22. Suzanne Ruggi, Commodifying Honor in Female Sexuality: Honor Killings in Palestine, 28 MIDDLE EAST REPORT (1998) (citing Lisa Taraki of the Birzeit University’s Women’s Studies Program, who “tentatively suggests that the patriarchal nature of Palestinian society could be undergoing a redefinition due to socioeconomic changes, such as the growth of employment prospects for women, the rising age of marriage, rising educational levels for women and the break up of the extended family.”), at http://www.merip.org/mer/mer206/ruggi.htm.

23. According to Adrien Katherine Wing:

One way in which custom has been influenced by the intifada is illustrated by the increased participation in the legal system by women and other non-traditional actors. Pre-intifada participants in the Palestinian legal system were traditionally highly respected men of senior stature who served as religious or customary law mediators, \textit{qadis}, and lawyers (\textit{muhamein}). Today, in addition to women, the Underground Leadership of the Uprising (UNLU), popular justice committees, and private individuals mediate issues such as spousal quarrels and regulate \textit{mahr} reductions. The legitimacy of these new actors results from the roles they played during the intifada, rather than through customary or religious status.

Wing, supra note 2, at 185.
women were elected to the PLC;\textsuperscript{24} although women still hold only a small percentage of top decision-making posts and have yet to break into parochial government,\textsuperscript{25} female representation in Palestine is far better than in Egypt or Jordan.\textsuperscript{26} School enrollment is comparable for males and females at the primary and secondary levels, and women comprised 42–45\% of students in Palestinian universities in 1996–97.\textsuperscript{27} While only 77\% of women overall are literate,\textsuperscript{28} over 98\% of women in the fifteen to twenty-four year age range are literate.\textsuperscript{29} These higher levels of education may also be attributed to women marrying later affording them greater employment opportunities prior to marriage.\textsuperscript{30}

\begin{enumerate}
\item Of the registered voters, 49\% were female, although only 32\% of actual voters were women: “The discrepancy indicated to many observers the existence of restrictions and impediments that prevented many women from exercising their voting right.” WCLAC Report, supra note 21. Five women were elected to the PLC, taking 6\% of the eighty-nine total seats, while women now constitute 12\% of the Palestinian National Council membership. See id. However, women are not represented at all in the PLO’s Executive Committee. See id.
\item According to the Palestinian Bureau of Statistics, “women represent 13\% of the staff in administrative positions, they hold only 3\% of top decision-making positions, such as legislators and upper level public servants.” See WCLAC Report, supra note 21. “In other public posts, such as village or town councils or project committees for rural communities, the number of women appointed to positions is nominal. Out of a total of 3,081 such positions, only 13 are held by women.” Id. There are also currently only three Palestinian judges, none of whom, of course, sit on shari’a courts. See id.
\item No women currently sit on Jordan’s legislature, while Egypt has a smaller percentage of women in its legislature than the PA. See International Institute for Democracy and Electoral Assistance, In Search of Political Power—Women in Parliament in Egypt, Jordan and Lebanon, at http://www.idea.int/women/parl/studiesla.htm (last visited Mar. 12, 2003).
\item By 1997, girls made up 49.11\% of the primary and secondary student populations. See Palestinian Central Bureau of Statistics [hereinafter PCBS], Selected Statistics: Education Indicators, at http://www.pcbs.org/inside/sectests.htm (last visited Apr. 5, 2003). In 1996–97, women made up 45.1\% of the student population at West Bank universities, and 42.5\% of the student population in Gaza universities. In addition, female students outnumber males in training institutes and colleges by a slim margin of 51\% to 49\%. WCLAC Report, supra note 21.
\item See WCLAC Report, supra note 21.
\item PCBS, Selected Statistics: Education Indicators, supra note 27 (showing that in 1997, 2.2\% of girls in the West Bank and 2.4\% of girls in Gaza in the fifteen to nineteen year range were illiterate; compared to 3.3\% of West Bank women and 3.7\% of Gazan women who were illiterate in the twenty to twenty-four age range).
\item PCBS, Selected Statistics: Economic Activity, 1997, at http://www.pcbs.org/inside/sectests.htm (showing that in 1995, none of the mean ages for first marriage for girls was below twenty, and only between 3\% and 12\% of girls between the ages of fifteen and nineteen had ever been married) (last visited Apr. 5, 2003).
\end{enumerate}
As a result of their increasing equality with men in the public sphere, middle and upper class women began to resent their continuing subjugation to men in the private sphere, and began to agitate for reforms to the personal status law, which had remained virtually untouched since 1967. One significant campaign has been to eliminate the dower, or mahr.

To the “modern” women of Palestine in the second half of the twentieth century, dower is the lynchpin in a decidedly un-modern marital relationship: the wife “sells” sexual rights to the husband for the dower price, and agrees to submit to his will with regards to her own public life in exchange for regular maintenance. Moors relates the reaction of a girl in the 1970s who, when asked by her brother whether she wished to have a dowry, replied indignantly, “Am I a donkey that he has to pay for me?”

Even before women began to lobby for formal limits on the dower, the feminist opposition to dower led to private inroads against payment of large cash dowers. First, there has been a “sharp reversal of the older pattern of having the registered value of the cash prompt dower greater than the value of the deferred dower.” Whereas in 1965 the prompt dower was larger than the deferred dower in 85% of all contracts sampled, by 1985 the deferred dower was greater than the

31. According to Adrien Katherine Wing:

> It was clearly out of necessity that Palestinian women took on responsibilities and issues that pre-intifada Palestinian culture did not include in the definition of the female gender role. It is doubtful that such social and political mobilization of Palestinian women would have occurred if the women felt that their particular needs and concerns were being adequately addressed by the intifada leadership. This redefinition of their own roles in the community must necessarily lead these women to question and evaluate the “traditional” role occupied by Palestinian women. As their new roles project a more egalitarian position for the Palestinian woman, it is likely that these women will perceive their “traditional” roles as too limiting.

Wing, supra note 2, at 188.

32. Id. at 187.

33. See Moors, supra note 1, at 108.

34. It should be noted that it is questionable whether dower may be formally abolished or even limited under a Muslim system of family law. Of all countries with Muslim personal status codes, only South Yemen has ever set an upper limit on the amount of dower, and this limitation was removed when the Republic of Yemen unified the personal status laws of its two jurisdictions. Limitations on dower are thus “not generally regarded as a matter for regulation by law . . . and classical position that held a maximum could not be imposed in law has been little challenged.” Welchman, supra note 5, at 153.

35. See id. at 142.
prompt dower in 70% of all contracts reviewed. This preference of deferred dower over prompt dower is positively correlated with the female education level, which Welchman attributes to the negative effect of education on women's attitudes toward the material, transactional nature of a traditional marriage. The preference for deferred over prompt dower thus arises out of a desire to change the nature of the marital relationship.

This desire for a modern marriage between autonomous equals is also reflected in the prevalence of the “token prompt dower.” Generally registered in the West Bank and Gaza as one dinar, the token prompt dower began in the 1960s among the highly educated professionals of Nablus as “an expression of modernity.” According to Moors, in the context of Palestinian marriages, an “important feature of the token dower is its symbolic meaning regarding a woman’s autonomy, which can be seen as an important sign of modernity.” Upper class women, educated at Westernized universities, prefer to receive non-monetary gifts that support the modern view of marriage as a romantic union between two equals.

An example of such a “modern marriage” is that of ‘Abir and Nafiz, as told by Annelies Moors. Both university educated political activists, ‘Abir and Nafiz waited six years to marry, until ‘Abir had finished her degree, and ‘Abir accepted Nafiz’s proposal on the condition that she be allowed to dress as she pleased and pursue further academic studies or a career if she so chose. She also refused to accept anything more than a token prompt dower, and refused Nafiz’s offer of a large deferred dower. However, while the token dower was registered in the marriage contract, her stipulations regarding work and dress were not; ‘Abir’s decision stripped her of virtually all of her legal rights to financial security without providing any legal guarantees for her much-treasured

36. See id. This trend extends across the region—for example, one researcher found that in the Jordanian village Kufr al-Ma’, the registration of deferred dower was very rare in 1960, but by 1979 deferred dower was of equal or greater value than the prompt dower in nearly all contracts registered. See id.
37. See id. at 143.
38. See id.
39. See id.
40. See id. at 145. See generally Moors, supra note 1, at 108–10.
42. See id. at 108.
43. See id. at 110–11.
44. See id.
autonomy. 45 Thus, the emancipation of this modern Palestinian woman depends largely on the honor of her husband.

From this "modernizing elite," the token dower spread down through the social classes and into the villages and camps. 46 In 1994, the Palestinian NGO, Women's Center for Legal Aid and Counseling [hereinafter WCLAC], found that 53% of contracts reviewed in Ramallah registered a token dower, and one third of contracts in Nablus registered a token dower. 47 The use of token dowers is much lower in Gaza: only 4% of marriage contracts in Gaza City and 8% of marriage contracts in Rafah registered token prompt dowers. 48 Although Moors suggests that the bride's family will expect more nonmonetary gifts if they register token prompt dowers, she gives examples of cases in which this expectation is not fulfilled, to the financial detriment of the bride and her family. 49 For this reason, Moors concludes that "registering a token dower means taking a risk." 50 Section III demonstrates that while this situation may be acceptable to someone of 'Abir's socioeconomic status, it is a risk that the poor and rural women of Palestine can ill afford to take.

III. The Truth about Dower in Palestinian Society

Section II explained that the feminist movement to eliminate dower in the West Bank and Gaza Strip is an upper class movement, and proceeds from the assumption that elimination of mahr will increase a woman's autonomy. This section disputes that assumption. First, it challenges the basis of women's objections to dower, by demonstrating that the legitimacy of the women's movement in general depends on its association with the nationalist movement, and that in this case the nationalist movement likely made mahr a "women's issue" in order to advance its own concerns. Second, this section demonstrates

45. See id.
46. See id. at 106–08 (discussing the social forces behind the rising use of token prompt dowers).
47. See WELCHMAN, supra note 5, at 145.
48. See id.
49. See MOORS, supra note 1, at 108–09 (discussing the case of a family that registered a token dower in expectation that the groom's family would provide expensive gifts of jewelry as well as all household goods, bedroom furniture, and the bride's clothing; instead, the bride received only the bedroom furniture and a negligible amount of jewelry, forcing the bride's family to provide the rest of her dowry.).
50. Id. at 113.
that far from increasing autonomy, eliminating mahr increases the dependence of most women on their husbands, since they have few resources other than dower and maintenance on which to survive.

A. Questioning the Origins of the Movement to Eliminate Mahr

This section examines the relationship between feminism and nationalism in occupied Palestine, and concludes that the movement to eliminate mahr was probably grafted onto the feminist movement by external forces that saw reduced dowry to be in the overall national interest, not necessarily the interests of Palestinian women.

As Section II demonstrated, the Palestinian nationalist movement embraced feminist issues and couched much of its rhetoric in pro-feminist language in order to rally women to the nationalist cause. By the same token, feminist groups, which traditionally encounter a great deal of opposition in Muslim societies, legitimized their own agenda by aligning it with the nationalist agenda, as can be seen by their argument that mahr is “inconsistent with the intifada’s stated goal of improving women’s status.” However, it becomes unclear who is using whom when the same women argue for elimination of mahr based on the needs of men under the intifada. Adrien Katherine Wing reports of these groups:

They also point out that the revolutionary nature of the intifada and the resultant oppression by the Israelis make it extremely difficult for many Palestinian men to maintain stable employment. Thus, many men are unable to pay the large sums of money required by mahr. In response to the encouragement of women’s groups, some individual women and couples have lowered the amount paid or even rejected the practice entirely. One Gazan lawyer and his wife agreed that he would only pay U.S. $5,000 instead of the $10,000 that would have been required for someone of her high educational status before the intifada.

Thus, while the nationalist cause offered feminists a public forum they might not otherwise have had, it also hindered the women’s movement

51. Wing, supra note 2, at 188–89.
52. Id. at 189.
by “emptying it of its feminist and class content and limiting it to the confines of the national liberation struggle.”

In the case of dower, it seems probable that the nationalist cause assigned to the feminist movement an issue that was in the interests not of women, but of the Palestinian nationalist cause itself. The case of the “modern marriage” of ‘Abir and Nafiz described in the previous section is instructive on this issue. Regarding her decision to register a token prompt dower and refuse a high deferred dower, ‘Abir said: “The high dower pushes the most politically conscious men to leave the country to marry a woman who does not demand a dower.” Thus, most public discussion of dower surrounds the burden it imposes on young men and their families, particularly in difficult economic times, and the media lectures society, “particularly the families of the brides,” to adjust their expectations regarding dower. In addition to the nationalist left, the religious right also objects to high dowers as an impediment to young men’s marriages. For example, the qadi of Ramallah published several newspaper articles in which he chastised Palestinian society for demanding high dower, since this expectation encourages young men to delay marriage or even to marry foreign women, who place little importance on dower. A later article lamented the demand for excessive dower as it represented a movement of Palestinian society away from the path of the Prophet. Strikingly absent from both the nationalist and the religious arguments is a consideration of how mahr affects women, other than the implication that women who demand high dowers are greedy.

It is certainly possible that the feminist argument against mahr and the nationalist/religious arguments against mahr developed simultaneously but separately, and that women genuinely consider elimination of mahr to be in their interests as women as well as in the interests of their people as a whole. Nonetheless, feminist movements to eliminate mahr have often occurred in the context of economic hardship or nationalist struggle. In Egypt, the movement to decrease mahr in the 1930s coincided with a significant economic depression. In Algeria, feminists began to agitate against dower as an “antiquated custom that objectifies women” at the same time that the nationalists FLN, fighting

54. MooRS, supra note 1, at 111.
55. WELCHMAN, supra note 5, at 153.
56. See id. at 154–55.
57. Id. at 155.
for independence from France, sought to limit the maximum *mahr*.\(^{58}\) This association suggests that the feminist objection to dower is intimately connected to national needs, rather than being a product of an independent evaluation of what would be best for women. Lazreg further notes that despite this opposition to dower on both fronts, its average value continued to rise, showing that brides and their families still clearly considered a high dower to be in their interests.\(^{59}\)

**B. Dower as the Primary Source of Independent Wealth for Palestinian Women**

The realities of life in the West Bank and Gaza Strip are such that the dower is the only independent source of wealth to which most Palestinian women have access. Inheritance laws favor male heirs, and legal and social norms minimize female labor force participation.\(^{60}\) Furthermore, the transition of Palestinian society (and Palestinian women in particular) from productive to consumptive wealth means that the size of the dower is crucial since its ability to support its owner is finite. Thus, dower remains "a potentially critical element in the balance of rights and duties between the spouses."\(^{61}\)

Under Palestinian law, inheritance portions adhere to the traditional Hanafi rules, in which women generally inherit half the portion of their male counterparts: daughters half as much as sons; wives half as much as husbands; sisters half as much as brothers.\(^{62}\) This greatly limits the resources available to women outside of the marital relationship, since they cannot count on disbursements from the estates of relatives. Additionally, social norms stigmatize female labor force participation, further increasing a woman's dependence on male wage earners. Despite the nationalist movement's encouragement of female participation in public life, the struggle against Israel has created a religious and cultural backlash to all things "non-Palestinian," which caused a tremendous opposition to changes within the structure of the family, the foundation of Palestinian society.\(^{63}\) One of the changes most strenuously opposed is a change in the

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59. *See* id.
60. *See* id. at 156.
61. *Id.*
62. *See* id. at 212.
63. *See* Wing, *supra* note 2, at 190–91, 193 (discussing attacks on secular women by Hamas activists); *see also* id. at 197 ("while social change has taken place in the nature
traditional, home-bound role of women. Husbands enforce their legal right to forbid their wives from working, and social stigma makes life very uncomfortable for unmarried women who are forced by economic necessity to work. The result is a very low rate of labor force participation: only 11.6% of the 1999 Palestinian work force were women. Female employment is concentrated in those sectors that receive the lowest wages, such as agriculture, services, and the public sectors.

In addition, several larger socio-economic changes have increased the importance of dower in women’s lives. First, the nuclear family has taken precedence over the extended family as the central social unit, with the result that married women are increasingly isolated from their blood relations. Whereas social norms during British colonial rule following World War I permitted women to return to their fathers’ homes in times of marital difficulty, today most married women are not welcome in their childhood homes. This isolation increases their dependence on their husbands. Second, the economic structure is changing from one of family-based production to wage labor, which takes economic production out of the home and thus out of the realm of women. The emphasis on wage labor has also decreased possession of productive assets such as land and livestock, making it less likely that women will receive productive property as gifts, dower or inheritance. Finally, the increasing emphasis on wage labor devalues the work that women do in rural areas and the of customary and religious norms in the women’s rights arena during the intifada, there has been retrenchment due to fundamentalist pressures as well.”). 64. Id. at 196. 65. See Welchman, supra note 5, at 224–25. 66. See WCLAC Report, supra note 21. While Palestinian women accounted for 35% of total domestic job growth in 1999, 84.2% of women in West Bank and 93.1% in Gaza Strip do not form a part of the official, paid workforce. See also Programme on Governance in the Arab Region, Palestine: Women in Public Life, at http://www.pogar.org/countries/palestine/women.html (last visited Apr. 29, 2002). This percentage reflects significant differences between the West Bank and Gaza. In many cities in the West Bank, which is the home to a greater proportion of secular nationalist groups, female labor force participation reaches as high as 22%, while in Gaza, which is under the control of the religious right, female labor force participation is below 10%. See PCBS, Selected Statistics: Economic Activity, 1997, at http://www.pcbs.org/inside/selects.htm. Women as a percentage of the labor force in 1997: Jenin, 22%; Tulkarm & Qalqilya, 17.3%; Nablus, 20.1%; Ramallah & al-Bireh, 13.4%; Jerusalem, 12.3%; Bethlehem & Jericho, 18.7%; Hebron, 12.5%; North Gaza, 7.2%; Gaza City, 7.3%; Central Gaza, 10%; South Gaza, 11%. See id. 67. Programme on Governance in the Arab Region, supra note 66. 68. Cheryl A. Rubenberg, Palestinian Women: Patriarch and Resistance in the West Bank 103–04 (2001). 69. See Moors, supra note 1, at 125 (discussing the impact that these socioeconomic changes have had on women’s access to property through the dower).
informal sector. Instead of viewing women’s work as a productive and adding value to the economy, a woman’s role is seen as that of a consumer, and as such women are entirely dependent on their husbands for maintenance.\textsuperscript{70} Therefore, in contrast to the situation in the early part of the twentieth century, Palestinian women today have fewer means of receiving or producing cash other than through their husbands.\textsuperscript{71} Divorced women must return to their fathers’ home until they remarry; poor women whose families cannot support them and who do not have the training to obtain a decent job must take a job in a factory, where they face the scorn of society as both divorced women and factory workers.\textsuperscript{72}

In this socio-economic context, women would be most benefited by a reform that maximizes not their legal autonomy, but their economic power. As Section IV demonstrates, eliminating dower has precisely the opposite effect.

IV. Impact of Dower on Women vis-à-vis Other Personal Status Laws

This section analyzes the interaction between dower and other family law rules such as those governing marriage formation, polygamy, and divorce. It demonstrates that given the socio-economic context, eliminating \textit{mahr} would decrease women’s abilities to guarantee a favorable situation within marriage, reduce their ability to exit an undesirable marriage, and deplete their economic resources considerably should their marriage dissolve.

\textit{A. Mahr and Marriage}

1. Opportunities for Bargaining in the Marriage Contract

This section demonstrates that eliminating dower reduces a bride’s ability to bargain for desirable stipulations in her marriage contract. Article 19 of the JLPS states that a marriage contract may include any stipulation “that is of benefit to one of the parties,” so long as it “is not inconsistent with the intentions of marriage,” and “does not impose

\textsuperscript{70} Id.
\textsuperscript{71} See Welchman, \textit{supra} note 5, at 156.
\textsuperscript{72} Rubenberg, \textit{supra} note 68.
The statute specifically lists stipulations that the husband not remove his wife from her town, that he not marry another wife, and that he delegate to her the power to divorce, as examples of valid stipulations. The marriage contract issued by the PA includes a blank section in which these stipulations may be written. Stipulations are “binding but not enforceable,” a stipulation against polygamy in a marriage contract cannot be enforced to prevent polygamy, and does not nullify any subsequent marriages entered into by the husband. Instead, it provides the wife with a judicially enforceable remedy in case of violation, by stating that the husband must pay his first wife money, or grant her a divorce if she requests it, upon his marriage to a second wife.

Dower is one of the fundamental bargaining tools in a traditional marriage negotiation—a groom’s family might offer more dower in exchange for the bride agreeing to accompany her husband abroad when he works, or the bride’s family might agree to accept less dower in exchange for a promise regarding the type of house that will be provided. This type of informal bargaining could be applied to the formal marriage negotiations as well—for example, a woman could agree to a reduction in dower in exchange for stipulations in their marriage contract guaranteeing her right to work and to divorce, preventing polygamy, or requiring that they live near their mothers.

However, such bargaining is impeded by the strong social stigma among Palestinians against the use of stipulations, which are generally considered to be an affront to the husband’s honor and a breach of spousal trust; most families prefer instead to extract the oral assurances described above. This preference is reflected in the extremely low use of stipulations in Palestinian marriage contracts: of 3,319 marriage contracts examined in Bethlehem, Ramallah, and Hebron in 1985, only twenty-one, or 0.2%, contained stipulations. Research by the WCLAC covering the years 1989, 1992, 1993, and 1994 found that 2% of
marriage contracts in Nablus contained stipulations, but that in Ramallah stipulations were included in only two out of 4,643 contracts.\footnote{80}{See id. In the WCLAC survey in Nablus in the 1990s, out of the total of 133 stipulations, seventy were on an independent dwelling, twenty on continuing education, and nine on the geographical location of the marital home. \textit{Id.} at 166.}

Despite the social pressures against the use of written stipulations, however, the financial carrot of reduced dower might be significant enough to assuage the slight against a groom’s honor. For example, many stipulations against polygamy require the husband to increase the dower if he takes on another wife.\footnote{81}{See Welchman, supra note 5, at 204.} After agreeing on a reasonable prompt dower, a bride’s family might offer to halve the amount in exchange for a stipulation against polygamy, and require the groom to pay the entire amount only if he marries another wife. Elimination of the dower, however, would deny women and their families the opportunity to make such a deal.

\textbf{2. Mahr as a Source of Power Within Marriage}

The second way in which dower can protect a wife’s rights within marriage is by giving her economic power within the marital relationship. Article 47 of the JLPS states that the wife has a right to withhold obedience until the prompt dower is paid.\footnote{82}{See JLPS, Article 47, quoted in Welchman, supra note 5, at 200.} Laxity concerning the payment of this, often large, sum can be a source of bargaining power even after the marriage contract is signed, since a wife can make a credible threat that she will sue for full payment if her wish is not granted.\footnote{83}{See Moors, supra note 1, at 116.} By contrast, if a wife agrees to a token dower, any nonmonetary gifts that she might rightfully expect cannot be legally demanded, and the wife cannot use this expectation “to strengthen her position in the relationship.”\footnote{84}{Welchman, supra note 5, at 146.}

In Palestinian society, the size of dower increases a wife’s power in the relationship by giving her resources from which to support the family. Although the law reserves dower to the wife’s personal use and does not require her to contribute it in any way to the household or to her own maintenance,\footnote{85}{Id. at 212.} Palestinian women frequently use their dower as emergency reserves to help their families through economically difficult
times. Research of polygamous relationships shows that working wives often enjoy greater autonomy because of the income that they contribute to the household, and this is likely to be true for women who contribute their dower wealth as well. If dower were eliminated, this resource would remain in their husbands’ hands, and wives would lose control over how and when (and on whom) it should be spent.

3. Mahr and Polygamy

Elimination of mahr, by decreasing the overall cost of each marriage, may also harm women by increasing the incidence of polygamy in Palestinian society. It is well settled that polygamous marriages cause subjective and often objective harm to women in comparison with monogamous marriages. Whether or not eliminating mahr would actually harm women by increasing polygamy, however, is far from clear. First, some researchers argue that housing costs far outweigh dower levels as the primary cost of marriage. Second, it may be that polygamy does not result in absolute harm to women if it replaces divorce. This section analyzes the issue, and concludes that the interaction between elimination of dower and the laws of polygamy does not produce a clearly negative effect on the lives of women.

A man’s right to enter into polygamous marriage in the West Bank and Gaza carries with it only a few restrictions: a man may marry up to four wives, is required to “be just and equitable between them,” and “may not settle them in one house without their consent.” While wives may go to court to force their husband to provide separate lodgings, the requirement of just and equitable treatment is considered to be non-justiciable.

Studies of polygamy in the PA show that it negatively affects the material and emotional well-being of preexisting wives. Since subsequent marriages are more likely to be based on affection rather than family arrangements, “second and subsequent wives often experience

87. Id. at 3.
88. WELCHMAN, supra note 5, at 185 (“The legislation currently in force in the West Bank reflects none of the developments in neighboring countries.”).
89. JLPS, Article 28, quoted in WELCHMAN, supra note 5, at 186.
90. JLPS, Article 40, quoted in WELCHMAN, supra note 5, at 5.
91. WELCHMAN, supra note 5, at 197 (“None of the cases studied however raised the issue of what constitutes unequal treatment.”).
favored status with respect to economic resources, social support, and attention. In a study of polygamous marriages in Gaza refugee camps, second and third wives were found to be younger and better educated than senior wives; 40% of junior wives worked outside the home but none of the senior wives did, giving junior wives greater economic power in the household. Thus, from the perspective of Palestinian women, the transition from a monogamous to a polygamous household is something to be avoided.

Rational choice theory dictates that the expenses associated with taking another wife will affect the incidence of polygamy; thus, the higher the dower that a husband must raise in order to marry another wife, the lower the incidence of polygamy. This theory is consistent with Moors' observation that divorce is deterred by the prospect of having to raise a new prompt dower—presumably, this requirement would deter polygamous marriage as well—and is further supported by the relatively low incidence of polygamy in the West Bank and Gaza. In the 1990s, WCLAC found the rate of polygamy recorded in marriage contracts to be 4.5% for the West Bank, and 3.8% for Ramallah. In 1998, the PBCS reported that the rate of polygamy in Gaza was 4.4% and in the West Bank was 3%, giving an overall rate of 3.5%.

However, this theory is contradicted by the fact that during the same period that deferred dowers became more important than prompt dowers and marriages in every class began to register token prompt dowers, the rate of polygamy also began to decrease. This fact points to the conclusion, reached by many researchers, that dower is less important than the cost of housing as a deterrent to polygamous unions. Custom is moving more and more toward wives requiring dwellings separate from the family home or the homes of other wives, as opposed to merely having their own separate suite of rooms in a common building. Moors states that the greatest financial burden of marriage is not dower, but housing; and while this is unlikely to prevent a man from marrying at all (though it may well increase the age of marriage), it is logical to assume that the added burden of maintaining two or more

92. Alean Al-Krenawi et al., supra note 86, at 3.
93. See generally id.
95. Welchman, supra note 5, at 190.
96. See id.
97. See, e.g., Moors, supra note 1, at 119–21; see also Rubenberg, supra note 68, at 108.
98. See Welchman, supra note 5, at 176.
99. See Moors, supra note 1, at 119–21.
residences would be a significant deterrent to polygamy. Whether or not mahr is eliminated, the price of housing is likely to remain a major determinant of polygamy rates in the West Bank and Gaza.

A far more serious consideration is whether decreasing polygamy is in the interests of Palestinian women in the first place. It is suggested that "in a society where women are not allowed to live on their own and divorce is so easy for men, the continued existence of polygamy might be a reasonable option for older women, who at least do not lose their homes, social status, and economic support." According to Welchman, stipulations in Palestinian marriage contracts against the husband taking another wife are more commonly remedied by the requirement that he pay her a sum of money, rather than giving her the right to divorce. This indicates that given the fact of polygamy, women are more interested in shoring up their financial position within a polygamous marriage rather than taking their chances outside of it.

Thus, it is unclear whether the interaction between the elimination of mahr and the rules of polygamy would result in harm to women. However, the outcome of this interaction certainly does not benefit women, and therefore the interaction of the dower rules with the marriage and divorce rules described in the rest of this section remains paramount.

100. See Rubenberg, supra note 68, at 108 (stating that the rate of polygamy in the PA has declined over time due to economic factors: "Given the extent of poverty and unemployment in West Bank camps and villages, a second wife and additional children is a luxury few men can afford . . . fewer still have the resources to construct separate living quarters for each family.").

101. Having said this, it must be noted that polygamy rates are higher in the refugee camps and the surrounding villages, where many have abandoned mahr due to financial constraints. See Rubenberg, supra note 68, at 108 (stating that while the Central Palestinian Bureau of Statistics records an overall average of 3.5% of marriages being polygamous, another researcher found the rate of polygamy to be 5-10% in the villages); see also Wing, supra note 2, at 189 ("Even before the intifada, mahr had been nearly abandoned in communities located near refugee camps where families lacked wealth and where employment opportunities existed for both sexes."). It is likely, however, that this larger percentage increase is not associated with the lack of dower but rather with the fact the second wives tend to be employed and therefore constitute economic assets to the household rather than economic liabilities. See Alean Al-Krenawi et al., supra note 86, at 11.

102. Rubenberg, supra note 68, at 110 (quoting Nira Yuval-Davis, Gender and Nation 118 (1997)).

103. See Welchman, supra note 5, at 168.
THE MARRIAGE DOWER

B. Mahr and Divorce

1. Mahr and Talaq

This section evaluates the interaction between mahr and talaq, the husband’s right to unilateral no-fault divorce, in order to determine the effect that eliminating mahr would have on the well-being of married and divorced women. This section demonstrates that while eliminating mahr would probably not increase the incidence of talaq, it would substantially reduce the economic resources available to divorced women.

Under Palestinian law, there are very few restrictions on a husband’s right of unilateral divorce. The husband must pronounce talaq on three separate occasions, and must do so in a sound state of mind. The wife need not be present, but must be informed within one week of talaq. While most talaqs are pronounced in court, extra-judicial talaq is permissible so long as the husband registers it within fifteen days.

With so few legal restrictions, women’s rights organizations seek extra-legal means of reigning in the use of talaq; much of the literature on this issue promotes a high deferred dower (as well as the prompt dower that would be demanded when the man remarried) as a deterrent against talaq. The logic appears sound: if a husband chooses to unilaterally divorce his wife, he must pay her all of her deferred dower.

104. WELCHMAN, supra note 5, at 253–61 (discussing limitations on talaq in Jordanian law and the requirement of registering out-of-court talaq’); JLPS, Article 91 (“If a man divorces his wife before the qadi, voluntarily and of his own choice, while in a state considered shari‘i, or acknowledges a talaq [that occurred] when he was in such a state, no claim made by him against this shall be heard.”), quoted in WELCHMAN, supra note 5, at 253; JLPS, Article 94 (stating that under normal circumstances every talaq is revocable except the third), quoted in WELCHMAN, supra note 5, at 255; JLPS, Article 85 (stating that each of the three talaqs must take place on separate occasions), quoted in WELCHMAN, supra note 5, at 256.

105. See WELCHMAN, supra note 5, at 262 n.49 (citing JLPS, Article 101).

106. See id. at 260 (citing JLPS, Article 101). Failure to register extra-judicial talaq prevents the husband from raising court claims based thereon; for example, he may not use an unregistered talaq as a defense against his wife’s suit for maintenance. However, a wife may go to court to prove the existence of an unregistered talaq if she wishes to use it to exit the marriage. See id. at 260–61.

107. See WELCHMAN, supra note 5, at 143 (“The standard explanation for the registration of a high deferred dower is to deter the husband from unilaterally divorcing his wife in view of the costs he would thereby incur.”).
immediately upon divorce. According to the theory of rational choice, a person will only divorce if the benefits of doing so exceed the costs; therefore, since increasing the deferred dower increases the costs of divorce, it decreases the likelihood that the husband will find it to be in his interests to divorce his wife.

"In this rational choice model, we would expect government policies that affect the costs associated with divorcing to affect the divorce rate." However, the evidence in both the Palestinian Authority and in the United States does not support this theory. In the United States, several economists studied the effects on the divorce rate of changing from a fault-divorce system to a unilateral no-fault system. Under the fault system, a married couple could divorce only if one of a limited number of conditions existed in the marriage; therefore, if a spouse wished to divorce for reasons other than those enumerated in the law, he had to pay the other spouse to say that one of the legal conditions for divorce existed. Under the no-fault system, however, no such payment was needed, and according to the theory of rational choice, this reduction in the cost of divorce should have resulted in a higher divorce rate. Instead, researchers found that the choice of a unilateral no-fault law over a fault law had no effect on divorce rates in the United States.

Similarly, researchers in Palestine have not found a correlation between the number of talaqs and the amount of deferred dower. If practical levels of deferred dower have no effect on rates of talaq, it is unlikely that formal limits on mahr would have any effect either. Moors does reveal, however, that at least in Mandatory times the prospect of

108. JLPS, Article 46 (stating that unless an alternative date is specified, deferred dower will be due upon talaq or death of one of the spouses), quoted in Welchman, supra note 5, at 200.
109. See Jacobson, supra note 94. Neither the benefits nor the costs need to be financial or even tangible; the theory of economic choice as applied to divorce envisions a subjective evaluation, in which the individual balances the emotional benefits of being free of an unhappy marriage against the financial costs of divorce as well as the difficulties of leaving one's own home and living on one's own.
110. Id. at 96.
111. See id. at 97–98 (reviewing the conclusions of several researchers and demonstrating that the main economist who found differences in divorce rates between fault and no-fault states did not control for regional differences in the perceived benefit of divorce).
112. See Welchman, supra note 5, at 143–44 (reviewing the work of Shalabi, who examined the relationship between dower and talaqs in Ramallah); Moors, supra note 1, at 139 ("It is hard to say whether the deferred dower is a major deterrent to arbitrary repudiation, but it is evident that the reverse is not true, at least not in the villages. During the British mandate, registering a deferred dowry was not common in the rural areas, but few women were repudiated.").
raising a new prompt dower for remarriage deterred men from divorcing their current wives; in this way, at least, dower may protect women from talaq.\textsuperscript{113}

Further comparison of the effects of unilateral no-fault divorce in the United States and of eliminating dower in Palestine, however, reveals that eliminating mahr harms women by reducing their financial security following talaq. While the institution of unilateral no-fault divorce did not raise the divorce rate in the United States, it did significantly decrease the settlement amounts that women received from the divorce.\textsuperscript{114} Economist Joyce Jacobsen explains this as being consistent with the Coase Theorem, which states: "if transaction costs are negligible, a change in property rights does not change resource allocation but does influence the distribution of wealth."\textsuperscript{115} No-fault divorce reassigned the property right of divorce from it being a mutual decision to a unilateral decision, and thus eliminated the requirement that the divorcing party offer his spouse a financial incentive in exchange for agreement to the divorce. Similarly, talaq under Palestinian law has negligible transaction costs, since extra-judicial talaq is legal and need only be registered with the court.\textsuperscript{116} Therefore, a change in the law regarding the wife's right to dower will affect the distribution of wealth from her husband to her upon divorce. This theory of the effect of eliminating mahr is supported by Moors' observation that women in Nablus "generally do not regard a high deferred dower as a major disincentive to talaq . . . . Rather they consider the deferred dower as financial security for the divorced woman."\textsuperscript{117} Given the restrictions on women's work described in Section III, deferred dower is often the only thing standing between poor divorced women and severe economic hardship.

2. Mahr and Khul'

In addition to impoverishing women who are divorced against their will, eliminating mahr makes it more difficult for a woman to obtain a divorce against the will of her husband. It does so by reducing a wife's leverage in bargaining for khul', the only way in which a woman may initiate no-fault divorce under Islamic law. Khul' in Palestinian law is a

\textsuperscript{113} Moors, supra note 1, at 139.
\textsuperscript{114} See Jacobsen, supra note 94, at 97.
\textsuperscript{115} Id.
\textsuperscript{116} Welchman, supra note 5, at 258–59.
\textsuperscript{117} Moors, supra note 1, at 139.
private agreement between spouses in which the husband grants his wife a divorce in exchange for her agreement to forego her traditional financial rights upon the dissolution of the marriage: namely, the deferred dower and maintenance during the *idda* period.\textsuperscript{118} Therefore, the wife must obtain her husband’s agreement in order to obtain a *khul’* divorce—much as was the case in the United States before unilateral no-fault divorce was instituted, the Palestinian wife must “pay” her husband to divorce her.\textsuperscript{119} According to Welchman, most divorces in the West Bank and Gaza Strip are *khul’* divorces, in which women renounce their right to deferred dower and maintenance.\textsuperscript{120} Eliminating the deferred dower would take away one of the wife’s only bargaining chips in negotiations for *khul’*, and it is likely that husbands would be less likely to consider granting their wives a divorce to be in their interests. This is significant not only for women who are merely unhappy with their marriages, but also for those women who suffer from spousal abuse; although abuse is grounds for judicial divorce under Palestinian law, the burden of proof upon the abused spouse is very high, and judges are generally disposed to attempt a reconciliation.\textsuperscript{121} Many abused women therefore seek to escape their marriages through *khul’* rather than through the courts.\textsuperscript{122} Eliminating dower would substantially reduce their ability to do so, and as a result would trap a number of women in unhappy or abusive relationships.

**Conclusion**

After reviewing the interaction between *mahr* and the other personal status laws and placing that interaction in its proper economic and cultural backdrop, it becomes clear that eliminating the dower would materially harm the majority of Palestinian women. If Palestinian

\textsuperscript{118} See Rubenberg, supra note 68, at 101–02 (discussing ways in which Palestinian women may seek divorce).

\textsuperscript{119} See id.; Jacobsen, supra note 94, at 98. The difference between the Palestinian rules regarding divorce and the pre-no-fault United States divorce laws lies in the fact that Palestinian men have no-fault divorce. Therefore, instead of the rule resulting in higher payments to women in order to allow men to divorce, it merely results in women redistributing their own wealth in order to obtain the desired legal result.

\textsuperscript{120} Welchman, supra note 5, at 144 (“Such a settlement may involve the woman receiving a certain sum from her divorcer, but her waiving of her legal right means firstly that she cannot hold him to that commitment, and secondly that certainly she does not receive the whole registered sum.”).

\textsuperscript{121} See WCLAC Report, supra note 21; see also Welchman, supra note 5, at 235.

\textsuperscript{122} See Moors, supra note 1, 142–46.
women's organizations genuinely wish to improve the lives of Palestinian women, they must agitate for reforms that benefit the lower classes in which most Palestinian women live. Although the modernizing elite may well see benefit in the adoption of token dower, responsible feminists should seek to prevent the spread of this custom to the lower class, and should encourage women to take full advantage of their financial rights in dower.