

Challenges of Marriage in Islam: A View from Social Cultural Anthropology¹⁾

Priscilla Choi*

A non-Muslim might say that a picture of veiled Muslim women is often the icon of cultural estrangement or ‘the other’²⁾ in the twenty-first century. The purveyed message of veiled Muslim women is often interpreted as the inescapable vulnerability entrapped in the web of Islamic legal, religious, and cultural symbolism steeped with assumption about “the naturalness of male superiority.”³⁾ Still, others might say that Islamic modesty and virtue captured in women’s veils and robes are smeared with headlines of world news stories of isolation, segregation, inequality, or even violence against women. Certainly, it is not fair to caricature Islam superficially through media depictions. On the other hand, it is perhaps equally being unreasonable to romanticize Islam’s view of women as the answer to the moral demise and breakdown of the family in the Western world. To be sure, as Durkheim observes, male-dominated culture

* Torch Trinity Center for Islamic Studies Researcher

1)) The views presented in this article belong to the author and not necessarily those of the institution. Research made possible through the generosity of Claremont School of Theology Library Scholars Program

2) Edward W. Said, *Orientalism* (New York: Vintage Books, 1979/1978).

3) Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence* (Oxford: Oneworld, 2006), 33.

was part of Islam, but predates the seventh century because such was a general norm of societies where divisions of labor according to gender were commonly practiced.⁴⁾ Durkheim says, “religion is something eminently social [and] religious representations are collective representations which express collective realities.”⁵⁾ Since women were not active members of the public sphere in society, rules and practices of gender inequality can only be observed within the private sectors. Therefore, a helpful social cultural anthropological research that understands the status and dignity of women would seek to understand the structures that shape the private sector of today’s Muslim society, namely, marriage and the family.

Modern Islamic marriages stand in stark contrast to Western, if not non-Muslim, marriages that are practiced today. Indeed, a few Muslim communities negotiate and modify their traditional emphases in different degrees according to specific geographical locations. Still, certain essential categories of understanding and practice about marriage widely persist even among these diverse Muslim communities in the world at large. These essential categories intersect with Islamic legal structures, and therefore they are identified inevitably when they encounter conflict and need resolution with non-Muslim communities that employ secular juridical laws and standards. The aim of this paper is to present at least four essential categories which mark modern Islamic marriages as being clearly dissimilar from Western, if not non-Muslim or Christian, marriages. These four areas

4) William A. Haviland, Harald E. L. Prins, Dana Walrath, and Bunny McBride, *The Essence of Anthropology* (Belmont: Thomson Wadsworth, 2007); See also Harvey J. Sindima, *Major Issues in Islam: The Challenges Within and Without* (Lanham: Hamilton Books, 2018).

5) Émile Durkheim, *The Elementary Forms of the Religious Life*, trans. Joseph Ward Swain (London: Allen & Unwin, 1954), 10.

identified as being distinct to Muslim marriages are ‘marriage as a contract,’ ‘different kinds of marriages,’ ‘practice of polygamy,’ and ‘practice of divorce.’ Only a general view of Islamic marriage is represented throughout the paper due to the limited space. The omission of some practices within the diversity of Islamic legal schools does not imply that school-specific traditions can be overlooked. Since the purpose of this article is to observe the major distinctive differences between Islamic and Christian marriages, discussions of minor variations within different Islamic schools would be beyond the scope of this paper.

1. The Marriage Contract

Unlike non-Muslims who freely choose to singlehood or marriage, or Christians who see either marriage or celibacy as a call from God, all Muslims are expected to marry as a religious obligation.⁶⁾ Therefore, a good marriage for young Muslims is of utmost concern and often parents as well as members of the extended family are expected to get involved in matchmaking.⁷⁾ But more interestingly, the Islamic marriage is radically different from the Christian marriage in its definition: In Christianity,

6) Bahra Sherif-Trask, “Families in the Islamic Middle East,” in *Families in Global Multicultural Perspective*, ed. Bron B. Ingoldsby and Suzanna D. Smith, 2nd ed. (Thousand Oaks: Sage Publications, 2006), 236.

7) Extended Muslim family members can reach up 100 to 200 people in Afghanistan. Pia Karlsson Ami Mansory, *An Afghan Dilemma: Education, Gender, and Globalisation in an Islamic Context* (Stockholm: Stockholm University, 2007), 133; Sulafa Abou-Samra, “Family Life,” in *Modern Muslim Societies*, eds. Felicity Crowe, Jolyon Goddard, Ben Hollingum, Sally MacEachern, and Henry Russell (New York: Marshall Cavendish Corporations, 2011), 9-31.

marriage is understood essentially as a sacred covenant so that “every marriage is divinely ordained,”⁸⁾ even as Jesus said “therefore what God has joined together, let no man separate” (Mark 10:9).⁹⁾ Men and women are to leave their natal family to form the marriage bond in becoming one flesh.

For Islam, marriage, “*aql al-nikah* (literally, ‘contact of coitus)’¹⁰⁾ is essentially a contract (*aqd*)¹¹⁾ without divine involvement; even employing the language of “a sale (*bay*).”¹²⁾ Marriage is spoken as a legal “transaction of sales (*mu’amilat*), in spirit it crosses into realm of the spiritual and religious (*ibadat*).”¹³⁾ In other words, what turns a man and a woman into a husband and wife is a valid contract of sales.

For a marriage contract to be valid, it has to meet certain essential requirements.¹⁴⁾ For example, both the bride and the groom must have a sound mind and meet the minimum age

8) Bruce K. Waltke, *Genesis: A Commentary*, with Cathi J. Fredericks (Grand Rapids: Zondervan, 2001), 90.

9) English Standard Version (ESV) of the Bible is used throughout the paper.

10) Joseph Schacht, *An Introduction to Islamic Law* (New York: Clarendon Press, 1982), 161.

11) Shahla Haeri, “Divorce in Contemporary Iran: A Male Prerogative in Self-Will,” in *Islamic Family Law*, eds. Chibli Mallat and Jane Connors (London: Graham & Trotman Limited, 1993), 57.

12) Monika Lindbeck, “The Enforcement of Personal Status Law by Egyptian Courts,” in *Adjudicating Family Law in Muslim Courts*, ed. Elisa Giunchi (Oxon: Routledge, 2014), 90.

13) Ann Black, Houssein Esmaili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Cheltenham: EdwardElgar Publishing, 2013), 112.

14) Nathan B. Oman, “How to Judge *Shari’a* Contracts: A Guide to Islamic Marriage Agreements in American Courts,” *Utah Law Review* 2011:1 (2011), 302; All schools agree that the absolute minimum is - offer and acceptance. Shamreeza Riaz, “Shariah Perspective on Marriage Contract and Practice in Contemporary Muslim Societies,” *International Journal of Social Science and Humanity* 3:3 (2013), 263-267, <http://www.ijssh.org/papers/241-D10005.pdf>.

requirement for marriage. The contract must be signed and have a specific enumeration of a dower (*mahr*),¹⁵⁾ and be witnessed by a minimum of two people. The bare minimum requirement for a valid marriage contract is a bride's offer for a marriage made via a male guardian (*wali*) and the groom's acceptance must be completed in one contractual session.¹⁶⁾

With the payment of dower (*mahr*), a husband owns exclusive legal access to her "sexual and reproductive organ"¹⁷⁾ and gains the rights to control his wife's movement.¹⁸⁾ *Mahr* is not a husband's volunteer gift to his wife; rather, it is a legal financial obligation mentioned various times in the Quran (4:4; 4:24; 4:25; 5:5; 33:50; 60:10). This dower should not be confused

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- 15) Daila Perkumiene, "The Institution of Marriage in the Canon and Lithuanian Civil Law with Regard to the International Relations" (PhD diss., University of Ghent, 2014), 132.
- 16) Andreas Rahmatian, "Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzania Experience," *International Journal of Law, Policy and the Family* 10 (1996), 286; There are marriages to two categories of people that make marriage contracts automatically void in Islam. They are permanently and temporarily prohibited categories and Islamic jurists wrote in detail about them. People from permanently prohibited marriage categories are blood relations, prior marriage relations, and foster relations. Interestingly, however, cousin marriages are allowed in the Quran (33:50) and are still considered as a popular type of marriage among Muslims; See Aisha Musa, "Incest in Islam," in *Encyclopedia of Love in World Religions*, Vol. 1, A-I, ed. Yudit Kornberg Greenberg (Santa Barbara: ABC-CLIO, 2008), esp. 321.
- 17) Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 221. Reciprocal duties and rights of a father-child relationship are only permitted to the genetic father. M. Kabir Banu az-Zubair, "Who is a Parent? Parenthood in Islamic Ethics," *Journal of Medical Ethics* 33:10 (2007), 605-609.
- 18) Ziba Mir-Hosseini. "Hijab and Choice: Between Politics and Theology," in *Innovation in Islam: Traditions and Contributions*, ed. Mehran Kamrava (Berkeley: University of California Press, 2011), 193.

with a dowry, a bride-price that a groom pays to the bride's family.¹⁹⁾ Rather *mahr* is a Quran-mandated husband's gift to his wife alone.²⁰⁾ Simply put, marriage in Islam is not defined as being sacred; instead, it is "a contract for the purpose of legalizing sexual intercourse and the procreation of children."²¹⁾

In all schools of Islamic jurisprudence, marriage (*nikah*, literally, 'coitus'),²²⁾ is not considered as a *sacrament* but a "civil contract" between a man and a woman²³⁾ codified by Sharia.²⁴⁾ Since there is no covenant dimension in the Islamic marriage, only the Islamic law recognizes the union as marriage when a couple possesses a valid marriage contract in accordance to the rules of Islamic law. Moreover, this marriage contract is a reciprocal contract (*muawada*),²⁵⁾ whereby both parties provide specific terms and have mutual duties and rights for each spouse through the duration of the marriage, which usually contains terms of divorce.²⁶⁾

19) Ghada G. Qaisi, "Religious Marriage Contracts: Judicial Enforcement of *Mahr* Agreement in American Courts," *Journal of Law and Religion* 15:1 (2001), 70-71.

Alternative spellings: *mehr*, *mehere*, *mehrieh*

20) Qaisi, "Religious Marriage," 70-71.

21) Jamal J. Ahmad Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation*, 3rd. ed., rev. and upd. (Leiden: Brill, 2009), 31.

22) Richard C. Martin, "Nikah," *Encyclopedia of Islam and the Muslim World* (New York: Macmillian Reference USA, 2004), 509; Mir-Hosseini, "Hijab", 193.

23) *Nikah*, a legal marriage in Islam is between a man and a woman. Linda Rae Bennett, *Women, Islam and Modernity: Single Women, Sexuality and Reproductive Health in Contemporary Indonesia* (London: RoutledgeCurzon, 2005), 18; David Pearl and Werner Menski, *Muslim Family Law*, 3rd. ed. (London: Sweet & Maxwell Ltd., 1998), 139.

24) Robert Dannin, *Black Pilgrimage to Islam* (Oxford: Oxford University Press, 2002), 235.

25) Bettina Dennerlein, "Changing Conceptions of Marriage in Algerian Personal Status Law," in *Perspective on Islamic Law, Justice, and Society*, ed. R. S. Khare (Lanham: Rowman & Littlefield Publishers, 1999): 125.

26) Wesahl Domingo, "The Case of Recognition of Muslim Personal Law in South

Most Islamic schools of jurisprudence agree that just about any condition can be written and stipulated in the marriage contract as long as each item does not go against the Quran. For example, a wife cannot insert a prohibition clause against her husband's practice of polygamy, because the Quran permits it (Quran 4:3). One way to avoid this situation is available to the wife, however: if she states that her husband must first divorce her before getting into another marriage, this is a plausible solution that can effectively keep her from becoming one of the four possible wives without going against the Quran. But of course this way of circumventing the Quran's endorsement of polygamy is available to her only if she is the first wife. This is a valid negotiation in a marriage contract since she has not prevented him from his right to marry as many as four wives as written in the Quran (4:3).²⁷⁾

2. Different Types of Marriages

Most people know that Muslim marriages can be either monogamous, or polygamous. Although it is not well-known, both Sunni and Shia Muslims have *temporary* marriages and BBC News recently featured a lengthy three-part article on the subject.²⁸⁾ In fact, there are fifteen different types of 'temporary

Africa: Colonialism, Apartheid and Constitutional Democracy," in *The Sociology of Sharia: Case Studies from around the World*, eds. Adam Possamai, James T, Richardson, and Bryan S. Turner (Cham: Springer International Publishing, 2015), 179.

27) Shahla Haeri, *Law of Desire: Temporary marriages in Shi'i Iran*, rev. and ed. (Syracuse, NY: Syracuse University Press, 2014), 38.

28) Nawal al-Maghafi, "The Teenager Married too Many Times to Count," *BBC News*, October 4, 2019, https://www.bbc.co.uk/news/extra/iuKTEGjKgS/teenage_iraq_brides#group-The-courthouse-54K963nH9I.

marriages’ among the Sunni Muslims (*misyar*), while there is only one among the Shia Muslims (*muta*), as we shall see below. The temporary marriages can last literally from minutes to years and they dissolve automatically regardless if there was a spell out or verbally agreed upon a pre-determined expiry time or not.

It is also important to note that the word ‘permanent’ in what is called ‘permanent marriage’ should not be misconstrued in the Christian way, as if it means ‘lasting until death.’ In other words, ‘permanent marriages’ do not primarily express a temporal category, while ‘temporary marriages’ do. It begins the marriage with an intention to divorce. Rather, the word ‘permanent’ here means ‘having full-fledged legal benefits.’ That is to say, ‘a permanent marriage’ comes with all the usual benefits mentioned in the contract, albeit including divorce settlements. A ‘temporary marriage’ on the other hand begins the marriage with an explicit or an undisclosed set time limit and ends automatically without a divorce settlement.

The marriage contract discussed in the previous section was in reference to the ‘permanent marriages’ (*nikah*) only. All Islamic legal schools recognize *nikah* as the ‘permanent marriage’ and all other types of marriages to be temporary. The four main characteristics of Shia temporary marriages (*muta* in Arabic; *sigheh* in Persian) as opposed to ‘permanent marriages’ are (1) no monthly maintenance fees for the wife (*nafaqih*); (2) no provision of independent accommodation for the wife; (3) objective of marriage is pleasure not procreation; (4) marriage expiration date made explicit or is mutually understood.²⁹⁾ The Sunnis temporary marriages (*misyar*) are very similar to Shias for it differs only in the fourth characteristic. The Sunnis use “the legally non-binding [marriage] contract” where there is neither explicit nor pre-agreed marriage expiration date exists.³⁰⁾

29) Haeri, *Law of Desire*, 60.

The multiple types of marriages in Islam can be traced back to how Islam views human sexuality. Quran 2:223 blesses and encourages sexual intercourse within the boundaries of marriage,³¹⁾ and categorizes all other sexual activities as illicit sex, *zina*, a major sin.³²⁾ Thus, men and women are to fulfill their sexual urges, but only exclusively with the opposite sex, and within the marriage boundary, as determined by Islamic Law.³³⁾ The sexual sin is also a ‘social crime,’ because there is no separation of religion and the state in Islam: Allah rules both the visible and the invisible realms, i.e., “‘religion and state’ (*al-islam din wa-daula*) and ‘religion and world’ (*al-islam din wa-dunya*).”³⁴⁾ Subjected by Allah, therefore, Muslims have no choice but to “accept responsibility for the establishment of proper public order . . . [and] act as his vice-regents on earth ordering goods and forbidding wrong.”³⁵⁾ Muslims became guardians and enforcers of the Islamic Law—Sharia, or ‘The right path.’³⁶⁾

30) Cam McGrath, “Children on the Front Line: Underage Girls Are Egypt’s Summer Rentals,” *Inter Press Service News Agency*, August 5, 2013, <http://www.ipsnews.net/2013/08/underage-girls-are-egypts-summer-rentals/>; al-Maghafi, “The Teenager Married”.

31) Hina Azam, “Sex, Marriage, and Eroticism in Contemporary Islamic Advice Literature,” *Journal of Middle East Women’s Studies* 9:1 (2013), 72.

32) Major offenses “*hudud*” have fixed and mandatory punishments based on the Quran and *Sunna*.” Samar Habib, *Islam and Homosexuality*, v. 1 (Santa Barbara: Praeger, 2010), 209; Quran 24:2 instructs a punishment of 100 lashes for both the man and woman guilty of illicit sex (*zina*) in the witness of others Muslims.

33) Frances S. Hasso, *Consuming Desires: Family Crisis and the State in the Middle East* (Stanford: Stanford University Press, 2011).

34) Gudrum Krämer, “Islam and Secularization,” in *Secularization and the World Religions*, eds. Klaus Wiegandt and Joas Hans, trans. Alex Skinner (Liverpool: Liverpool University Press, 2009), 109.

35) David Waines, *An Introduction to Islam*, 2ed. (Cambridge: Cambridge University Press, 1995), 63.

36) Mohammad Hashim Kamali, “Law and Society: The Interplay of Revelation and Reason in the Shariah,” in *The Oxford History of Islam*, ed. John L. Esposito

The Sunnis and the Shias each have their own guidelines for temporary marriages. Perhaps Shia's temporary marriage (*nikah muta*) is made well known by Sunnis' vocal protest that it serves to cover up or legitimize prostitution. The temporary marriages were practiced by both Sunnis and Shias from the earlier days of Islam, tracing back to the daughter of Abu Bakr, the first Sunni caliph after Muhammad in the seventh century.³⁷⁾ At one point, however, the Sunnis changed their position and prohibited temporary marriages by arguing that a marriage cannot have a predetermined expiration date, and that the automatic dissolution of marriage is an indication that there never was a marriage at the start. Yet, the practice of temporary marriage among the Sunnis have never ceased.³⁸⁾ On the contrary, it has increased explosively and became clearly widespread in recent days.³⁹⁾

The Shias have labeled these temporary marriages as 'pleasure' (*muta*), while the Sunnis have it called 'ambulatory' (*misyar*), saying they were permitted by Sharia,⁴⁰⁾ and were part of the marriage practice in pre-Islamic era. For example, they claim that 'ambulatory marriage or travel marriage' was a common marriage practice among long distant traveling merchants. These 'travel' marriages increased up to 50% after the Islamic Jurisprudence Assembly in Mecca issued a *fatwa* which legalized these marriages in 2006.⁴¹⁾

(New York: Oxford University Press, 1999), 108.

37) Haeri, *Law of Desire*, 62.

38) *Ibid.*, 1.

39) Dawould el-Alami, "Marriage," in *Modern Muslim Societies*, eds. Felicity Crowe, Jolyon Goddard, Ben Hollingum, Sally MacEachern, and Henry Russell (New York: Marshall Cavendish Corporations, 2011), 49.

40) *Ibid.*, 37-57.

41) Sammy Z. Badran and Brian Turnbull, "Contemporary Temporary Marriage: A Blog-analysis of First-hand Experiences," *Journal of International Women's Studies* 20:2 (2019), 243, available at: <https://vc.bridgew.edu/jiws/vol20/iss2/17>

In addition, Sunnis have another type of popular temporary marriage called ‘customary’ (*urfi*) marriages. These are unregistered marriages, not recognized as legal, but not forbidden in Islam. Accordingly, couples in a ‘customary’ marriage are not guilty of having illicit sex. The ‘customary’ marriage gained such popularity in Egypt that a professor of Islamic Comparative Jurisprudence at Al-Azhar University, Ahmed Karima stated “most of Egyptians will be in jail . . . if *urfi* [‘customary’] marriages were to be criminalized.” He also added that “[t]here are more than fifteen types of this marital practice and for several reasons,” showing how practice of temporary marriages among the Sunnis is far from eliminated.⁴²⁾

The few different categories of ‘customary’ type of temporary marriages are presently available on various Middle Eastern and Gulf countries: They are called ‘lawful’ (*shari*), ‘summer holiday’ (*misyaf*), ‘station’ (*mahatta*), ‘friend marriage’ (*sawaj al-frind*), ‘travel’ (*misfar*), and ‘summer marriages’ (*zawaj al-sayf*).⁴³⁾ It is noteworthy that all types of temporary marriages have one thing in common: the husband is not required to inform his permanent wife about his temporary marriage(s).⁴⁴⁾ Temporary marriages are evolving along with the change in people’s lifestyles.

The increase of temporary marriages is not geographically limited. It travels with people: Shia’s temporary marriages almost

42) Egypt Today Staff, “Controversy Over New Proposed Law to Criminalize *Urfi* Marriage,” *Egypt Today*, August 21, 2018, <https://www.egypttoday.com/Article/2/56345/Controversy-over-new-proposed-law-to-criminalize-%E2%80%98urfi-marriage>.

43) Esther van Eijkk, *Family Law in Syria: Patriarchy, Pluralism and Personal Status Codes* (London: I.B. Tauris, 2016), 146.

44) Corinne Fortier, “Women and Men Put Islamic Law to Their Own Use: Monogamy versus Secret Marriage in Mauritania,” in *Marriage by Force?: Contestation over Consent and Coercion in Africa*, eds. Annie Bunting, Benjamin N. Lawrance, and Richard L. Roberts (Athens: Ohio University Press, 2016), 213-231.

exclusively practiced by Iranians are being practiced by Shia Afghanistan Muslims who returned from Iran, and Sunni Afghanistan Muslims are replicating it.⁴⁵⁾ Further, young descendants of Shia Muslims in UK are reviving temporary marriages as an alternative Islamic solution, a way to stay faithful to their religion while adapting to modernized Western lifestyle as well.⁴⁶⁾ Likewise, the ‘customary’ temporary marriage is gaining popularity in Egypt and Mauritania.⁴⁷⁾

The increase practice of temporary marriages involving young girls is part of the serious social concern, especially in locations where poor locals meet rich tourists like in upper Niles, Egypt. Temporary child marriages spike during the summer in Egypt, since many wealthy Middle Eastern men vacation there. A 25% of Egyptians live with less than US \$2 a day, and young girls are married off by her father through a broker for a day of ‘pleasure (*muta*) marriage’ for US \$115 or to a non-binding ‘summer (*misyar*) marriage’ for US \$2,800 to US \$10,000 which automatically terminates when this ‘husband’ returns back to his home country. These girls are most likely to be ‘married off’ again and again by her father for money. An officer of Egyptian government reports that some girls get married more than 60 times before they reach 18, the age of consent.⁴⁸⁾

The peril of ‘customary’ (*urfi*) temporary marriages occurs when women get pregnant and give birth, for there is no Islamic

45) Immigration and Refugee Board of Canada (IRB), *Afghanistan: Whether Seigha (Temporary Marriage) is Practiced in Afghanistan and by Which Groups*, by Research Directorate. IRB Document Number AFG104238.E (Canada, October 24, 2012), <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454214&pls=1>.

46) Shabnam Mahmood and Catrin Nye, “I Do... For Now. UK Muslims Revive Temporary Marriages,” *BBC News*, May 13, 2013, <https://www.bbc.com/news/uk-22354201>.

47) Fortier, “Women and Men,” 213-231.

48) McGrath, “Children on the Front Line”.

law or state that can be called upon to be on her side, because there never was any marriage. More under-aged young girls are expected to join temporary marriages due to worsening economic situation and laxity of regulating against child marriages in Egypt.

Finally, categories of people prohibited from temporary marriage are as follows: men with four wives, marriage to two sister, and idolaters. One noteworthy exception for these men is that they are allowed to marry Jewish and Christian women.⁴⁹⁾

3. Poligamy

Islam is well known for its practice of polygyny (a more precise description of polygamy where one man has more than one wife): “up to four wives” (Quran 4:3). However, not all Muslims engage in polygamous marriage; for example, two Islamic countries, Turkey and Tunisia outlawed polygyny in 1926 and 1956 respectively. However, in January of 2019, Tunisia women were demonstrating, demanding the government to decriminalize polygyny, because ‘spinsters’ (the old maids) were not able to get married.⁵⁰⁾ According to the National Office for Family and Population of Tunisia, the number of single women reached 2.25 million, which was 46% of the total of 4.9 million females in 2018.⁵¹⁾ In Egypt like in Tunisia, a pro-polygyny argument to solve “16 million” difficult to marry single women was presented during a polygamy debate on

49) el-Alami, “Marriage,” 42.

50) Terrance J. Mintner, “Tunisian and Egyptian Activists Call For Polygamy To Solve ‘Spinster Crisis,’” *The Medialine*, February 20, 2019, <https://themedialine.org/news/tunisian-egyptian-activists-call-for-polygamy-to-solve-spinster-crisis/>.

51) Ibid.

Al-Rahma Television in December 2018. Removal of existing polygyny restrictions⁵²⁾ was argued for to address “a ticking bomb” of “11 million spinsters . . . 4.5 million divorcees . . . and 5 million widows” in the country.⁵³⁾

Christianity understands that polygamy was tolerated in the Old Testament times, but only because of “the hardness of heart,” as Jesus explicitly teaches similarly on divorce (Matthew 19:1-12), and that it was never God’s original intention. This is seen clearly perceived in Genesis 2:24-25: “Therefore *a man* shall leave *his father* and *his mother* and hold fast to *his wife*, and they shall *become one flesh*. And *the man and his wife* were both naked and were not ashamed [*emphasis mine*].” The singular forms, ‘man’ . . . his father . . . his mother . . . wife’ show the family structure designed by God: One man has one wife and he is an offspring from the previous pair, a husband and a wife in marriage. Moreover, explicit prohibitions against polygyny are also given in the context of teaching against unlawful sexual relationships: “And you shall not take a woman as a rival wife to her sister, uncovering her nakedness while her sister is still alive” (Leviticus 18:18). In fact, even the king “shall not acquire many wives for himself, lest his heart turn away” (Deuteronomy 17:17). Both these passages imply that Israel

52) Current polygyny restrictions in Egypt: up to four wives and requires the first wife’s consent. Nathalie Bernard-Maugiron, “Courts and the Reform of Personal Status Law in Egypt: Judicial Divorce for Injury and Polygamy,” in *Adjudicating Family Law in Muslim Courts*, ed. Elisa Giunchi (New York: Routledge, 2014), 111-113.

53) A pro-polygyny debate on Al-Rahma TV (Egypt) featured Saber Ghanem (a pro-polygyny activist) and Islam Amer (the Head of the Marriage Officials Union of Egypt). “Egyptian TV Debate: Polygamy as a Solution to Egypt’s ‘Spinster Crisis,’” *Middle East Media Research Institute TV Monitor Project*, December 23, 2018, video (clip #6956) and transc., 2:08, <https://www.memri.org/tv/egyptian-debate-polygamy-solves-spinster-crisis>.

should turn from polygyny that was a part of the practice in pagan society.⁵⁴⁾

Polygyny toward male ascendancy is based on “a generic male superiority over women,”⁵⁵⁾ and seems to parallel the male-centered Arabian tribalism era. A patriarchal honor-shame system of pre-Islamic Arab tribalism made life easier for long-distance desert traveling merchants.⁵⁶⁾ Men could acquire new allegiances through multiple marriages and also buy as many wives as he could pay for his pleasure and divorce them at will.⁵⁷⁾

Pre-Islamic Arab was dominated by us-versus-them tribalism.⁵⁸⁾ Unlimited polygyny was the common marital arrangement, whereby women were purchased and sold, used as human shields during enemy attack, while new born baby girls were discarded as being useless.⁵⁹⁾ Moreover, pre-Islamic Arabs were polytheists who worshipped 360 idols – one god per day housed in the Kaaba, Mecca.⁶⁰⁾ Faced against already established Arab society, Islam carved out an image of their uniqueness as a way of survival by fostering thicker-than-blood sense of belonging.⁶¹⁾ Islam

54) Paul Copan, *Is God a Moral Monster? Making Sense of the Old Testament God* (Grand Rapids: Baker Books, 2011), 116-117.

55) Asma Afsaruddin, *Contemporary Issues in Islam* (Edinburgh: Edinburgh University Press, 2015), 100.

56) Carl Olson, *Religious Ways of Experiencing Life: A Global and Narrative Approach* (London: Routledge, 2016), 452-494.

57) Faryal Abbas Abdullah Sulaimani, “The Changing Position of Women in Arabia Under Islam During the Early Seventh Century” (master’s thesis, University of Salford, 1986), 17-39, <http://usir.salford.ac.uk/id/eprint/14814/1/361089.pdf>.

58) Margaret Laurence, *Heart of a Stranger*, ed. with and intro. Nora Foster Stovel (Edmonton: The University of Alberta Press, 2003). 180.

59) Moin Shaker, “Status of Women: Islamic View,” *Social Scientist* 4:7 (1976), 70-75.

60) Carol Bakhos, *Ishmael on the Border: Rabbinic Portrayals of the First Arab* (Albany: State University of New York Press, 2006), 174. A 360 days/year calendar was used.

61) Émile Durkheim, *The Division of Labor in Society*, intro. Lewis Coser, trans.

syncretized Jewish kosher lifestyles to distinguish themselves from Arabs, and added the Christian notion of the *imago dei* to eliminate ethnic discrimination. By borrowing these two ideas from Judaism and Christianity, and branding Islam to be ‘the best religion,’ Islam made the appeal and change of allegiance possible for Arab men within their collective worldview.⁶²⁾

The content of the message should be new, but not too alien, so that listeners could become aware of their ‘state of ignorance’ (*jahiliyyah*).⁶³⁾ The claim that “Islam is the best religion”⁶⁴⁾ in winning pre-Islamic Arabs had two messages: (1) Muhammad who came after Moses and Jesus was declared by Allah as the last Messenger to receive sacred Scriptures directly from him: Moses received the Torah, Jesus received the Bible, and Muhammad received the *Quran*;⁶⁵⁾ (2) An empowering message that each person has power to ‘save’ oneself from hell because Allah created everyone in the state of Muslim purity (*fitrah*). A guaranteed entrance to ‘eternally blissful Paradise’ was for everyone who reverted back to their original Muslim nature of purity (*fitrah*) by submitting to the will of Allah. Becoming a Muslim is through “doing” obligatory (*wajib*) acts and avoiding forbidden (*haram*) acts.⁶⁶⁾ A radical egalitarian

W. D. Halls (Houndmills: Macmillan, 1994/1984).

62) Eugene Webb, *Worldview and Mind: Religious Thought and Psychological Development* (Columbia: University of Missouri Press, 2009).

63) Halim Rane, “Human Rights in the Middle East: Frameworks, Goals, and Strategies,” In *Human Rights in the Middle East: Frameworks, Goals, and Strategies*, ed. Mahmood Monshipouri (New York: Palgrave Macmillan, 2011), 57-72.

64) Imen Gallala-Arndt, “The Impact of Religion in Interreligious Custody Disputes: Middle Eastern and Southeast Asian Approaches,” *The American Journal of Comparative Law* 63:4 (2015), 853.

65) Gordon Nickel, *Narratives of Tampering in the Earliest Commentaries on the Qur’ān* (Leiden: Brill Academic Publishers, 2011), 228.

66) Aron Hughes, *Muslim Identities: An Introduction to Islam* (New York: Columbia University Press, 2013), 137. Since there is no concept of “the original sin”

message of Islam visualized a faith-based ‘the imagine community’⁶⁷⁾ of Muslim believers, the *ummah* against fatalistic pre-Islamic Arabs whose hereditary-based social hierarchy was fixed by family blood-relations. Islam thereby offered a belonging to all regardless of one’s heritage, race, or gender.⁶⁸⁾

Many Islamic scholars often say how Islam addressed pre-existing gender inequalities in Arab traditions, significantly improved women’s status from pre-Islamic Arab society, prohibited infanticides of newborn girls, endowed property rights to women, allotted half of inheritance to that of men, and gave a bride-price for each wife.⁶⁹⁾ With all of this dramatically improved status of women, gender inequality, especially polygyny, was still legalized in the Quran (4:3). Successive legal interpretations of classical jurists did not deviate their exegesis from “up to four” wording in the Quran. What is usually not addressed when commenting about this “up to four wives” is how Muslim men can have unlimited temporary marriages at will. Wives from temporary marriages are called ‘concubines’ and so they are not counted in the “up to four wives” limit. Clearly, gender discrimination cannot be avoided since no women are permitted to have more than one husband. While Islam merely attempted to regulate unlimited polygyny, it was the Christian teaching which effectively erected laws to abolish polygyny in Western society.⁷⁰⁾

in the Quran, there is no need for an atoning redeemer to convert oneself in Islam like in Christianity. In Islam, everyone is born as a Muslim hence a non-Muslim only needs revert back to the pure Muslim state (*fitrah*) that everyone is born with: A reversion instead of a conversion.

67) Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983).

68) Durkheim, *The Division of Labor*.

69) Muhaemin Latif, “Islam and Feminism Theology,” *Journal of Islamic Civilization in Southeast Asia* 7:2 (2018), 291.

70) Majid Khadduri, “Marriage in Islamic Law: The Modernist Viewpoints,” *The*

What do current statistics from various non-Muslim countries report? Where polygyny is allowed 2-12% Muslim Arab men were found to be in a polygamous marriage, and 90% of them had two wives.⁷¹⁾ The actual number of polygamous marriage is most likely higher since national statistics collect only registered permanent marriages. Naturally, polygamous marriages present growing legal challenges to countries where only monogamy is

American Journal of Comparative Law 26:2, [Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah, February 24-25, 1977] (1978), 213, <https://www.jstor.org/stable/839669>. Systemic gender stratification is embedded in the marriage contract. For example, there are four gender unequal default settings in the marriage contract. For men only: Polygyny, unilateral triple repudiations (*talaq*), child custody, interfaith (Jewish and Christian) marriage; See Haeri, *Law of Desire*, 37. In page 30, Haeri explains that one owns everything of a purchased slave girl: She, her sexual organs, and products of her sexual organs. Quran contains explicit verses about the superiority of men over women and orders men how to deal with the inferior gender. The male superiority over women begins from the creation time where Allah gives authority to Adam, the first man, over angels (Quran 2:34) and puts men as appoints men to as his viceroys (Quran 2:30). Quran sets a model of male-gender superiority as Allah gives men the authority (Quran 2:228; 4:34) and guardianship (Quran 4:5) over women and directs men to carry out different types of disciplines for a husband to address wife's disobedience from giving advice "to strik[ing]"(Quran 4:34). Furthermore gender inequality is clearly set when Quran tells men to have double inheritance portion than women (Quran 4:11, 176); See Lamia Rustum Shehadeh, *The Idea of Women in Fundamentalist Islam* (Gainesville: University Press of Florida, 2003). Muhaemin Latif, "Islam and Feminism Theology," *Journal of Islamic Civilization in Southeast Asia* 7, no. 2 (2018): 291, observes: "In other words, there is no concept of equality between men and women [in Quran and] . . . in the tradition of classical Islamic theology." This conclusion should not come as any surprise since Islam came out of male-centered tribal Arab traditions and from the beginning Islam sought accommodation rather than transformation of an existing society; See Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, (Cambridge: Harvard University Press, 2008), 227.

71) Joseph Chamie, "Polygyny Among Arabs," *Population Studies* 40:1 (1986), 55-66.

legally acceptable. In addition to long-term Muslims residents who had settled in European Union (EU) countries after the oil crisis in 1974, more Muslim refugees are moving to EU countries since the European migrant crisis in 2015, when over 1 million refugees arrived.⁷²⁾ Muslims in Europe and other places are appealing to civil governments for special provisions to validate their marriage status, so that all of his wives can receive social benefits, such as family-union visas, national health care, social security, and so on.

France has the largest Muslim population in European Union with 5.7 million Muslims (2016 estimate) making up 8.8% of France's total population.⁷³⁾ France banned polygamy in 1993 with seven-years of prison term for violation. Yet, polygamy is still a problem among Muslim immigrants from the Northern Africa region and an estimate of 150,000–400,000 people secretly live in polygyny.⁷⁴⁾ In April 2019, an Algerian-born French naturalized citizen was accidentally discovered by the French government when one of his four wives received a moving violation ticket for driving an automobile with the full face-covering veil. The man claimed that he was not in a polygamous marriage, that he had one wife and three mistresses.⁷⁵⁾

Similarly, the UK also considers polygamy to be a crime that deserves 7 year prison term. There is an estimate of 20,000

72) Tom Miles, "EU Gets One Million Migrants in 2015, Smugglers Seen Making \$1 Billion," *Reuters*, December 22, 2015, <https://www.reuters.com/article/us-europe-migrants-idUSKBN0U50WI20151222>.

73) Conrad Hackett, "5 Facts About the Muslim Population in Europe," *PEW Research Center*, November 29, 2017, <https://www.pewresearch.org/fact-tank/2017/11/29/5-facts-about-the-muslim-population-in-europe/>.

74) Genevieve Oger, "France's Polygamy Problem," *DW Made for Minds*, July 31, 2005, <https://www.dw.com/en/frances-polygamy-problem/a-1664241>.

75) Lizzy Davies, "French Muslim in Polygamy Row Hits Out at Threat to Revoke Citizenship," *The Guardian*, April 26, 2010, <https://www.theguardian.com/world/2010/apr/26/france-muslim-polygamy-claim-row>.

people in polygamous marriages in their Muslim community, while online polygamy websites in France (muslima.com)⁷⁶⁾ and in the UK (secondwife.com) are set up as an alternative lifestyle, “responding to a ‘gap in the market’.”⁷⁷⁾

All European Union countries currently have three common legislation about marriage in all of their member states: (1) only a civil marriage registered with the state is recognized valid as a marriage; (2) a polygamous marriage conducted within EU territories is not valid, and is considered a crime in Switzerland, Germany, France, and England; (3) family unification is granted only to one wife.⁷⁸⁾

4. Divorce

Divorce is another area where institutionalized gender inequality is in a perpetual cycle of discrimination against women in Islamic societies. As we had seen a Christian marriage is a covenant of sacred bond of marriage instituted by God between the couple and God, not a mere contract or a promise between human beings by themselves. (Mark 10:2-8). To the question about legality of divorce: “Is it lawful for a man to divorce his wife?” Jesus teaches, “What therefore God has joined together,

76) “Find Your Muslim Life Partner,” Musilma, accessed August 18, 2019, <https://www.muslima.com/en/women/marriage/france/polygamy/that-accept-polygamy>.

77) Martin Coulter, “Website Designed to Help Muslim Men Find Second Wives ‘Should Be Shut Down’, Says Former Second Bride,” *Evening Standard*, October 29, 2017, <https://www.standard.co.uk/news/uk/website-designed-to-help-muslim-men-find-second-wives-should-be-shut-down-says-second-former-bride-a3667466.html>.

78) Andrea Büchler, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws* (Surrey: Ashgate, 2011).

let no man separate” (Mark 10:9). On the topic of divorce and remarriage, only three different cases are mentioned in the New Testament: First, Jesus taught that remarrying is committing adultery except when adultery was already committed by one’s spouse, which would permit a divorce (Matthew 5:23; 19:9). The second and third ground that permit divorce occur when an unbelieving spouse leaves (1 Corinthians 7:15) or dies (Romans 7:2-3).

In Islam, “marriage establishes a reciprocity system in which each party is assigned a set of contractual rights and conferred duty toward the other party.”⁷⁹⁾ Islamic laws have the power to legalize marriages and divorces based on *whatever those contracted terms of breaking the marriage had been agreed upon* at the beginning of their marriage. Thereafter, a confirmation of certificate of divorce allows a divorcee to remarry. On January 6, 2019 the Ministry of Justice of Saudi Arabia began sending divorce certificate numbers to women via SMS texts. According to the Saudi courts this was “a step aimed at protecting the rights of female clients” because previously, a wife, very often, was not even aware that her husband had divorced her.⁸⁰⁾

When marriages have troubles the Quran admonishes the husband and the wife to have an arbitrator representing either side in order to reconcile the differences and settle the dispute in peace (Quran 4:35). When reconciliation efforts fail, divorce is permitted as the sayings of Muhammad recorded in the Hadith: “Of all the things that are permitted, divorce is the most hated of [Allah].”⁸¹⁾ A divorce initiation right is conferred only to

79) Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Translation* (Surrey: Ashgate, 2010), 4.

80) Nada Altaher and Hilary Clarke, “Saudi Women to be Notified of Divorce by Text Message,” *CNN: Middle East*, January 7, 2019, <https://edition.cnn.com/2019/01/06/middleeast/saudi-divorce-text-intl/index.html>.

81) el-Alami, “Marriage,” 37-57.

men via the triple pronouncements of divorce called the *talaq*.⁸²⁾ Quran provides three types of divorce pronouncements: repudiation (*talaq*); mutual divorce (*khul*); and at-fault divorce (*faskh*).⁸³⁾ All divorces are final after completing four months and ten days of waiting period. The most popular type of Muslim divorce is most likely *talaq* – the unilateral divorce right of the husband after triple pronouncement of “I repudiate you” statement. *Talaq* repudiation is “socially disapproved of and religious frowned upon, divorce is a divine right of the husband . . . that cannot be infringed upon”⁸⁴⁾ (Quran 2:226-237). The entire 12 verses in chapter 65 titled Divorce (*al-Talaq*) in the Quran as well as Muhammad lays out rules of repudiation.⁸⁵⁾ Triple *talaq* makes the process of divorce immediate and his wife enters the waiting period.

In mutual (*khul*) divorce a wife negotiate her terms of her divorce with her husband. A divorce process is initiated by wife as she approaches her husband with an offer to pay for the divorce. Divorce is only possible if her husband agrees with the terms of divorce. A wife usually offers to return the dower, the marriage gift (*mahr*) or waive the right to receive the remaining balance of her dower.

The third type, at-fault (*faskh*) divorce is an extremely difficult divorce to obtain. It is a fault-based divorce option available for the wife to supply sufficient proof of her claims against her husband. Unlike mutual divorce—that can be paid with dower,

82) Domingo, “The Case,” 175-198. A wife can use *talaq* divorce only if her husband had delegated *talaq* to her (*talaq-al-tafwid*) in the marriage contract or make it legal during the marriage.

83) Ibid., 175-198.

84) Haeri, *Law of Desire*, 42.

85) Abdul Jalil Bin Haji Hassan, “The Influence of the Shafi’I Scholl of Muslim Law on Marriages and Divorce in the Malay Peninsula, with Special Reference to the State of Trengganu” (PhD diss., University of Saint Andrews, 1969), 217-229, <https://research-repository.st-andrews.ac.uk/handle/10023/2748>.

the wife keeps the dower.⁸⁶)

All three types of divorces: *talaq*; *khul*; and *faskh* require a waiting period (*iddah*) of four months and ten days for the divorce to be effective (Quran 2:234-235). The waiting period is the confirmation time needed to learn that the wife is not pregnant. A certificate of divorce is issued when the waiting period ends. The husband is required to pay the wife's maintenance fee during the waiting period.

An Islamic divorce process discriminates against women not only because returning the dower is unexpected, but the husband often demand even more than the dower amount, placing undue financial burden. Moreover, at-fault divorce requires the wife to produce indisputable proofs before the court that she has been wronged by her husband. Although Sharia is theoretically supposed to provide the wife to terminate the marriage in either mutual or at-fault divorce cases, financial burden and the difficulty of providing evidences make them realistically out of her reach.

A concrete instance of how the Islamic marriage in a non-Muslim country creates further injustice to Muslim women can be illustrated even with a simple case of conflict in cultural values in England. Since the large number of Muslim from colonies of India immigrated in the eighteenth century, Muslims had continued their presence in England. As of 2011, there were over 3.3 million Muslims living in the UK, comprising 5.2% of the total population. The UK recognizes only state registered civil marriages as legal. This means that religious marriages, such as Islamic marriages (*nikah* marriage) are not recognized as valid under the English Law. Muslims with only *nikah* marriages performed in England are not in a

86) Asifa Quraishi-Landes, "A Meditation on *Mahr*, Modernity, and Muslim Marriage Contract Law," in *Feminism, Law and Religion*, eds. Marie A. Fallinger, Elizabeth R. Schiltz, and Susan J. Stabile (London: Routledge, 2016), 177.

husband-and-wife conjugal relationship, but are counted as a cohabiting couple. Consequently, the English family law cannot protect a Muslim women's rights as a divorcee, if she was merely married according to *nikah*, i.e., without registration. On the other hand, the same law can protect her cohabiter's rights. Despite the lack of access to legal action, perhaps suffering the consequence of a divorce, on-going national campaign for UK Muslims to register their *nikah* marriage with civil authorities remains very low. Up to 75-80% of UK Muslims still skip registering their *nikah* marriages.⁸⁷⁾ A study revealed two reasons for the low registration of *nikah* marriages within UK: The first is a lack of trust that English judges are familiar with Sharia to judge their case fairly. The second has to do with Muslims' honor-and-shame culture. Muslims want to protect their honor rather than appear in court, preferring to settle disputes outside the courtroom.⁸⁸⁾ Muslims living in England for over three centuries still prefer to regulate their legal affairs governed by Sharia in their most intimate personal realm, the family.

5. Conclusion

It is perhaps true that Islam was able to improve the condition of life that included a better regard and treatment of women previously abused in the Arab world before the seventh century.

87) Harriet Sherwood, "Islam: Most Women in UK Who Have Islamic Wedding Miss Out on Legal Rights," *The Guardian*, November 2, 2017, <https://www.theguardian.com/world/2017/nov/20/women-uk-islamic-wedding-legal-rights-civil-ceremony-marriage>

88) Islam Uddin, "Nikah-only Marriages: Causes, Motivation, and Their Impact on Dispute Resolution and Islamic Divorce Processing in England and Wales," *Oxford Journal of Law and Religion* 7:3 (2018), 401-426.

It is also true that some Islamic communities have debated and wrestled with the issues that were traditionally authorized yet directly in conflict with the modern concerns to nurture health in the family. At the same time, research seems to indicate that certain realities of discrimination and injustice persist in Islamic communities when those four essential categories for understanding marriage and its practice reveal the grossly undermined status of women. These four areas ('marriage as a contract,' 'different kinds of marriages,' 'practice of polygamy,' and 'practice of divorce') were phenomenologically identified because they would invariably surface whenever intense marriage conflicts bring them to the courtroom, especially in non-Muslim societies; but it also appears that these will not go unnoticed, because in some sense they are the parameters of revealing what defines a marriage essentially and foundationally.

<주제어>

이슬람교 결혼, 혼인계약, 임시결혼, 복혼, 이혼

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References

- Abou-Samra, Sulafa, "Family Life," In *Modern Muslim Societies*, eds. Felicity Crowe, Jolyon Goddard, Ben Hollingum, Sally MacEachern, and Henry Russell, New York: Marshall Cavendish Corporations, 2011, 9-31.
- Afsaruddin, Asma, *Contemporary Issues in Islam*, Edinburgh: Edinburgh University Press, 2015.
- Ali, Kecia, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*, Oxford: Oneworld, 2006.
- al-Maghafi, Nawal, "The Teenager Married too Many Times to Count," *BBC News*, October 4, 2019, https://www.bbc.co.uk/news/extra/iuKTEGjKgS/teenage_iraq_brides#group-The-court-house-54K963
- Altaher Nada, and Hilary Clarke, "Saudi Women to be Notified of Divorce by Text Message" *CNN: Middle East*, January 7, 2019, <https://edition.cnn.com/2019/01/06/middleeast/saudi-divorce-text-intl/index.html.nH9I>.
- Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983.
- An-Na'im, Abdullahi Ahmed, *Islam and the Secular State: Negotiating the Future of Shari'a*, Cambridge: Harvard University Press, 2008.
- Azam, Hina, "Sex, Marriage, and Eroticism in Contemporary Islamic Advice Literature," *Journal of Middle East Women's Studies* 9:1 (2013), 54-80.
- Badran, Sammy Z., and Brian Turnbull, "Contemporary Temporary Marriage: A Blog-analysis of First-hand Experiences," *Journal of International Women's Studies* 20:2 (2009), 241-256, <https://vc.bridgew.edu/jiws/vol20/iss2/17>.
- Banu az-Zubair, M. Kabir, "Who is a Parent? Parenthood in Islamic Ethics,"

- Journal of Medical Ethics* 33:10 (2007), 605-609.
- Bakhos, Carol, *Ishmael on the Border: Rabbinic Portrayals of the First Arab*, Albany: State University of New York Press, 2006.
- Bennett, Linda Rae, *Women, Islam and Modernity: Single Women, Sexuality and Reproductive Health in Contemporary Indonesia*, London: RoutledgeCurzon, 2005.
- Bernard-Maugiron, Nathalie, "Courts and the Reform of Personal Status Law in Egypt: Judicial Divorce for Injury and Polygamy," In *Adjudicating Family Law in Muslim Courts*, Edited by Elisa Giunchi, New York: Routledge, 2014, 106-120.
- Black, Ann, Houssein Esmaili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law*, Cheltenham: EdwardElgar Publishing, 2013.
- Büchler, Andrea, *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*, Surrey: Ashgate, 2011.
- Chamie, Joseph, "Polygyny Among Arabs," *Population Studies* 40:1 (1986), 55-66.
- Copan, Paul, *Is God a Moral Monster? Making Sense of the Old Testament God*, Grand Rapids: Baker Books, 2011.
- Coulson, Noel J., *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1964.
- Coulter, Martin, "Website Designed to Help Muslim Men Find Second Wives 'Should Be Shut Down', Says Former Second Bride," *Evening Standard*, October 29, 2017, <https://www.standard.co.uk/news/uk/website-designed-to-help-muslim-men-find-second-wives-should-be-shut-down-says-second-former-bride-a3667466.html>.
- Dannin, Robert, *Black Pilgrimage to Islam*, Oxford: Oxford University Press, 2002.
- Davies, Lizzy, "French Muslim in Polygamy Row Hits Out at Threat to Revoke Citizenship," *The Guardian*, April 26, 2010, <https://www>.

theguardian.com/world/2010/apr/26/france-muslim-polygamy-claim-row.

Dennerlein, Bettina, "Changing Conceptions of Marriage in Algerian Personal Status Law," In *Perspective on Islamic Law, Justice, and Society*, Edited by R. S. Khare, Lanham: Rowman & Littlefield Publishers, 1999, 123-141.

Domingo, Wesahl, "The Case of Recognition of Muslim Personal Law in South Africa: Colonialism, Apartheid and Constitutional Democracy," In *The Sociology of Sharia: Case Studies from around the World*, Edited by Adam Possamai, James T, Richardson, and Bryan S. Turner, Cham: Springer International Publishing, 2015, 175-198.

Durkheim, Émile, *The Elementary Forms of the Religious Life*, Translated by Joseph Ward Swain, London: Allen & Unwin, 1954.

_____, *The Division of Labor in Society*, Introduction by Lewis Coser, Translation by W. D. Halls, Houndmills: Macmillan, 1994/1984.

Egypt Today Staff, "Controversy Over New Proposed Law to Criminalize *Urfi* Marriage," *Egypt Today*, August 21, 2018, <https://www.egypttoday.com/Article/2/56345/Controversy-over-new-proposed-law-to-criminalize-%E2%80%98urfi-marriage>.

el-Alami, Dawould, "Marriage," In *Modern Muslim Societies*, Edited by Felicity Crowe, Jolyon Goddard, Ben Hollingum, Sally MacEachern, and Henry Russell, New York: Marshall Cavendish Corporations, 2011, 37-57.

Fortier, Corinne, "Women and Men Put Islamic Law to Their Own Use: Monogamy versus Secret Marriage in Mauritania," In *Marriage by Force?: Contestation over Consent and Coercion in Africa*, Edited by Annie Bunting, Benjamin N. Lawrance, and Richard L. Roberts, Athens: Ohio University Press, 2016, 213-231.

Fournier, Pascale, *Muslim Marriage in Western Courts: Lost in Translation*,

- Surrey: Ashgate, 2010.
- Gallala-Arndt, Imen, "The Impact of Religion in Interreligious Custody Disputes: Middle Eastern and Southeast Asian Approaches," *The American Journal of Comparative Law* 63:4 (2015), 829-858. <https://www.jstor.org/stable/26425442>.
- Habib, Samar, *Islam and Homosexuality*, Vol. 1, Santa Barbara: Praeger, 2010.
- Hackett, Conrad, "5 Facts About the Muslim Population in Europe," *PEW Research Center*, November 29, 2017, <https://www.pewresearch.org/fact-tank/2017/11/29/5-facts-about-the-muslim-population-in-europe/>.
- Haeri, Shahla, "Divorce in Contemporary Iran: A Male Prerogative in Self-Will," In *Islamic Family Law*, Edited by Chibli Mallat and Jane Connors, London: Graham & Trotman Limited, 1993, 55-70.
- _____, *Law of Desire: Temporary marriages in Shi'i Iran*, Revised and edited, Syracuse: Syracuse University Press, 2014.
- Hassan, Abdul Jalil Bin Haji, "The Influence of the Shafi'i School of Muslim Law on Marriages and Divorce in the Malay Peninsula, with Special Reference to the State of Trengganu," PhD diss, University of Saint Andrews, St. Andrews, 1969, <https://research-repository.st-andrews.ac.uk/handle/10023/2748>.
- Hasso, Frances S., *Consuming Desires: Family Crisis and the State in the Middle East*, Stanford: Stanford University Press, 2011.
- Haviland, William A., Harald E. L. Prins, Dana Walrath, and Bunny McBride, *The Essence of Anthropology*, Belmont: Thomson Wadsworth, 2007.
- Hughes, Aaron W., *Muslim Identities: An Introduction to Islam*, New York: Columbia University Press, 2013.
- Immigration and Refugee Board of Canada (IRB), *Afghanistan: Whether Seigha (Temporary Marriage) is Practiced in Afghanistan and by*

- Which Groups*, by Research Directorate, IRB Document Number AFG104238.E, Canada, October 24, 2012, <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454214&p1s=1>.
- Kamali, Mohammad Hashim, "Law and Society: The Interplay of Revelation and Reason in the *Shariah*," In *The Oxford History of Islam*, Edited by John L. Esposito, New York: Oxford University Press, 1999, 107-154.
- Khadduri, Majid, "Marriage in Islamic Law: The Modernist Viewpoints," *The American Journal of Comparative Law* 26:2, Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah, February 24-25, 1977. (Spring 1978), 213-218. <https://www.jstor.org/stable/839669>.
- Krämer, Gudrum, "Islam and Secularization," In *Secularization and the World Religions*, Edited by Klaus Wiegandt and Joas Hans, Translated by Alex Skinner, Liverpool: Liverpool University Press, 2016, 108-121.
- Latif, Muhaemin, "Islam and Feminism Theology," *Journal of Islamic Civilization in Southeast Asia* 7:2 (2018), 288-313.
- Laurence, Margaret, *Heart of a Stranger*, Edited with and Introduction by Nora Foster Stovel, Edmonton: The University of Alberta Press, 2003.
- Lindbeckk, Monika, "The Enforcement of Personal Status Law by Egyptian Courts," In *Adjudicating Family Law in Muslim Courts*, Edited by Elisa Giunchi, Oxon: Routledge, 2014, 87-105.
- Mahmood, Shabnam and Catrin Nye, "I Do... For Now. UK Muslims Revive Temporary Marriages," *BBC News*, May 13, 2013, <https://www.bbc.com/news/uk-22354201>.
- Mansory, Pia Karlsson Ami, *An Afghan Dilemma: Education, Gender, and Globalisation in an Islamic Context*, Stockholm: Stockholm

- University, 2007.
- Martin, Richard C., "Nikah," *Encyclopedia of Islam and the Muslim World*, New York: Macmillan Reference USA, 2004, 509.
- McGrath, Cam, "Children on the Front Line: Underage Girls Are Egypt's Summer Rentals," *Inter Press Service News Agency*, August 5, 2013. <http://www.ipsnews.net/2013/08/underage-girls-are-egypts-summer-rentals/>.
- Middle East Media Research Institute TV Monitor Project*, "Egyptian TV Debate: Polygamy as a Solution to Egypt's 'Spinster Crisis,'" December 23, 2018, Video (clip #6956) and Transcript, 2:08, <https://www.memri.org/tv/egyptian-debate-polygamy-solves-spinster-crisis>.
- Miles, Tom, "EU Gets One Million Migrants in 2015, Smugglers Seen Making \$1 Billion," *Reuters*, December 22, 2015, <https://www.reuters.com/article/us-europe-migrants-idUSKBN0U50WI20151222>.
- Mintner, Terrance J., "Tunisian and Egyptian Activists Call For Polygamy To Solve 'Spinster Crisis,'" *The Medialine*, February 20, 2019, <https://themedialine.org/news/tunisian-egyptian-activists-call-for-polygamy-to-solve-spinster-crisis/>.
- Mir-Hosseini, Ziba, "Hijab and Choice: Between Politics and Theology," In *Innovation in Islam: Traditions and contributions*, Edited by Mehran Kamrava, Berkeley: University of California Press, 2011, 190-212.
- Musa, Aisha, "Incest in Islam," In *Encyclopedia of Love in World Religions*, Vol. 1, A-I, Edited by Yudit Kornberg Greenberg, Santa Barbara: ABC-CLIO, 2008, 321.
- Muslima, "Find Your Muslim Life Partner," Accessed August 18, 2019, <https://www.muslima.com/en/women/marriage/france/polygamy/that-accept-polygamy>.

- Nasir, Jamal J. Ahmad, *The Status of Women under Islamic Law and Modern Islamic Legislation*, 3rd. edition, Revised and updated, Leiden: Brill, 2009.
- Nickel, Gordon, *Narratives of Tampering in the Earliest Commentaries on the Qur'ān*, Leiden: Brill Academic Publishers, 2011.
- Oger, Genevieve, "France's Polygamy Problem," *DW Made for Minds*, July 31, 2005, <https://www.dw.com/en/frances-polygamy-problem/a-1664241>.
- Olson, Carl, *Religious Ways of Experiencing Life: A Global and Narrative Approach*, London: Routledge, 2016.
- Oman, Nathan B., "How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts," *Utah Law Review* 2011:1 (2011), 287-334.
- Pearl, David and Werner Menski, *Muslim Family Law*, 3rd. edition, London: Sweet & Maxwell Ltd., 1998.
- Perkumiene, Daila, "The Institution of Marriage in the Canon and Lithuanian Civil Law with Regard to the International Relations," PhD diss., University of Ghent, 2014.
- Qaisi, Ghada G., "Religious Marriage Contracts: Judicial Enforcement of *Mahr* Agreement in American Courts," *Journal of Law and Religion* 15:1 (2001), 67-82.
- Quraishi-Landes, Asifa, "A Meditation on *Mahr*, Modernity, and Muslim Marriage Contract Law," In *Feminism, Law and Religion*, Edited by Marie A. Fallinger, Elizabeth R. Schiltz, and Susan J. Stabile, London: Routledge, 2016, 173-195.
- Rahmatian, Andreas, "Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzania Experience," *International Journal of Law, Policy and the Family* 10, (1996), 281-231.
- Rane, Halim, "Human Rights in the Middle East: Frameworks, Goals, and

- Strategies,” In *Human Rights in the Middle East: Frameworks, Goals, and Strategies*, Edited by Mahmood Monshipouri, New York: Palgrave Macmillan, 2011, 57-72.
- Riaz, Shamreeza, “Shariah Perspective on Marriage Contract and Practice in Contemporary Muslim Societies,” *International Journal of Social Science and Humanity* 3:3 (2013), 263-267. <http://www.ijssh.org/papers/241-D10005.pdf>.
- Said, Edward W., *Orientalism*, New York: Vintage Books, 1979/1978.
- Schacht, Joseph, *An Introduction to Islamic Law*, New York: Clarendon Press, 1982.
- Shakir, Moin, “Status of Women: Islamic View,” *Social Scientist* 4:7 (1976), 70-75.
- Shehadeh, Lamia Rustum, *The Idea of Women in Fundamentalist Islam*, Gainesville: University Press of Florida, 2003.
- Sherif-Trask, Bahra, “Families in the Islamic Middle East,” In *Families in Global Multicultural Perspective*, Edited by Bron B. Ingoldsby and Suzanna D. Smith, 2nd. edition, Thousand Oaks: Sage Publications, 2006, 231-246.
- Sherwood, Harriet, “Islam: Most Women in UK Who Have Islamic Wedding Miss Out on Legal Rights,” *The Guardian*, November 2, 2017, <https://www.theguardian.com/world/2017/nov/20/women-uk-islamic-wedding-legal-rights-civil-ceremony-marriage>.
- Sindima, Harvey J., *Major Issues in Islam: The Challenges Within and Without*, Lanham: Hamilton Books, 2018.
- Sulaimani, Faryal Abbas Abdullah, “The Changing Position of Women in Arabia Under Islam During the Early Seventh Century,” Master’s thesis, University of Salford, Manchester, 1986, <http://usir.salford.ac.uk/id/eprint/14814/1/361089.pdf>.
- Uddin, Islam, “Nikah-only Marriages: Causes, Motivation, and Their Impact on Dispute Resolution and Islamic Divorce Processing in

England and Wales,” *Oxford Journal of Law and Religion* 7:3 (2018), 401-426.

van Eijkk, Esther, *Family Law in Syria: Patriarchy, Pluralism and Personal Status Code*, London: I.B. Tauris, 2016.

Waines, David, *An Introduction to Islam*, 2nd. edition, Cambridge: Cambridge University Press, 1995.

Waltke, Bruce K., *Genesis: A Commentary*, With Cathi J. Fredericks, Grand Rapids: Zondervan, 2001.

Webb, Eugene, *Worldview and Mind: Religious Thought and Psychological Development*, Columbia: University of Missouri Press, 2009.

<초록>

사회문화인류학적 관점에서 바라 본 이슬람교 결혼의 문제

Dr. Priscilla Choi
(헛볼트리니티 한국이슬람연구소)

오늘날 이슬람교의 결혼에 관한 문헌은 더 이상 희귀한 것이 아니다. 이는 연구주제를 일부다처제에 관한 무슬림 혼인전통의 발전으로 한정하는 경우에도 마찬가지이며, 남편이 보유한 일방적인 이혼권(*talaq*)에 관한 분쟁에 대해서도 다양한 논의가 진행되었다. 하지만 흥미롭게도 ‘임시결혼’과 관련해서는, 그것이 이슬람의 오래된 혼인전통임에도 불구하고, 매춘을 합법적으로 은폐하기 위한 것으로 알려진 시아파의 악명높은 ‘임시결혼’(*muta nikah*) 관행에 초점을 맞춘 일단의 연구를 제외하면 다양한 문헌연구가 집적되지 못한 현실이다. 수니파에서 지속되고 있는 ‘임시결혼’(*misyar nikah*) 관행에 관한 연구는 더욱 희귀하며, 그나마 최근에서야 BBC등과 같은 비무슬림 대중매체로부터 관심을 받게 된 정도이다.

“결혼이란 무엇인가”라는 질문은 근본적으로 누가 결혼이라는 제도를 지배할 수 있는 권한을 보유하고 있는지에 대해서 묻는 것이다. 결혼은 그리스도인에게 있어서는 성사(sacrament)이지만, 무슬림에게 있어서는 민사계약(civil contract)에 해당한다. 기독교인의 결혼관은 보통 “죽음이 우리를 갈라 놓을 때까지”라는 결혼서약을 통해서 표현되는 남편과 아내 사이의 신성한 연합(sacred union)으로서, 이는 하나님 앞에서 그리고 하나님과 맺은 언약으로서의 결혼이라는 관계를 지켜나가겠다는 약속을 의미한다. 반면 이슬람교에서의 결혼은 언약(covenant)이라기 보다는 일종의 민사계약 개념으로서 부부생활의 의무를 강화시켜 줄 수 있는 결혼의 종교적 측면을 현저히

약화시켜버린다.

이 논문은 현대 이슬람교와 기독교 상호간에 특징적으로 구별되는 결혼에 관한 최소 4가지 범주의 주요 사상을 제시하는 것을 목적으로 한다. 첫 번째 범주는 결혼의 기본 개념에 대해서 기독교와 이슬람교에 어떠한 차이가 있는지를 비교하는데 주안점을 두고 있다. 축약하면 이슬람교는 결혼을 민사계약으로 분류한 결과로서 기본적인 성 편견적 구조와 지침을 잔존시키는 동시에, 혼인에 대한 책임을 부여하기 보다는 오히려 부정의를 영속화하고 있다. 그밖에 본 논문이 다루고 있는 또 다른 3가지 범주의 사상은 ‘다른 종류의 결혼제도’, ‘복혼관행’, ‘이혼관행’으로서, 최근 이에 관한 내용은 비무슬림 사회규범 및 법리연구를 통해서 확인되고 있다.

<Abstract>

Challenges of Marriage in Islam: A View from Social Cultural Anthropology

Dr. Priscilla Choi

(Torch Trinity Center for Islamic Studies Researcher)

There is no shortage of literature on marriage in Islam, even when the subject matter is narrowed down to the development of Muslim marriage traditions on polygamy. A multiplicity of discussion also exists on disputes repudiation about the husband's unilateral rights of divorce (*talaq*). Interestingly, not much literature is found on the topic of 'temporary marriages' despite its long-standing traditions within Islam, except for some studies focusing on the Shia's infamous practice of 'temporary marriages' (*muta nikah*) known to cover-up legalized prostitution. Even less research seems to be available on the Sunni's practice of 'temporary marriages' (*misyar nikah*) which have persisted nevertheless. Only very recently Sunni's *misyar* began receiving attention from non-Muslim public media sources as the BBC.

The question 'What is marriage?' is fundamentally asking who has the authority to govern the institution. While marriage is a sacrament for Christians, it is a civil contract for Muslims. The Christian idea of marriage as a sacred union between husband and wife is commonly expressed in the wedding vow, 'until death do us apart,' promises to keep the marriage bond as a covenant with and before God. The Islamic idea of marriage as a civil contract, rather than as a covenant, significantly weakens the religious dimension of marriage that would strengthen the marital duty.

This article aims to present at least four essential categories of ideas about marriage which are particularly dissimilar between modern Islam and Christianity. The first category is brought to a focus by comparing how Christianity and Islam differ on the basic idea of marriage.

The consequence of labeling marriage as a civil contract, while retaining the basic gender-biased structure and guideline, perpetuates injustice, rather than provide accountability. The last three areas have also been recently identified through non-Muslim societal norms and jurisprudence: ‘different kinds of marriages,’ ‘practice of polygamy,’ and ‘practice of divorce.’