

# **Norm Resistance in Iraq**

The influence of norm antipreneurs on the draft of the Ja'fari law

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**Content**

Introduction ..... 3

Theoretical framework ..... 5

    Literature Review ..... 5

    Conceptualization ..... 9

Research methods..... 10

Results ..... 14

    Sub question 1: What were the proposed amendments to the Personal Status Law made by the Ja’fari law, and how do they violate Human Rights?..... 14

    Sub question 2: Were there political leaders, religious groups or non-governmental organizations present as norm antipreneurs during the formation of the Ja’fari law?..... 16

    Sub question 3: How did these antipreneurs tried to influence the amendments according to the structural and tactical advantages described by Bloomfield (2016a)? ..... 17

Conclusion and discussion ..... 20

Bibliography..... 24

## Introduction

On February 26, 2014, a photograph of Iraq's Minister of Justice went viral. In his hand was the draft of the Ja'fari Personal Status Law. This law was based on Sharia and would change the existing, non-religious Personal Status Law to Islamic law. Among other things, it stated that the minimum age for women to marry had to be reduced to nine years old, and it legalized marital rape. This law received both national as international attention because the implementation of it would mean a violation of Iraqi laws, international agreements and UN Human Rights conventions that were ratified by Iraq (Zangana, 2014). It led to four days of demonstrations in Baghdad during International Women's Day. Nonetheless, the draft was approved by the Iraqi council of ministers and was put to vote in the parliament. While no majority was won in parliament for the draft, it is not inconceivable that a proposal such as this would be submitted again (Hamoudi, 2016).

In recent years, the world is striving towards a norm of greater freedom and equality in marriage, divorce, inheritance and the protection of women's rights (Abbas, 2014). However, sometimes a challenger norm (a norm that is made to change the status quo) receives resistance and decisions are made that head in the opposite direction by defending the status quo. This happened with the proposal of the Ja'fari law. While Iraq was implementing the norm of women's rights protection in its legislation, the Ja'fari draft was created to defend the status quo of Islamic law.

Resisters of a challenger norm can be called 'norm antipreneurs'. According to Bloomfield (2016a) they enjoy certain strategic and tactical advantages over the advocates of the human rights norm; the 'norm entrepreneurs'. Antipreneurs use these advantages to counteract the challenger norm and maintain the status quo.

Previous scholars only investigated how norm antipreneurs resist entrepreneurs by preventing the making of laws that represent the challenger norm. The gap in the literature is that no research has been done into laws that have been formed by antipreneurs to protect the status quo. The puzzle that this thesis therefore tries to solve is to what extent Bloomfield's (2016a) theory is applicable to a case where antipreneurs do not prevent the making of laws by entrepreneurs, but create laws themselves to protect the status quo. The theoretical contribution is therefore that the applicability of Bloomfield's theory on strategic and tactical advantages is tested for situations in which norm antipreneurs take initiative to create laws.

The social contribution is that this thesis provides an understanding of how antipreneurs form and promote laws that protect the status quo, which can be useful to promote or prevent these laws in the future. Antipreneurs learn which moves they can make to promote a law that defends the status quo. Supporters of the challenger norm can use this thesis to recognize such a law and the arguments and tactics that antipreneurs use to promote it, and contradict these.

Therefore, in this thesis I will answer the question:

*‘How have norm antipreneurs attempted to influence Iraq’s Personal Status Law in 2014 with the making of the Ja’fari law that violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?’*

The main findings of this thesis are that the Islamist Virtue Party played the role of norm antipreneur by creating the Ja’fari law that challenged the norm of improvement of women’s rights and protected the status quo of Islamic law. Striking is that only one category of norm antipreneurs was found, and that there is no prove of the use of all the advantages described by Bloomfield (2016a).

The structure of this thesis is as follows: first, the relevant literature on norm antipreneurs will be discussed that consists the scholars on which Bloomfield’s (2016a) theory of norm antipreneurs is based, followed by an overview of the main critics and scholars that build on his theory. Subsequently, the research methods explains how the research question will be answered by using the case study method. Thereafter, the actual research is done, and the results are presented. The final chapter includes the conclusion and a discussion of the methodological, conceptual and theoretical limitations.

# Theoretical framework

## Literature Review

This section describes the preliminary scholars norm antipreneurs, followed by a conceptualization of the main concepts.

Bloomfield (2016a) introduced the concept of norm antipreneurs in his article *Norm antipreneurs and theorising resistance to normative change*. His research emerged from previous literature on norm entrepreneurs and norm resistance.

Over the years, a lot of scholars investigated how norms emerge into political change. Constructivists explain norm change with the influence of norm entrepreneurs. Finnemore and Sikkink (1998) introduced the 'norm life cycle'. This cycle includes three stages through which norms go before they emerge into political change: norm emergence, norm cascade and internalization. In the first stage, norm emergence, norm entrepreneurs play an important role by calling attention to issues or by creating issues. In the second stage they promote the norm to the most important, most influential actors. During internalization, the norm entrepreneurs spread the norm more widely. Furthermore, another theory about the spread of norms is made by Risse, Ropp and Sikkink (1999). They have created a model to explain variation in internalization of human rights and the process of norm diffusion. A large number of scholars have continuously expanded their research on the role of norm entrepreneurs. However, research on norm resistance and the influence of norm antipreneurs has recently been established and is limited.

One of the first scholars to research norm contestation was Payne (2001). Even though prior research only focused on entrepreneurs, he concluded that the spread of a challenger norm receives resistance. According to him, this happens during the framing process. Those who move against a norm do not only do this by persuading the other party, but also by strategically manipulating frames and thus setting the opponent in a negative light. Wiener (2007) also went against established scholars by seeing norms as a process rather than a thing. A norm can have different meanings in different contexts because actors constitute their own meanings. She explained that contestation happens when individuals do not share the same meaning of a norm. Acharya (2013) joined the idea of Wiener and recognizes resistance. He concluded that in the process of normative change, norm challengers try to influence the

norm. Therefore, the creation of international norms is never a one-way or one-step process, nor is it carried out by a single agent. Besides, he sees, similar to Wiener, norms as a process. He found that once created, norms are still being adapted and introduced another reaction to norms: along rejection or adaption, it is also possible for actors to ‘feedback’ and adjust the norm. The goal is not to weaken the norm but to make it more suitable for diffusion.

Bloomfield (2016a) built on the theories of Payne (2001), Wiener (2007) and Acharya (2013). To designate the actors of norm contestation, he created the concept of norm antipreneurs. He investigated the benefits that norm antipreneurs have over norm entrepreneurs when the normative status quo is entrenched. These benefits can be divided into strategic and tactical advantages. Before norm antipreneurs can make use of their advantages, norm entrepreneurs must make two strategic moves to achieve norm change. First, they must disseminate that there is a problem with the existing norm and that this approves the justificatory attacks on the status quo. In addition, they must offer a solution to this problem by proposing a challenger norm. These strategies of entrepreneurs provide antipreneurs with two ‘strategic blocking opportunities’. First of all, antipreneurs can contradict the idea that the existing norm causes problems. People prefer to maintain the status quo and as long as the norm does not fail catastrophically, the existing norm will be retained. Second, when the first strategy has not worked and the entrepreneurs do succeed in addressing a normative problem, antipreneurs can make use of another strategy: undermining the challenger norm. The status quo will be favoured when the effectiveness of a challenger norm is unproven. Therefore, the norm antipreneurs will try to convince society that the entrepreneurs are “idealistic, naïve dreamers ... or dangerous radicals ...” (Bloomfield, 2016a, p. 14). Their advantage is that ‘sunk costs’ for the status quo are already made and will disappear when the norm changes. This makes it harder for entrepreneurs to prove the effectiveness of the challenger norm because it has to compensate the ‘sunk costs’. Next to these strategic advantages, norm antipreneurs also enjoy tactical advantages when the status quo is formally institutionalized. These tactical advantages can be understood in two ways. One way to resist entrepreneurs is by using the formal institutionalization to resist more negotiation about the challenger norm and thereby prevent the expansion of precedents that want to promote it. Another tactical advantage is that antipreneurs can play the ‘veto player role’ and block the efforts to adopt challenger norms. Bloomfield noted that these advantages differ in every situation: context matters. He found empirical evidence of the existence of these advantages in his research on the Responsibility to Protect (Bloomfield, 2016b) and shows how the concept of antipreneurs is useable in

different contexts by examining resistance on the humanitarian access norm in the situation of occupation, civil war and natural disasters (Bloomfield, 2016c).

Furthermore, Bloomfield (2016a) created a role-spectrum of norm dynamics. Like Wiener (2007) and Acharya (2013), Bloomfield recognized more roles than only norm entrepreneurs and norm antipreneurs. Pure norm entrepreneurs challenge the whole normative status quo. A little more to the centre, we find competitor entrepreneurs that agree with change, but do not agree on the content of the challenger norm. Competitor entrepreneurs are investigated by Wiener (2007) and Acharya (2013). On the other side of the spectrum, pure norm antipreneurs have the most intentions to defend the normative status quo. Creative resisters are still defending the normative status quo, but accept that some change is needed. This acceptance arises when it is necessary under the circumstances or when they are persuaded by norm entrepreneurs.

Bloomfield's (2016a) theory is based on Bob's research on rival entrepreneurs. Bob's (2013) research is influential in the literature on antipreneurs. He investigated progressive transnational networks and the influence of rival entrepreneurs. Bob states that rival entrepreneurs are hard to distinguish because they use similar strategies and tactics. Therefore, he contradicts the idea that the roles actors play in norm contestation processes are distinctly different. This is different from Bloomfield (2016a), who created a model of strategic and tactical advantages which is therefore universally applicable.

Different scholars build on Bloomfield's (2016a) statements and test the usability of the concept of norm antipreneurs. This leads to two groups of critics: those that find the concept useful but criticize the strategic and tactical advantages. Others criticize the concept of norm antipreneurs and propose a different term.

First, Bloomfield's strategic and tactical advantages can not be found in every situation. This can be the case because windows of opportunity can change over time. When windows of opportunities for norm entrepreneurs arise, formed by the international environment, it is harder for antipreneurs to use their tactics, which leads to a change in strategy (Adachi, 2016). Another explanation is that some advantages can be so effective, that the use of other advantages have less or no impact. Mills and Bloomfield (2018) conclude this after investigating African resistance to the anti-impunity norm. They found that the advantage of the veto-player role was very effective for protecting the status quo, while the impact of the other advantages was not strong. Thereafter, Bloomfield (2016a) assumes that

antipreneurs use as many of the advantages to maintain the status quo and prevent the spread of the challenger norm. However, antipreneurs sometimes surrender to the contesting norm. According to Nesadurai (2016) antipreneurs and entrepreneurs will, when the status quo is not deeply entrenched, combine the contesting, rival norm and the status quo to create a 'hybrid norm' that includes elements from both sides.

Not only the advantages received criticism, but also the concept of norm antipreneurs. Namely, it is difficult to distinguish the antipreneur from the entrepreneur. This can be because not only entrepreneurs, but also antipreneurs are trying to undermine the status quo (Sanders, 2018, p. 272). Sanders (2018) gives the example of women's rights norms, that have been "... both widely adopted and vigorously contested at the UN for several decades" (p. 272). To solve the problem, she introduced the term 'norm spoiling', that is "... the process through which actors directly challenge existing norms with the aim of weakening their influence" (p. 272). Her concept of 'norm spoilers' has a few elements of Bloomfield's (2016a) concept of norm antipreneurs. It differs in some ways because norm spoilers are not necessarily defending the status quo but are undermining the established norms themselves too. Besides, while the term 'antipreneurs' clarifies that there is conflict over norms, it also implies that one side plays the role of defence, and the other offence. Bob (2016) found that this is not always the case, and that they can use the same tactics. He suggests other terms like "'rival', 'contending', or 'opposing' networks" that are more analytically appropriate (Bob, 2016, p. 27). Another critical note about the concept of antipreneurs is that it "... focuses primarily on *what* actors are doing; relatively less attention is paid to *why* they are doing it." (Clapton, 2016, pp. 22-23). Although the concept is useful to understand a part of norm resistance, it comes short by ignoring the motives of actors. By explaining the intentions of both entrepreneurs and antipreneurs, it is easier to understand why some of the strategic and tactical advantages sometimes not occur.

These criticisms from multiple scholars recognize the shortcomings of the concept of norm antipreneurs and explain why Bloomfield's (2016a) strategic and tactical advantages do not always work. This is useful for my research because it helps me stay critical about the concept and helps me understand why actors did not make use of some of the advantages (if this is the case).



## Conceptualization

In this section, I will conceptualize norms, followed by norm entrepreneurs and norm antipreneurs.

First, *norms* can be conceptualized as “a standard of appropriate behaviour for actors with a given identity” (Finnemore & Sikkink, 1998, p. 891). Most of the articles on norm entrepreneurs and antipreneurs use this conceptualization.

The next concept is *norm entrepreneurs*. Norm entrepreneurs are “actors who set out to alter the prevailing normative order according to certain ideas or norms that they deem more suitable” (Finnemore & Sikkink, 1998, p. 887).

Lastly, *norm antipreneurs* need to be conceptualized. Norm antipreneurs are “the norm entrepreneurs’ opponents” (Bloomfield, 2016a, p. 311), and “are actors who defend the entrenched normative status quo against challengers” (Bloomfield, 2016a, p. 321). For my research it is necessary to make a categorization of norm antipreneurs. Therefore, I will divide norm antipreneurs among three groups: political leaders and parties, religious groups and non-governmental organizations (NGOs). These three groups are chosen because they are found as norm antipreneurs in the existing literature. Firstly, I want to investigate if political leaders and their parties were present during the making of the Ja’fari Law. Thereafter I will look at the potential influence of religious groups, followed by NGOs.

## Research methods

This research will make use of the qualitative research method ‘case study’ to answer the question ‘*How have norm antipreneurs attempted to influence Iraq’s Personal Status Law in 2014 with the making of the Ja’fari law that violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?*’. I choose for qualitative research because I want to understand in which ways antipreneurs influenced the amendments, according to the antipreneural advantages created by Bloomfield (2016a). The best way to find these ways of influence in real life is to take a specific case and investigate it deeply. The decision to choose the case of Iraq was taken because the draft of the Ja’fari law is a typical case to investigate the influence of antipreneurs. Because the ‘human rights norm’ gets accepted more broadly, I expect that norm antipreneurs have exerted influence to resist the norm with the draft, and therefore the making of the draft can be seen a direct result of the work of antipreneurs. By choosing a typical case I can test whether the advantages can be found in situations in which direct influence of norm antipreneurs is visible. The results can lead to three conclusions (Seawright & Gerring, 2008, p. 299). First, the advantages are all found and the theory is confirmed. Second, the results show some overlap, but also different results than the theory described. Or the advantages are not found and which, because it is a typical case, constitutes evidence against the theory.

To answer the main research question, I have created sub questions, that form together a clear picture of the role of antipreneurs while making the draft.

- What were the proposed amendments to the Personal Status Law made by the Ja’fari Law, and how do they violate Women's Rights?
- Were there political leaders, religious groups or non-governmental organizations present as norm antipreneurs during the formation of the Ja’fari law?
- How did these antipreneurs tried to influence the amendments according to the structural and tactical advantages described by Bloomfield (2016a)?

First, the concept ‘norm antipreneurs’ needs to be operationalized. The definition of norm antipreneurs is “actors who defend the entrenched normative status quo against challengers” (Bloomfield, 2016a, p. 321). To identify antipreneurs, it is necessary to define the normative status quo and the challenger norm. I treat the human rights norm as the challenger norm, even though the principles of human rights are part of the Iraqi legislation. While there has

been a transition in Iraq from a traditional Islamic Personal Status Law to (partially) secular legislation that separates state and religion and promotes human rights protection, "... the fact a norm has been codified in a treaty does not by itself mean that it represents the normative status quo" (Mills & Bloomfield, 2018, p. 6). In surrounding countries such as Iran and Saudi Arabia, Islamic law is still present and seen as the status quo (Otto, 2010). Since Iraq has many similarities with these countries, the status quo in Iraq is Islamic Law, despite the fact that norm entrepreneurs have already exerted much influence. That makes the norm entrepreneurs the actors that defend the Islamic Ja'fari draft. The norm entrepreneurs are actors that promote the human rights norm.

The first category of norm entrepreneurs I want to investigate are political leaders and their parties. Leaders and parties are one category together because they largely overlap: political leaders represent a party and therefore they have the same political ideas. Both Lantis (2016) and Harvey and Mitton (2016) find political leaders as norm entrepreneurs. Lantis describes that governmental officials of the US presidential administrations played a critical role in the decision-making of space policy and were entrepreneurs because they showed their concerns about the developments of cooperation with multilateral institutions (Lantis, 2016, pp. 9-10). Harvey and Mitton (2016) have drawn a similar conclusion. While investigating the 2003 Iraq War, they find that political leaders and their parties tried to hold back norm change. The second category is religious groups. Sanders (2018) describes in her article how the religious group C-FAM fulfils the role of 'norm spoiler', that corresponds to the concept of norm entrepreneurs, by opposing the pro-LGBT-norm. Thereafter, I will look for NGOs that play the role of entrepreneur. NGOs are found as norm entrepreneurs by Scott and Oriana (2016). Among other things, they find WWF, Greenpeace and Sea Shepherd defending the status quo by resisting Japan's promotion of a norm of sustainable whaling. Many norm entrepreneurs that promote human rights are NGOs, which makes it likely that NGOs are also present in the role of entrepreneur.

My data will be obtained from news articles and other scholars that investigated the draft. I am aware that this can lead to a biased image because I cannot use Arabic sources, due to a lack of command of the Arabic language. This means that I can only use English sources that are mostly written by Western scholars and journalists that write with a Western view on the world. It is possible that these sources are based on prejudices that the West have about the Middle East. By using these sources, I might take over biased information and implement this in my research. To find norm entrepreneurs, I will first describe which actors are normally present during discussions about the separation of religion and state in Iraq. Thereafter I will

search for names of political leaders, parties, religious groups and NGOs in the (news) articles about the Ja'fari law. To create a picture as complete as possible, I use not only Western news sites like The Guardian and news from the Human Rights Watch, but also English newspapers, like Al Monitor, that publishes articles written by journalists and experts from the Middle East, and a translation of an article by Safia Al Souhail (2014), a Member of Parliament in Iraq's Council of Representatives. Besides, scientific articles from Cherland (2014) and Hamoudi (2016) provide me with information about the making of the law.

Furthermore, scholars on norm antipreneurs define 'influence' like the generally recognized definition: "the capacity to have an effect on the character, development, or behaviour of someone or something, or the effect itself" (Lexico, n.d.). In this thesis I will try to find out in which ways norm antipreneurs attempted to influence the making of the amendments. To operationalize the concept of influence I will make use of the strategic and tactical advantages described by Bloomfield (2016a). Looking at the use of these advantages will answer the question how norm antipreneurs tried to influence the amendments. Bloomfield (2016a) and other scholars that tested his theory do not explain how these advantages are recognized while investigating a case. Therefore, I have created an operationalization myself.

Before antipreneurs can make use of the advantages, entrepreneurs must make two strategic moves. First, they must acknowledge that the current norm fails, and then propose a challenger norm. These moves can be recognized in the literature by looking at the ways in which entrepreneurs have tried to promote their norm and looking at legislative proposals that are in line with the challenger norm.

The first strategic move antipreneurs can make is demonstrate that the status quo does not fail drastically. To identify this advantage, I will look for statements of norm antipreneurs that explain why the status quo should be retained and what the advantages of the status quo are. Second, antipreneurs can make another strategic move: undermining the challenger norm. This differs from the first strategic advantage since it is not about the advantages of the status quo, but about the disadvantages of the challenger norm. The way in which this will be found in the literature corresponds to the first advantage for antipreneurs. I will look for statements by antipreneurs that try to bring the challenger norm down by explaining why it does not work.

In addition to these strategic advantages, antipreneurs also enjoy two tactical advantages to maintain the status quo. When the status quo is formally institutionalized antipreneurs can use the argument of compliance to the existing legislation to resist

negotiation about the norm. This is the case when antipreneurs appeal to the current legislation to support the normative status quo. Finally, an antipreneur can play the veto player role by blocking efforts to adopt laws in that are line with the challenger norm. To recognize this tactic, I will look if antipreneurs have used formal decision-making mechanisms to limit the ability of the entrepreneurs to exert influence.

To measure influence I will study news sites and articles from other scholars to look at the drafting process. For this I will use the same sources as for the concept of antipreneurs. Among other things, I will use (news) articles from the Guardian, Cherland (2014), Hamoudi (2016) and from the news-website Al Monitor.

## Results

In this chapter the sub questions will be answered. After describing the content of the Ja'fari law and explaining how it violates Human Rights, I will present which antipreneurs were present during the making of the law. Thereafter, the question how norm antipreneurs influenced the draft will be answered.

### **Sub question 1: What were the proposed amendments to the Personal Status Law made by the Ja'fari law, and how do they violate Human Rights?**

The Personal State Law in Iraq includes legislation related to marriage, divorce, child custody and inheritance. In most Muslim countries, these laws are based on Islamic Sharia law. However, Iraq created a new Personal Status Law No 188 in 1959 whereby Sharia courts were replaced by government-run personal status courts (Heinrich Böll Stiftung, 2014). This law was created after a long struggle between the religious establishment and the secular government and was one of the most protective laws for women's rights in the Middle East (Cherland, 2014, p. 70). The 1959 law combines Hanafi (Sunni) and Ja'fari (Shia) interpretations of Sharia (Cherland, 2014, p. 71).

In 2014, the Ja'fari law was introduced. The implementation of the Ja'fari law would mean radical changes for the Personal Status Law. In this section the Ja'fari law will be compared to the existing Personal Status Law No 188 on the area of age of marriage, marriage with non-Muslims, polygamy, the man's right over his wife and deficiency.

The change in the minimal age for marriage was one of the most internationally contested amendments of the Ja'fari draft. The 1959 law stated that the legal age for marriage should at least be eighteen for both men and women. The Ja'fari law would change the legal age for boys to fifteen and for girls to nine. With the consent of a guardian, father or grandfather, this age could be lower (Zangana, 2014).

Next, under the current Personal Status Law, a Muslim man can marry a non-Muslim woman without conditions or restrictions (but a Muslim woman can only marry a Muslim man). The Ja'fari law proposes that marriage can only take place between two Muslims (Al Souhail, 2014). Only with the permission of a religious figure, a Muslim man can temporarily marry a non-Muslim woman for sexual purposes in exchange for money. In this temporary marriage, the man specifies how long the marriage will last and can renew the marriage when it expires or cease it earlier (Zangana, 2014).

Furthermore, the Personal Status Law No 188 does not permit polygamy. It is only allowed when a judge gives permission. This permission can be received when the man has a clear reason and the financial resources to support another wife. The Ja'fari law will make polygamy easier. According to this law, men are unconditionally allowed to have several wives (Al Souhail, 2014) (Zangana, 2014).

Another amendment considers the man's right over his wife. The law of 1959 states that the wife can not be forced to do anything. However, the proposed Ja'fari law states that a man is allowed to enjoy the pleasure of his wife any time he wants. The wife's permission for sex is not needed. Besides, the wife will need permission from her husband to leave the house (Al Souhail, 2014).

The last radical change is the way in which deficiency is proved. Divorce is allowed in cases of deficiency by the man or woman when it is impossible to continue a married life. Under the 1959 Personal Status Law, deficiency is proved by official medical committees. Within the Ja'fari law, prove will be collected by witnesses and swearing under oath (Al Souhail, 2014).

The implementation of the Ja'fari law would be problematic because it violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as the Convention on Rights of the Child (CRC). The CEDAW, that was signed by Iraq in 1986, would be violated because women and girls are given fewer rights on basis of their gender (Cherland, 2014, p. 86). Therefore, the experts of the CEDAW committee urge Iraq's government to "immediately withdraw the draft Jaafari personal status law" (Human Rights Watch, 2014). Among other things, Article 2 is being violated because the draft legalized marital rape. This also applies to Article 16, that prohibits discrimination against women in all matters relating to marriage and family relations. The proposed law violates the CRC too by legalizing child marriage. This increases the chance of involuntary marriages, sexual abuse, which means that the best interest of the child is not being respected. Besides, the draft seems to violate the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights by restricting the rights of certain individuals based on their religion (Human Rights Watch, 2014).

## **Sub question 2: Were there political leaders, religious groups or non-governmental organizations present as norm antipreneurs during the formation of the Ja'fari law?**

To answer this sub question, I will use the categorization described in the research methods. First, I will describe which political leaders and parties normally influence Iraqi politics, followed by an investigation whether they were present in the case of the Ja'fari law. Thereafter, the same steps will be taken when looking for religious groups and NGOs.

### **Political leaders and their parties**

The Economist Intelligence Unit (2017) categorizes Iraq as a hybrid regime where democratic elements are combined with autocratic ones. While Iraq has regular and competitive elections, in practice the decision making process is affected by corruption and security threats (Freedom House, 2018). This does not mean that political leaders and political parties are not able to resist a norm. During Saddam Hussein's rule, political parties have contested the Personal Status Law No 188. Arab nationalists and the Ba'athist party have tried to change the law's regulations regarding polygamy and inheritance into rules according to Sharia (Cherland, 2014, p. 80). The Ba'athist party contains mostly Sunni party members and was led by Saddam Hussein. After the overthrow of Hussein, the Iraqi Governing Council (IGC), that temporarily served as a government, tried to change the Personal Status Law with Resolution 137 that replaced the Personal Status Law by Sharia. Although it is not certain who voted in favour of this law, because voting happened behind closed doors, Abdul Aziz al-Hakim was the chairman at the time of the vote (Cherland, 2014, p. 89) (Coleman, 2005). He was member of the Shia Supreme Council for the Islamic Revolution in Iraq (SCIRI) (later Islamic Supreme Council of Iraq (ISCI)). Now, the Sunni political parties and the Kurds (an ethnic group in Iraq) want to keep religion out of the government, and after years of suppression by Saddam Hussein, the Shia parties want Sharia (Coleman, 2005). The Shia parties promote the traditional norm and status quo of Islamic Law; therefore, they are the norm antipreneurs in this case.

In the literature and news articles, the Shia Islamist Virtue (Fadhila) Party is found as a norm antipreneur (Zangana, 2014). This is a small political party that only has a few seats in parliament. Hassan al-Shammari, Minister of Justice and member of the party, introduced the draft and promoted it. Not only al-Shammari, but also Grand Ayatollah Muhammad al-Ya'qubi protected the status quo by approving the Ja'fari law. He is the leader of the Islamic Virtue Party and a Grand Ayatollah, which is the highest level of authority within Shia Islam.



He spoke out that he is against a democracy that establishes legislation against God's Islamic law (Cherland, 2014, p. 92). Furthermore, other party members of the Virtue Party defended the proposed draft. Susan al-Saad, one of the female party members, said on TV: "It is a divine Shari'a, it is a must" (Zangana, 2014).

### **Religious groups**

Several religious groups are present in Iraq. However, on the topic of separation of religion and state, there is one important group that is committed to the creation of an Islamic state: the Sadrist Movement (Zeed, 2016). This is a Shia movement that is in conflict with secular movements that want a separation of state and church. The Sadrist Movement is politically active, which results in overlap between this category and the previous one: political leaders and their parties. However, evidence of influence of the Movement on the formation of the Ja'fari draft is not found. While the Islamic Virtue Party is born out of the Sadrist Movement, the party is currently not affiliated with it because its leader, Muqtada al-Sadr, is part of another branch of Sadrists. This explains why the Movement has not visibly contributed to the draft.

### **NGOs**

The number of Muslim NGOs has increased in the recent years. They are mostly engaged in humanitarian development and provide aid in conflicts (El Karhili & Jassem, 2018). Although there are countless non-religious NGOs in the world that are concerned with human rights, only very few religious NGOs have implemented the promotion of human rights in their work (except some Western Christian NGOs) (Petersen, 2014). It is therefore not unexpected that I have not found any prove of influence of NGOs as antipreneurs in the literature during the making of the Ja'fari law.

### **Sub question 3: How did these antipreneurs tried to influence the amendments according to the structural and tactical advantages described by Bloomfield (2016a)?**

This section focuses first of all on the making of the Ja'fari law. Thereafter the two strategic moves of entrepreneurs will be explained, followed by a description of how the norm antipreneurs have made use of their strategic and tactical advantages.

The first public appearance of the Ja'fari law was on the 26th of February 2014, when a photograph taken of Hassan al-Shammari, Minister of Justice and member of the Islamist

Virtue Party (Hamoudi, 2016, p. 340). He prepared the draft of the Ja'fari law and submitted it to the council of ministers. The council accepted the law so it could be put to a vote in parliament. Within the council of ministers, the Virtue Party was supported by other Shia parties because they were afraid of losing socially conservative Shia voters (Hamoudi, 2016, p. 342). And because the majority of the country's citizens are Shias, a majority of the ministers voted in favour of the Ja'fari law (Central Intelligence Agency, 2019).

According to Bloomfield (2016a), norm entrepreneurs make two strategic moves before antipreneurs can intervene. They must make it generally known that the status quo is lacking and then they must offer a solution. For years, human rights activists and women's rights organizations have tried to influence Iraq's Personal Status Law to make it more consistent with the human rights treaties that were signed by Iraq (Cherland, 2014). They disseminated that there is a problem in Iraq; women's rights violations, and offer a solution by proposing laws that correspond with women's rights. During the formation of the 1959 law, they therefore tried to implement the women's rights norm, which made Iraq's current law one of the most protective laws within the area (Zangana, 2014).

The first strategic advantage for antipreneurs is that people favour the status quo and therefore antipreneurs only have to prove that the status quo doesn't fail drastically. Proponents of the Ja'fari draft explain that the status quo guarantees personal freedoms, like the freedom of religion. Under the Personal Status Law of 1959, judges legally acknowledge marriage contracts of different Islamic sects (Al-Ghazi, 2013). That shows, according to the antipreneurs, that the status quo of Islamic law is not failing since people make use of Islamic contracts to make their marriage official. The Islamic Virtue Party proposes that Iraqi citizens can choose their own Personal Status Law, according to their religion (Abbas, 2014). In that way the proposed law does not cause problems because it strengthens the freedom of religion.

The second strategic advantage is undermining the challenger norm by showing it is unproven and not viable and credible (Bloomfield, 2016a, p. 323). Antipreneurs' arguments for this are somewhat similar to the first strategic move. They try to bring the challenger norm down by stating that it limits the freedom of religion (Al-Ghazi, 2013). While marriage contracts from different Islamic groups are acknowledged, these marriage contracts must comply with the Personal Status Law from 1959 that is considered to be contradictory with Islamic Sharia by many Islamic leaders (Heinrich Böll Stiftung, 2014). Antipreneurs thus

state that it restricts personal freedoms and therefore norm entrepreneurs are “idealistic, naïve dreamers ... or dangerous radicals ...” (Bloomfield, 2016a, p. 14).

The clearest and most effective use of antipreneural advantages by the Islamic Virtue Party is the first tactical advantage: taking advantage of the formal institutional status quo (Bloomfield, 2016a, p. 324). The party used the Constitution of Iraq to prove that the proposed draft is legal. While opponents cite Article 14 of the constitution: “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, colour, religion, sect, belief or opinion, or economic or social status” (Abbas, 2014). The Virtue Party addresses that they can violate this law on basis of Article 41, which states that “Iraqis are free to abide by their personal status according to their religions, sects, beliefs or choices, as regulated by law” (Abbas, 2014). This means that Iraqi citizens should have the freedom to live by their own rules of personal status (Cherland, 2014, p. 91). Besides, norm entrepreneurs use Article 2 to explain why the proposed law is unconstitutional. Paragraph b states that “no law may be enacted that contradicts the principles of democracy” and paragraph c that “no law may be enacted that contradicts the rights and basic freedoms outlined in this constitution”. However, the Islamic Virtue Party justifies the draft by paragraph a: “no law may be enacted that contradicts the established provisions of Islam” (Abbas, 2014).

According to Bloomfield (2016a), antipreneurs enjoy another tactical advantage, as they can fulfil the veto player role. With that position, they could stop institutions from forming policies according to the challenger norm. However, I have not found prove in the literature of the use of this advantage. This can be explained by the fact that the antipreneurs did not want to block the making of new policies, but rather wanted to promote a new law.

## Conclusion and discussion

This thesis answers the question ‘*How have norm antipreneurs attempted to influence Iraq’s Personal Status Law in 2014 with the making of the Ja’fari law that violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?*’. The main answer is that the Islamic Virtue Party, the norm antipreneur, has made a proposal to change the current secular Personal Status Law No 188 to Islamic law. The Ja’fari law would change legislation related to marriage, divorce, child custody and inheritance from secular to Sharia and would violate multiple women’s rights and children’s rights. This law was made by the Islamic Virtue Party and the members Hassan al-Shammari, Grand Ayatollah Muhammad al-Ya’qubi and Susan al-Saad played a big role in promoting it. It is striking that the law has received a lot of attention, while no evidence of the presence of other antipreneurs was found. The impact of the law was great, so I expected to find several antipreneurs. But none were found among religious groups and NGOs, which I will try to explain in the coming sections.

To answer exactly *how* norm antipreneurs have tried to promote the Ja’fari Law, I investigated whether the antipreneurs have used the strategic and tactical advantages that were described by Bloomfield (2016a). This led to notable results too. Prove of the use of all the benefits was not found: the antipreneurs did not make use of the veto-player role. The Islamic Virtue Party defended the status quo by stating people favour it because the challenger norm limits the freedom of religion. Besides, they drew attention the legality of the Ja’fari draft. According to Article 14, “Iraqis are free to abide by their personal status according to their religion...” (Abbas, 2014) and according to Article 2, paragraph c “no law may be enacted that contradicts the rights and basic freedoms outlined in this constitution” (Abbas, 2014).

In this research, the used data comes forth out of existing literature. This brings along multiple limitations.

Firstly, the language barrier makes it impossible to use Arabic and Kurdish Iraqi news items and articles, which can lead to missing data. Besides, the English sources I used are mostly created by Western scholars and media that have prejudices about the Middle East and create news items that fits Western ideas. By using these sources, it is possible that Western prejudices have influenced my investigation too and that thereby antipreneurs or advantages are not found. To minimize this effect, I tried to use as many English Iraqi sources and Arabic scholars as possible.

In addition, I have to base my results on internet sources and a book. Because it was not possible for me to travel to Iraq, I could not hold any interviews. Given that there is little freedom of the press in Iraq and that decision-making largely takes place behind the scenes, there is a chance that there are unknown norm antipreneurs that have exerted influence on the making of the Ja'fari law (Freedom House, 2018). To find as many antipreneurs as possible, I have used a high number of different sources. However, in order to get a complete picture of the creation of the draft, in-depth interviews should be held with policy makers.

Furthermore, the research is limited to the chosen categories. It is possible that there are more actors that have exerted influence on the Ja'fari law, in addition to political leaders and parties, religious groups and NGOs. However, to make this research feasible, I decided to search only for these three actors based on my expectations. Because of this it could be that other influential antipreneurs were present but not found.

That is why I recommend for future research to investigate the influence of norm antipreneurs on Ja'fari law through in-depth interviews with policy makers, or to add more categories of antipreneurs such as terrorist groups.

The concept of norm antipreneur is useful, since it can give structure to research. As Bloomfield states "... recognising a clear distinction between entrepreneurs and antipreneurs enables the construction of a spectrum of the various roles, which actors might assume in various classes of norm contestation processes" (Bloomfield, 2016a, p. 321). However, I agree with Sanders' (2018) criticism that it is not always clear who the antipreneur is and who the entrepreneur is. This is also the case with the Ja'fari law. I categorized the supporters of Islamic law as norm antipreneurs and seculars as entrepreneurs. This can change if you define the status quo differently. In this thesis I interpreted the status quo as the traditional idea that there should be Islamic law. However, if the status quo was defined as existing legislation, the roles would turn around. In that case, the entrepreneur wants to change the norm of a non-religious state to a challenger norm; an Islamic state with Sharia. The antipreneur protects the status quo, which would be the 1959 Personal Status Law. The examined case fits with Sanders idea that norm antipreneurs can undermine the status quo too. That is why she changed the term to 'norm spoilers' (Sanders, 2018, p. 272). It is important to realize this difference in conceptualization as it influences the use of benefits that antipreneurs have over entrepreneurs.

This is in line with Bob's (2016) criticism that the term 'antipreneur' places too much emphasis on the fact that one party is in favour and the other is against a norm. It puts

antipreneurs in a negative light. In the discussed case, Islamist antipreneurs are projected as ‘bad’ because they violate human rights, and the secularists are ‘good’ because they protect them. In this way, the concept builds on the Western pro-human rights norm and the thought that the human right norm is the ‘good’ challenger norm that replaces the ‘bad’ traditional norm. Bob recognizes this and explains that the division between antipreneur and entrepreneur is not always this clear and that they can use the same tactics. That is why he suggests more neutral terms like rival, contending or opposing networks.

In the future it would be interesting to investigate whether the results change when the concept to describe norm resisters changes from norm antipreneurs to, for example, norm spoilers or rival networks.

Previous research by Bloomfield (2016a) showed that norm antipreneurs enjoy certain strategic and tactical advantages over entrepreneurs. The puzzle that this research tried to solve is to what extent this theory is applicable to a situation where antipreneurs do not prevent the making of laws by entrepreneurs, but create laws themselves to protect the status quo. The results show that they did not make use of all the advantages. While Bloomfield states that the strategic and tactical advantages differ in every context, not all of the advantages can be found in this case. This can be explained in two ways.

First of all, I think there is a relationship between the extent to which the status quo is included in the existing legislation and the use of the benefits that Bloomfield describes. In Iraq the (partial) separation of religion and state was included in the legislation years ago, namely during the formation of the Personal Status Law in 1959 where Sharia courts were replaced by government-run personal status courts (Heinrich Böll Stiftung, 2014). It is therefore more difficult for norm antipreneurs to protect and promote the status quo and thus to make use of all the advantages Bloomfield presents. For example, there is a smaller chance that the veto-player role will be fulfilled when the challenger norm is already part of the legislation. Laws that are made by entrepreneurs could namely restrict the veto-right of the antipreneurs.

In addition, I also expect there to be a relationship between the cause of becoming a norm antipreneur and the use of the benefits. I agree with the aforementioned criticism from Clapton (2014) that Bloomfield’s (2016a) theory primarily focuses on what norm antipreneurs are doing and leaves out why they are doing it. In the case of the Ja’fari law there is, according to the literature, a clear reason for proposing the draft. The law was presented a few months before the elections in Iraq. The Islamic Virtue Party hoped that the making of the

draft would lead to more Shia votes, since the previous parliament had failed to implement important laws (Taher, 2013). This gave them an advantage too. The party knew that citizens were disappointed in the current parliament and wanted to take away voters from other Shia parties. That can explain why other Islamist parties voted in favour of the law in the council of ministers; they did not want to lose any voters right before the elections (Hamoudi, 2016, p. 342). I think that this cause of becoming a norm antipreneur, the upcoming elections, can also be a reason for not using all of the advantages. The party knew beforehand that the draft was not going to be accepted in parliament and did not need it to succeed after the elections. Therefore, it was not necessary to make use of all the advantages.

For further research, I propose to investigate whether there is a relation between the extent to which the norm is included in the existing legislation and the use of the strategic and tactical advantages or a relation between the underlying reason for becoming a norm antipreneur and the use of the advantages.

With this thesis, I hope to have contributed to the literature on norm antipreneurs. I found a gap in the existing literature: research on laws that are created by norm antipreneurs to protect the status quo. Although Bloomfield's (2016a) theory was tested multiple times, there was no research done on whether his theory is applicable on cases where the antipreneurs take initiative to create new legislation. That is why I investigated the Ja'fari law in this thesis. This raises several points of criticism about the application of the concept of 'norm antipreneurs' and about the theory of the advantages they enjoy.

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