

## 12 Religion, Gender, and Family Law

### Critical Perspectives on Integration for Western Muslims

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#### Introduction

For well over three decades, Muslim scholars and legal experts residing in the West and elsewhere have been engaged in a concerted effort to employ classical legal frameworks and principles to formulate religious rulings appropriate to the Western sociopolitical and cultural milieu. These scholars, in seeking to develop jurisprudence for minorities (*fiqh al-'aqalliyyat*), have generated a rich intellectual discourse on how religious laws can both reinforce civic belonging and adapt to meet the practical needs of Muslim-minority populations. For instance, there is broad consensus among such scholars that following the laws of the territory within which one resides is incumbent upon Muslims and that a parallel system of law is unnecessary and undesirable. In general, civil laws attempt to safeguard persons, life, property, family, and human dignity; hence, it is understood that civil codes, Western and otherwise, are roughly in line with the objectives of Muslim religious law.<sup>1</sup> Here, the underlying principle is that key aims of religious law, such as securing the rights of individuals within a family structure, can be secured through civil legislation. This is not to say that the integration of religious and civil norms is not without its particular challenges, both practical and theoretical,<sup>2</sup> but that integration is the most viable path forward.

Holding a collaborative conversation across identity borders on pressing social issues should engender a holistic and productive debate on the history and future of familial ethics and laws. Across Western jurisdictions, legislation related to the family cuts across many domains of the law, creating intricate webs of regulations and procedures spanning local, national, and transcontinental jurisdictions.<sup>3</sup> While the complexity is inherent, and while the current systems are roughly adequate, there is room for bureaucratic streamlining to improve expediency and efficacy. In particular, it should be a priority to close legal loopholes that

allow individuals with nefarious intentions to circumvent provisions that are otherwise aimed at securing the stability and financial support of dependant members of the family.<sup>4</sup> It should be seen as part and parcel of Western Muslim civic responsibility to be actively engaged in working toward the betterment of such institutional frameworks for securing justice.<sup>5</sup> Courts, community activists, religious authorities and community support networks must work in tandem to secure the interests of the disenfranchised and vulnerable;<sup>6</sup> this is the ultimate, shared aim.

#### DEBATES ON INTEGRATION

The applicability of Muslim family law in Western contexts has been a subject of vigorous debate on the part of lawyers, policymakers, academics, activists, and the general public for decades.<sup>7</sup> For instance, in the early 1990s, a Leiden-based conference entitled 'Religion and Emancipation of Ethnic Minorities in Western Europe' explored the legal rights of ethnic and religious minorities. Arguing for the strengthening of Muslim civic institutions and organizations, as well as for a greater understanding of the existing informal associations, scholars pointed out the various needs for institutional integration.<sup>8</sup> Scholars at the forum also argued for devoting greater attention to how stereotypes, anti-immigrant discrimination, prejudices and other structural dynamics hampers the vitality of ethnic minority and immigrant communities,<sup>9</sup> factors which remain relevant today. Within policy conferences and workshops, religion often takes centre stage; yet, for Muslim populations singled out as problematic or nonconforming, often the most pressing causes of social disintegration are poverty, unemployment, linguistic deficiencies, educational and professional barriers, and in some cases, naturalization policies; at their core, these issues have little to do with religious identity.<sup>10</sup>

Some Western commentators go to great lengths to argue that Western and Islamic values are at odds, for instance by citing gender violence in places such as post-revolutionary Iran and Afghanistan under the Taliban to illustrate misogynistic Muslim tendencies at large.<sup>11</sup> There is no doubt that such deliberate mischaracterizations and cultivated mistrust undermine genuine cooperation across ethnic and religious boundaries and represent an attempt to isolate individuals on the mere basis of their ethnic or religious identity. Indeed, public debates on the integration of religious and ethnic minorities are often characterized by neo-Orientalism or laden with xenophobic sentiments.<sup>12</sup> Yet, to be sure, debates on gender justice are rightfully an issue in terms of

the applicability of normative Muslim renditions of familial ethics, in Europe and beyond. Here, the broader socio-political context requires brief elaboration.

The rise of Islamism, which has led to Islamist governments in many Muslim-majority countries as well as fringe groups within some diaspora populations in Europe, has led to a chorus of resounding claims that religious law must be accommodated in the Western context.<sup>13</sup> Such a demand for full-scale adaption of Islamic law typically provides little in the way of an operational framework for determining which religious prescriptions are normative, and which are purely idiosyncratic interpretations of a particular grouping of Muslims that should not be imposed on Muslims at large. Similar to the dynamics within other sizeable religious communities, the matter of defining what norms and practices in fact constitute Islam can readily give rise to acrimonious debate.

Within this context, the conceptual domains of gender and family have functioned as jockeying sites where more deeply-ingrained ideological and postcolonial conflicts are played out. Within intra-Muslim discourses, the familial sphere is often portrayed as the fortress wherein religious identity and so-called traditional values must be protected against the advances of licentious Western capitalist exploitation of women, and various other tribulations.<sup>14</sup> Throughout the colonial era and beyond, the sphere of family and personal status law has been one arena in which classical Islamic legal thought has maintained considerable sway, a trend that is continuing today.<sup>15</sup> Hence, for vocal factions of Muslims, the sphere of family law is regarded as a fundamental stronghold for religious values, and any concessions to perceived Western influence therein are met with particularly vociferous resistance.

Nonetheless, numerous Muslim intellectuals have long been advocating for family law reforms with measurable successes.<sup>16</sup> While substantive changes in family law in Muslim-majority societies have been occurring at a modest pace since the early twentieth century, the most politically and socially repressive Muslim-majority countries are often taken by Western commentators to be *de facto* examples of applied Muslim family law. This overlooks the myriad of cases where indigenous women and men in majority-Muslim societies have been successful in instituting gender-egalitarian reforms;<sup>17</sup> it ignores the vibrant developments in the West itself;<sup>18</sup> and perhaps most strikingly, it neglects to account for how, in the not-so-distant past, women in Europe and beyond had to agitate for basic political and economic rights. Hence, arguing that Muslim women, as a homogeneous category, are somehow uniquely repressed due to Islam itself is misguided; gender-based

bigotries and asymmetrical power dynamics are not only pertinent to Muslims, but are central concerns on the agendas of gender activists and queer movements transnationally. A vast literature exists on this subject, and it is not necessary to reproduce it here.

Rather, we proceed with specific theoretical and practical examples of how European Muslims can integrate Muslim familial norms and customs within the civil legal sphere. We aim to forward critical and collaborative conversations by drawing on intellectual debates on these subjects over the past two decades. What is the precedent for Muslims to follow the 'law of the land' when residing in a non-majority Muslim jurisdiction? What specific measures allow for a marriage to be deemed legitimate within both a religious and civil framework? How can religiously-based conceptions of marriage adapt to present-day circumstances while retaining core moral values and ethical integrity?

In exploring such questions, we advance the following propositions: 1) rather than attempting to develop a parallel system for recognizing marriages and divorces, Western Muslims should devote their energy to strengthening existing civil legislation, to developing community support programmes, and to continuing conversations on the roles, rights, and expectations of spouses within an Islamic framework of mutual caring; 2) policymakers, community leaders, and religious authorities must work together to forward policies and enact procedures that allow for integration between religious and civil requirements; and 3) activists, religious and civil together, must work together to ensure that family support services can meet exigent demands without marginalizing the interests of women (or men). In this context, we argue that there are pressing needs to ensure that female community leadership opportunities are on par with those available to the male community, and that women's purviews and areas of expertise must be sought out and represented in a much more concerted fashion.

## **Continuity and Change in Muslim Notions of Family Rights and Responsibilities**

While grounded in more universal objectives, such as guarding human life and dignity, as well as protecting wealth, family, and property, Muslim religious laws have adapted according to a matrix of socio-political, cultural, and economic factors. The sphere of religious law is polyvocal, not only due to intra-Muslim diversity on matters of religious interpretation, but also due to the geographic expanse of Islamic empires, each with customary practices, administrative procedures, and other

idiosyncrasies influencing how law was developed and applied. The positive application of law was quite fluid, not only from one region to another, but also from one epoch to the next. Like legal systems the world over, methodology developed by formative scholars took into consideration factors such as prior precedents, exigent circumstances, and social welfare. Within this context, models for family relations developed by Muslim scholarly elites took account of a variety of sources, including scripture, prophetic dictates, dominant customs, perceptions of sexuality and gender, and so on. With all of the aforementioned variables at play, systems for the adjudication of family matters were not static; changing government structures, differing roles for religion in legal jurisdictions, shifting political ideologies, colonialism and its legacy, and particularly in recent times, the greater involvement of women in aspects of political and professional affairs, all have affected the character and range of applications of Muslim family law.<sup>19</sup>

Notwithstanding this plurality, there are several defining characteristics of Muslim family law, as originally worked out by the major interpretive schools of law and now as reinforced by influential factions in the contemporary religious establishment. In this particular account, we take marriage as the primary example, due to its centrality in the system of family law. Marriage in classical Muslim family law is not regarded as a sacrament, but rather as a civil contract of unique importance, due to its centrality as a fundamental organizing principle of society. As a contract, both parties may stipulate their own legally binding expectations and conditions for the arrangement, which if violated can nullify the marriage or otherwise be grounds for divorce. There are numerous gender-based prescriptions that became mainstays of the religiously sanctioned Muslim marriage. By contemporary standards, certain of these prescriptions etched out by medieval legal authorities and defended by an overwhelmingly male-dominated religious establishment are overtly chauvinistic and appear geared to maintaining a patriarchal social order. These include unilateral divorce rights for husbands, the presumption that men are *de facto* heads of households, and exclusively male rights to religiously sanctioned polyandry, within and beyond the framework of marriage.<sup>20</sup>

Yet, within this gender-based division of spousal rights and responsibilities, there are some clear benefits for women. Even early medieval Muslim discussions of family law go to great lengths to consider certain rights of wives, mothers, and children, particularly from a socioeconomic standpoint. For instance, wives entering into Islamic marriages retain independent finances and are not thought of as the property of husbands, and wives are owed a mutually agreed upon monetary or

symbolic marital gift to contribute toward their material security. The rights are not purely socioeconomic; wives possess notable legal rights to sexual and emotional satisfaction. There are even some provisions in classical law that could provide inspiration for contemporary women: a wife of a Muslim husband is not *a priori* religiously bound to perform domestic labour if this is not the social norm for her society or station. Under certain circumstances, it is legally possible that if she voluntarily performs such tasks, the husband may be compelled to compensate her monetarily for her labour. From another aspect, Muslim courts in different regions have long recognized a variety of reasons for wife-initiated judicial divorce, some of which bear resemblance to contemporary paradigms of 'no-fault' due to the irrevocable breakdown of the marriage. At the very least, wives had recourse to divorce in cases of a husband's protracted absence or in unfortunate cases where the husband caused marked physical harm to her person. Many other guidelines within family law can be argued to have the wellbeing of the wife as the underlying concern.

This is simply to argue that shari'a law need not be seen as inherently or utterly inimical to the interests of women. Guiding principles for Muslim marriage, and familial ethics more broadly speaking, are firmly vested in the promotion of families as cohesive social units that engender successful progeny and social stability. With this objective in mind, elites considered that the clear articulation of spousal rights and responsibilities would enable greater marital harmony. What contemporary perspectives sometimes interpret as gender inequality, classical authorities and their modern proponents read as a manifestation of justice. Perhaps both perspectives can coexist as a pragmatic compromise between ideological positions; while the institution of marriage has historically upheld a gendered division of marital rights and responsibilities, with a subtle adjustment of the distribution, the framework could be responsive to contemporary socioeconomic circumstances and customary norms.

For instance, within the traditional model of a Muslim family, as endorsed by a consensus of Muslim legal scholars and authorities since the formative period, husbands and fathers are given the sole financial responsibility for the maintenance of the family, including the provision of food, clothing, shelter, and other necessities. A woman's maintenance is theoretically provided for by her guardian until her marriage and her husband thereafter. Any belongings, earnings, and inheritance are entirely her own; she is not, in the theoretical formulation of the law, required to use her wealth or income for any of her basic needs or the needs of her children.

While full financial support can be seen as a women's perk within Islamic religious law, in times of increasing global financial insecurity and widespread unemployment, particularly among young adult populations, this model for family finances is no longer practicable or sustainable. A husband should not have to shoulder the financial, physical, and emotional burdens of supporting a family unilaterally. This is particularly true if his wife has a secure job and earns more than he does, a trend that may very well be on the rise. Here, rather than maintaining outdated frameworks that posit the husband as the sole breadwinner and hence authority, a paradigm of reciprocity is more appropriate. After all, it is a well-recognized principle in Islamic law that changing times necessitate changing measures, and this principle applies here. Well intended though they may be, classical gendered models for family finances must be reconsidered in light of current economic and social realities. There is no compelling reason to continue to buttress a gendered division of marital finances. Furthermore, if marital finances are no longer gendered, the principle of the man as the *de facto* head of the household becomes an appendage that serves little purpose and can be reengineered, given the current custom and exigent needs.

This is one cursory example of how principles of family law may be adjusted from within the framework of religion itself. For religiously committed Muslims, the process will require a sustained commitment to reasoned debate and deliberation.<sup>21</sup> As noted above, Muslim legal provisions have, in principle, strived to remain in touch with the particular characteristics, customs, and circumstances of local populations while also safeguarding more universal concerns for equity, security, and individual responsibility. The present is no exception. Yet, the scale and pace of this process of drawing from religious texts and traditions to inform contemporary realities have to keep pace with ever-growing populations and ever more sophisticated institutions and bureaucratic structures.

### Getting Married: Recommendations for Western Muslims

While the previous example of how to preserve continuity while adapting to circumstantial changes was more theoretically oriented, the following example is more practically geared. The goal of our prescriptions is to balance unity and uniformity with particularity; that is, we maintain the fundamental integrity of the civil framework for recognizing marriage while at the same time legitimize, and in fact advocate

for, several uniquely Muslim considerations for marriage. It is to the aspects of uniformity that we first turn.

To better protect the rights of spouses and children, Muslim leaders in the Western context, and particularly *imams*, to whom the task of performing marriage ceremonies is commonly given, should require their constituencies to register marriage contracts with Western civil authorities *before* a religious marriage ceremony is conducted.<sup>22</sup> The *de facto* authority for resolving disputes should be the civil jurisdiction. This standard should serve to integrate families wholly within the Western legal system to avoid complicated and unreliable recourse to international private law for the purposes of securing state-endowed rights or for the purposes of settling any disputes that could arise in Western civil courts. For couples married outside of the West but currently holding legal status within Western states, we recommend that marriages also be registered with civil authorities in the West, where possible. Domicile should be the primary standard, only to be supplemented with factors such as nationality and party autonomy when deemed necessary.<sup>23</sup>

At a basic level, registry could better ensure that adequate records are present in cases of dispute over marital finances, the paternity of children, or other such affairs. It would also ensure that Western civil courts recognize the marital union and can have the authority to dissolve the marriage if necessary. Furthermore, traditional religious frameworks for recognizing marriage are pluralistic, and at times the line between what counts as a valid marriage and what does not is ambiguous.<sup>24</sup> Setting the clear expectation that marriages be registered with civil authorities is one step in resolving such ambiguity. The fact that judges sitting on such courts may not be Muslim does not constitute a barrier. As long as the civil authority is known to be reliable and accurate in its records, and there is no evidence to the contrary, there is no compelling reason for Muslims not to rely on civil authorities. In this case, the purpose of having two upright witnesses is adequately fulfilled by the bureaucratic institution.

It merits noting that the support of civil institutions is not to envision that Western laws pertaining to the family are unadulterated, or are otherwise capable of surpassing or escaping the confusion and even rancour that can characterize family disputes; rather, it is to affirm that civil registry of a marriage in no way conflicts with any religious principle, and in fact, civil registry can effectively safeguard the rights of partners in the contract. It provides a more reliable and bureaucratically advanced framework than that which fledgling Western Muslim communities are able to offer at present. Muslim spouses could still

make recourse to religiously grounded family mediation and arbitration services to assist with the resolution of certain extrajudicial issues. We argue below that the availability, credibility, and resource-base of such services should be strengthened, but that they should not form a substitute for the civil registry of marriage and divorce, or the resolution of any disputes that require the involvement of civil authorities.

In the model that we are advocating, religious networks represent an important but auxiliary form of mediation. For the reasons stated above, the civil jurisdiction must have ultimate authority. There is no harm in having a religiously oriented commemoration of the marriage, but to avoid confusion and to protect the rights of all parties, as well as the rights of any potential children that could come from the union, such a ceremony should ideally be conducted only after the civil contract is filed. While we encourage Muslims to register marriages and divorces with civil authorities, we maintain that the Muslim notion of a marriage contract is a useful tool for couples to articulate their expectations for the marriage. The contract can specifically state that it is supplementary to the civil contract, and Muslim witnesses, two upright men or two upright women, can sign.<sup>25</sup>

For instance, traditional formulae for Muslim unions provide opportunities to recognize conditions and stipulations. While the stipulations and conditions specified may not have *de facto* legal value within the civil framework of the law, as they might within a purely religious court, civil courts may look into the conditions and stipulations of the religious contract to help discern the intent of the parties at the time of marriage, should a legal conflict arise. The contract offers an opportunity for the couple to develop and clearly document how they will approach the idiosyncrasies of their marriage: where will the couple reside? Will a spouse pursue higher education? There are a host of questions for consideration, on which a new couple should have the opportunity to reflect in an environment that can reinforce religious values in marriage, such as kindness, reciprocity, patience, forgiveness, and mutual support. Muslim communities should provide the framework for new and potential couples to consider such preliminaries. While polygamy is somewhat of a mute point for Muslims maintaining Western domicile, since Western laws clearly prohibit multiple marriage partners, nevertheless the marriage contract is also a forum where a wife can reiterate, if relevant, her expectation of a monogamous marriage.

The marriage contract traditionally functions as documentation of the *mahr*, the gift bestowed upon the wife by the husband, or otherwise promised to her.<sup>26</sup> In the Western context, if the gifts bestowed have a significant monetary value, documentation of the exchange with the

couple's signatures can be notarized to avoid later disagreements on the value of the gifts bestowed. For devout Muslims, key financial aspects of the marriage, namely the *nafaqa*, the obligation of the husband to provide a wife with financial support for housing, food, clothing, and other necessities, as well as *'idda*, the alimony paid by the husband during the period of marital disillusionment, remain a religious obligation which may or may not be deemed relevant in a civil court. We recommend that bank records be kept, if necessary, to prove that such sums were paid, should a legal need for proof arise. In short, financial settlements between the spouses in the event of a divorce should fall under the ultimate authority of civil jurisdictions, which are better equipped to enforce decisions equitably. In order to secure justice in such cases involving *mahr*, *nafaqa*, and *'idda*, Western courts should employ a comparative legal method and gender justice approach, the theoretical underpinnings of which have already been articulated.<sup>27</sup>

As the number of devout Muslims residing in the West rises, so too does the need for individuals with the appropriate religious training and background to make legal guidance and pastoral care readily available, not to mention the need for other social services that together form a more cohesive support structure for families.<sup>28</sup> As practitioners who have worked extensively at the community level on issues concerning the family, we cannot emphasize this point enough. It is not merely in the domain of law at the national level where conversations on this topic need to be occurring, but perhaps even more so, it is at the local level where needs are most pressing and interventions would be felt most directly. For instance, Western Muslim organizations should build their capacities in order to offer wider marital counselling services, led by teams of professionals with competence in religious matters, the behavioural sciences, and law.<sup>29</sup>

Providing such family support should not fall to the *imam* of a community, who is unlikely to have the professional training or resources necessary to meet the demand. Neither should such a task fall to an ad hoc tribunal, particularly not the kind that charges exorbitant fees for services. Finally, all-male councils risk marginalizing women's interests and are no longer acceptable according to modern standards. If it is not possible to find female members to sit on such councils – which would be highly unlikely – then female-specific training programmes should be an upmost priority. The goal should be to make readily available locally tailored, affordable, gender-balanced, professionally competent, non-binding family dispute mediation and arbitration services, as well as other holistic programmes aimed at strengthening families.<sup>30</sup> Drawing on the expertise of social scientists and community-based profes-

sionals with expertise working at the family level would be particularly valuable in this context.

## Conclusion

Societies the world over have been actively deriving mechanisms and procedures for secular laws and religious values to coexist for centuries, such that the case of contemporary Western Muslims is best understood as an unavoidable facet of cosmopolitan civic life, rather than a peculiar exception to it. That said, each society has its own political philosophies, legal structures, and cultural dynamics. Hence, our argument is not directed toward providing a singular, comprehensive model for the integration of religious values within largely secular systems; rather, we have provided recommendations, guided by current research and time-tested principles, for how Western Muslims and their partners can facilitate social and legal integration at the level of families. We firmly hold that advocating for norms drawn directly from pre-modern Muslim legal discourses, without a full consideration of their outcomes and effects in specific Western contexts, is entirely counterproductive.

Given the preceding discussions, the best path is to seek out continuity in aims between religious and civil law, and to work within existing systems to enhance their efficiency. As many Muslim-majority locals move towards even greater reform of their family and personal status law codes to reflect current transnational standards, it would be reasonable to expect that conversations engendered by Western Muslims and lawmakers would impact these wider deliberations. New models for Western Muslim familial ethics stand to add valuable insights to, and reap insights from, negotiations of this type that have long been taking place in Muslim-majority societies. Namely, strengthening organizations and community networks that cater to family support should be a high priority. Policy leaders need to continue to work across religious and national boundaries to establish best practices and forums for collaborative engagement. Western partners need to help craft systems of family dispute arbitration that are relevant to the needs and customs of local Muslim communities. Western Muslims and their partners can continue to work to forward a civic discourse that mitigates xenophobia and Islamophobia. So, too, investments of time, resources, and creative energies are needed from all parties to help institute holistic solutions for meeting the exigent needs of vulnerable populations.

## Notes

- 1 See the arguments of Tāhā Jābir Fayyād Alwānī, *Towards A Fiqh for Minorities: Some Basic Reflections*, London; Washington: International Institute of Islamic Thought, 2003.
- 2 For a detailed account thereof see Andrea Büchler, *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws*, Surrey, England; Burlington, VT: Ashgate, 2011; Julie MacFarlane, *Islamic Divorce in North America: A Shari'a Path in a Secular Society*, New York: Oxford University Press, 2012.
- 3 See Dieter Martiny, 'Is Unification of Family Law Feasible or Even Desirable?' in Arthur S. Hartkamp, Ewoud Hondius, Chantal Mak and Edgar du Perron (eds.), *Towards a European Civil Code*, Alphen a/d Rijn/London: Kluwer Law International BV, 2011, pp. 429-57.
- 4 On the incompetence of a handful of tribunals in the United Kingdom, see Irfan al-Alawi, Stephen S. Schwartz, Kamal Hasani, Veli Sirin, Daut Dauti and Qanta Ahmed, *A Guide to Shariah Law and Islamist Ideology in Western Europe, 2007-2009*, London: Center for Islamic Pluralism, 2009, pp. 44-49.
- 5 See related discussions in Andrew F. March, 'Sources of Moral Obligation to Non-Muslims in the "Jurisprudence of Muslim Minorities" (*Fiqh al-aqalliyyāt*) Discourse,' *Islamic Law & Society* 2009 (Vol. 16, No. 1), pp. 34-94.
- 6 For a model approach, see Marie-Claire Foblets, 'Migrant Women Caught between Islamic Family Law and Women's Rights: The Search for the Appropriate "Connecting Factor" in International Family Law,' *Maastricht Journal of European and Comparative Law*, 2000, (Vol. 7, No. 1), pp. 11-34.
- 7 See Jonathan Laurence, *The Emancipation of Europe's Muslims: The State's Role in Minority Integration*, Princeton, N.J.: Princeton University Press, 2012.
- 8 J.D.J. Waardenburg, 'Muslim Associations and Official Bodies in some European Countries,' and J.S. Nielsen, 'Muslim Organizations in Europe: Integration or Isolation?' in W.A.R. Shadid and P.S. van Koningsveld (eds.), *The Integration of Islam and Hinduism in Western Europe*, Kampen: Kok Pharos Publishing House, 1991, pp. 24-42 and 43-59.
- 9 See W.A.R. Shadid and P. S. van Koningsveld, 'Blaming the System or Blaming the Victim? Structural Barriers Facing Muslims in Western Europe,' in Shadid and van Koningsveld, *The Integration of Islam*, 1991, pp. 2-21.
- 10 M. Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges*, New Delhi: Global Media Publications, 2007, p. 15; see also J. S. Nielsen, *Muslims in Western Europe*, Edinburgh: Edinburgh University Press Ltd., 2004, 1st ed. 1992, pp. 101-104; and Jocelyne Cesari, 'Islamophobia in the West: A Comparison between Europe and the United States,' in John L. Esposito and Ibrahim Kalin (eds.), *Islamophobia: The Challenge of Pluralism in the 21st Century*, Oxford: Oxford University Press, 2011, pp. 11-24 and particularly pp. 25-27.
- 11 Sonya Fernandez, 'The Crusade over the Bodies of Women,' *Patterns of Prejudice*, 2009 (Vol. 43, Nos. 3-4), pp. 269-286.
- 12 For a detailed account, see Fatima El-Tayeb, *European Others: Queering Ethnicity in Postnational Europe*, Minneapolis: University of Minnesota Press, 2011.

- 13 Irfan al-Alawi *et al.*, *A Guide to Shariah Law and Islamist Ideology in Western Europe*, 2009.
- 14 For one regional analysis, see Gamze Çavdar, 'Islamist Moderation and the Resilience of Gender: Turkey's Persistent Paradox,' *Totalitarian Movements and Political Religions* 11, 2010 (Nos. 3-4). pp. 341-357, see especially pp. 348-350.
- 15 For an account of the codification and reform of Muslim family law codes with some comparison to the history of European family law codification, see Nielsen, *Muslims in Western Europe*, 2004, pp. 108-110.
- 16 Hanne Petersen, 'Women, Secular and Religious Laws and Traditions: Gendered Secularization, Gendering shari'a,' in Jørgen S. Nielsen, and Lisbet Christoffersen (eds.), *Sharia as Discourse: Legal Traditions and the Encounter with Europe*, Farnham, Surrey UK; Burlington, VT: Ashgate, 2009, pp. 77-88; see also related discussions in Margot Badran, *Feminism in Islam: Secular and religious convergences*, Oxford: Oneworld Publications, 2009.
- 17 See for example Yakaré Oulé-Jansen, 'Muslim Brides and the Ghost of Shari'a: Have the Recent Law Reforms in Egypt, Tunisia, and Morocco Improved Women's Position in Marriage and Divorce and Can Religious Moderates Bring Reform and Make it Stick?', *Northwestern Journal of International Human Rights*, 2007 (Vol. 5, No. 2), pp. 181-212.
- 18 For one example, see discussions in Robin Griffith-Jones, *Islam and English Law*, Cambridge: Cambridge University Press, 2013.
- 19 Frances Susan Hasso, *Consuming Desires: Family Crisis and the State in the Middle East*, Stanford, CA: Stanford University Press, 2011.
- 20 For an extended analysis, see Kecia Ali, *Marriage and Slavery in Early Islam*, Cambridge: Harvard University Press, 2010.
- 21 For an apt framework for engagement, see Tariq Ramadan, *Western Muslims and the Future of Islam*, Oxford; New York: Oxford University Press, 2004, particularly pp. 9-10, 51-55, 109-115. On the role of religious reason in the political process see Jeffery Stout, *Democracy and Tradition*, Princeton: Princeton University Press, 2004, pp. 63-91.
- 22 For an analysis of the opinions of leading European authorities for and against civil registry of marriages, see Vit Sisler, 'European Courts' Authority Contested? The Case of Marriage and Divorce Fatwas On-line,' *Masaryk University Journal of Law and Technology* 2009 (Vol. 3, No. 1), pp. 51-78. See also Bowen, *Can Islam be French?*, pp. 165-70.
- 23 On the pros and cons of the various approaches, see Marie-Claire Foblets, 'Migrant Women Caught between Islamic Family Law and Women's Rights, 2000, pp. 20-25.
- 24 For ethnographic examples, see Bowen, *Can Islam be French?*, pp. 157-165.
- 25 For a woman's witness carrying equal weight to that of a man, see Tāhā Jābir Fayyād Alwānī, 'The Testimony of Women in Islamic Law,' trans. Yusuf DeLorenzo, in *The American Journal of Islamic Social Sciences*, 1996 (Vol. 13, No. 2), pp. 173-96; see also Fadel, Mohammad, 'Two Women, One Man: Knowledge, Power and Gender in Medieval Sunni Legal Thought,' *International Journal of Middle East Studies* 1997 (Vol. 29, No. 2), pp. 185-204.

- 26 Substantial attention has already been devoted to this topic, see Rubya Mehdi and Jørgen S. Nielsen, *Embedding Mahr (Islamic Dower) in the European Legal System*, Portland: International Specialized Book Services, 2011. See also Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Translation*, Burlington, VT: Ashgate, 2012.
- 27 As detailed in Lene Løvdal, 'Mahr and Gender Equality in Private International Law: The Adjudication of Mahr in England, France, Norway and Sweden,' in *Embedding Mahr*, 2011, pp. 77-112.
- 28 Such discussions are already emerging at the community level, e.g. Aneesah and Zarinah Nadir, 'License to Wed: Muslim couples need to weigh legal issues entailed by married life,' *Islamic Horizons*, 2012 (Vol. 41, No. 1), pp. 55-54.
- 29 For one successful model see Mohamed Keshavjee, *The Ismaili Alternative Dispute Resolution Training Programmes and the Potential for New Directions in Mediation*, London: Institute for Ismaili Studies, 2007.
- 30 European courts should not be obligated to enforce the recommendations of such committees; however, expert testimony of such a gender-balanced and professionally competent committee could be valuable in some cases. See related discussion in Al-Alawi *et al.*, *A Guide to Shariah Law, 2007-2009*, p. 39.