Contextualizing Muslim Religious-Only Marriages

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This special issue focuses on Muslim religious-only marriages, which are marriages not recognized by state authorities but which at least one of the parties involved considers religiously valid. The practice of informal religious marriages has manifested in different parts of the world, and such marriages have become a topic of debate and intervention. In a tripartite dynamic, state authorities are involved in attempts to regulate or criminalize religious-only marriages, religious actors play a variety of roles, and the couples involved are left to navigate an increasingly controversial field. This special issue explores these issues in detail by investigating the interactions among state authorities, religious actors, and the couples themselves, and the motivations of each in their engagement with the others.

The contributions to this special issue were, with one exception, presented at the two-day symposium *Unregistered Muslim Marriages—Regulations and Contestations*. This symposium was organized by Rajnaara Akhtar and Annelies Moors and held in April 2017 at the De Montfort University in Leicester, in conjunction with the University of Amsterdam.[1] All of the papers are based on well-grounded empirical research. The authors employ a variety of methods, from participant observation, informal conversations, and semi-structured interviews to discourse analysis of texts and images and social media use. They have worked with different interlocutors, including state actors, religious authorities of various standing and persuasions, NGOs, and ordinary Muslims involved in these marriages. Research has been conducted both in Muslim-majority settings (Malaysia, Tunisia, and Jordan) as well as in countries where Muslims are a religious minority (Norway, England, and the Netherlands), in states that have developed a diverse range of policies on Muslim religious-only marriages, and with Muslim constituencies that differ both in terms of ethnic and national backgrounds and with respect to the nature of their religious commitment.

Taken together, the six contributions include the perspectives of a wide variety of interlocutors. Annelies Moors, Martijn de Koning, and Vanessa Vroon-Najem investigate the media hype about the further criminalization of Muslim religious-only marriages in the Netherlands, discussing the positions taken by religious authority figures in public debate, and presenting the perspectives of female converts who enter into polygamous marriages. Anja Bredal worked with policy makers and mosque administrators in Norway and discusses their position on the double-track (civil and religious) system of marriage authorization in that jurisdiction. Rehana Parveen researched the files of a Sharia Council in Birmingham and analyzes the perspectives of women of Pakistani-British background about their experiences with religious and civil marriage and divorce. Eva Nisa investigated motivations for religious-only marriages among Indonesian migrant workers in Malaysia as well as the points of view of Malaysian and Indonesian religious authorities on these marriages. Dina Zbeidy, who carried out research in Wihdat camp in Jordan, examines both marriages that are concluded at a very early stage in relationships among Palestinians and Muslim religious-only marriages among Syrians, contrasting the perspectives of developmental non-governmental organizations (NGOs) with those of people engaging in these practices. Iris Kolman undertook anthropological fieldwork in Tunis to discover why a small number of people opt for cohabitation rather than for either a religious-only marriage or a state-registered marriage. From these six case studies, four themes emerge that we briefly discuss below: the state regulation of religion and marriage, the problematization of Muslim religious-only marriages, the interventions of religious authority figures, and the perspectives of those involved in these marriages.

1   State Regulation of Religion and Marriage

The emergence of the modern nation-state has engendered particular forms of regulation of religion and marriage. The *idea* of secular governance starts from the separation of religion and state, of the private and the public, and the relegation of religion to the private sphere. However, in practice there is no such separation. Rather, secular rule is a form of governance that regulates the religious field (Asad 2003). State authorities do not only categorize some forms of religion as more acceptable and other forms as less acceptable or even beyond the pale of what may be tolerated, but also define what acts can be considered as constituting the field of religion (Brown 2006; Fernando 2014).

In a similar vein, marriage is not a private affair, but an important field where such regulation operates. Central to the organization and control of sexuality and procreation, it produces kinship, regulates fatherhood and descent, organizes domestic economies of labour and care, and functions as a means for the transfer of wealth. This indicates that marriage is central to the production, reproduction, and transformation of families, ethnicities, religious groups, nations, and other social formations (Franklin and McKinnon 2000; Young et al. 1981). As marriage is such a crucial institution, it should then not come as a surprise that a wide variety of actors has a strong interest in how marriages are concluded (Hasso 2011).

Both in Muslim-majority settings and in countries where Muslims are a religious minority, state authorities actively engage in the regulation of marriages. In the former, the push toward the registration of marriages needs to be seen within the context of the codification of family or personal status law that has been accompanied by legal reforms restructuring family relations and by the bureaucratization of the court system and social life more generally. The assumption that family law is the last stronghold of *sharia'* overlooks the fact that even in countries where Islamic concepts are central to the substance of the law, these concepts and the concomitant styles of legal reasoning have been incorporated in and hence transformed through these new formats and authority structures (Bowen 2003; Moors 2003). For instance, the position of judges changes fundamentally once they need to work with codified law and are incorporated into a hierarchical state-controlled court system.

The impact of these processes is evident in the shifting meaning of the term *'urfi* ('customary') marriages. Whereas until the emergence of nation-states many marriages were labelled as *'urfi* in the sense of being socially recognized but not state registered, this has changed in the course of the 20th century. States have not only started to require the formal registration of marriages but have also been rather successful in pushing their subjects to do so, often through bureaucratic means such as requiring registration to establish fatherhood, citizenship, and nationality (Zbeidy, this issue), and hence for access to services, such as education (Nisa, this issue). This has not only turned *'urfi* marriage from the norm into a marginalized and transgressive practice, but it has also shifted the meaning of this term. Contemporary *'urfi* marriages have often gained the connotation of secrecy. They are seen as marriages that are purposely not registered because they need to remain hidden for particular publics. The extent to which they have become a topic of debate and even, at times, have been turned into a moral panic, depends largely on from whom they are hidden. *'Urfi* marriages that are concluded without the knowledge of

parents are considered as far more problematic than those that are only to remain outside of the gaze of the state (Moors 2013; Sonneveld 2012).

In Europe, debates about Muslim religious-only marriages have become entangled with the ways in which states attempt to regulate religion and to manage Islam. In some countries religious marriages have no legal effects, yet concluding a religious marriage prior to a civil marriage is considered illegal (such as in the Netherlands, Belgium, France, and also in Turkey) (Moors et al., this issue). In other settings, such as the Nordic countries, state authorities work with dual-track systems. With a separation between the civil and the religious ceremony, a legally valid marriage can be officiated by either a civil or a religious institution, provided the latter is authorized by the state to perform a marriage (Bredal, this issue). Usually it is the celebrant who needs to fulfill certain requirements in order to be approved by the state. In England and Wales, in contrast, it is also the location (building) that needs official approval (Parveen, this issue).

In many European countries there were, and sometimes still are, strong traces of the dominance of a Christian past in marriage regulations. This is evident in the preferential treatment for certain religious traditions, such as Roman-Catholicism in Italy (Sona forthcoming) and Malta (Sadegh and Zammit, forthcoming), the Anglican church in England and Wales (Parveen, this issue), and the Lutheran church in Norway (Bredal, this issue). Some elements are also visible in the substance of civil marriage, such as, for instance, in restrictions on divorce.

2   Turning Religious-Only Marriages into a Problem-Space

The above indicates that Muslim religious-only marriages have not always been a problem; for long stretches of time such marriages either were the norm or remained invisible and tolerated. Our argument is that rather than simply appearing as a problem in need of regulation, these marriages have been turned into problems that require state intervention. Building on the Foucauldian notion of problematization, we consider the production of particular issues as a problem as part and parcel of the process of governing (Bacchi 2015). But not only state authorities at different levels—be it local or national authorities, security services, or child protection officers—take part in this process of problematization. Others also have a stake in these debates about religious-only marriages and attempt to claim a position of authority. Religious authorities, feminist organizations, other developmental NGOs, or activists of various persuasions, as well as on- and offline media producers all play an active role

in turning religion into a public issue (Moors, this issue; Nisa, this issue; Zbeidy, this issue). One general observation is that in the process Muslim religious-only marriages often become associated with other undesirable or even prohibited forms of marriage, such as under-age marriages, polygamous marriages, and, in Europe, cousin marriage, all of which are, at times, subsumed under the category 'forced marriages' (De Koning et al. 2014, Moors and Vroon-Najem forthcoming).

If concerns generally center on sexuality and religion, there are substantial differences between Muslim-majority countries and those settings where Muslims are a minority. In the former, a major concern of state authorities is that family structures and hence the social fabric of society will fall apart if sexual relationships outside of marriage would become acceptable. Even in the few countries where such relations are not legally censured, such as in Tunisia, authorities, such as the police, use other means to pose obstacles to cohabiting couples (Kolman, this issue; Voorhoeve 2014). One major concern centers on the children born in such unions, as in most Muslim-majority countries establishing fatherhood is very difficult if marriages are not state-registered. This then would engender major problems for the claims to citizenship and nationality of the children concerned (Nisa, this issue; Zbeidy, this issue).

In Europe, on the other hand, the problematization and even criminalization of Muslim religious-only marriages by state authorities needs to be seen in the context of growing anti-Islam sentiments, the strengthening of ethnonationalist movements, and the turn, also among mainstream political parties, toward more assimilationist integration policies. Under such conditions it is the fact that a Muslim religious-only marriage is a *Muslim* practice that turns it into a suspicious act that undermines liberal secular values, such as gender equality. The politicization of Muslim religious-only marriage does not only produce a growing distrust of 'things Islamic,' but also contributes to the production of an increasingly homogeneous national identity.

3   Interventions of Religious Authority Figures

There is no simple answer to the question as to what turns a marriage into a Muslim marriage. There is a wide range of opinions about a host of issues. Who should be the parties concluding the marriage? Can the bride do this without the presence and approval of her marriage guardian? What are the minimum requirements for publicity? Are two witnesses sufficient or does there need to be a public wedding? What happens if the dower is not mentioned in the marriage contract? Does that make the marriage invalid, or does it oblige the

groom to pay the average amount for 'those equal to her'? And is a temporary marriage Islamically valid? There are also disagreements as to when a Muslim marriage is concluded (Mir-Hosseini 1994; Welchman 2007). Is the decisive moment when the marriage contract is signed, when it has been registered with state authorities, or when a public wedding has been held (Zbeidy, this issue)?

As mentioned previously, the emergence of the nation-state has engendered a heightened interest in the management of religion. One question that always emerges in debates about religious-only marriages centers on the interaction between state authorities and religious authority figures. Are religious authorities, especially when incorporated in state institutions, first and foremost representing the state and taking part in 'managing Muslims' or do they function as representatives of 'the Muslim community' to the state? This then evokes further questions. Which communities are represented? How are the voices heard of those who are marginalized within these communities? How are women represented in conventionally male-centered authority structures?

Relations between state agents and religious authorities vary, depending on such factors as the forms of state governance and the kinds of Islamic traditions present. In Muslim-majority countries, personal status has become codified, and Islamic institutions, such as muftis and judges at religious courts, have become part of the state apparatus and incorporated into hierarchical structures. Still, religious authority figures, even those employed by the state, may claim some autonomy from other state institutions. While highlighting the need to register a marriage with the state, they simultaneously may be very hesitant to declare Muslim religious-only marriages as void.

Legal formats, the substance of the law, and its implementation differ considerably between Muslim-majority countries (Welchman 2007). Syrians in Jordan are, for instance, struck by the much stronger emphasis in Jordan on the obligation to register marriages, compared to the situation in Syria where confirmation of marriage is considerably easier (Zbeidy, this issue). Although in Tunisia there is no legal prohibition of cohabitation, police and other authorities are nonetheless convinced of its illegality (and act accordingly) as cohabitation stands in such tense relation with the dominant normative order (Kolman, this issue; also Voorhoeve 2014). In Indonesia and Malaysia religious authorities use both ethical and pragmatic lines of reasoning to enable the official confirmation of Muslim religious-only marriages of Indonesian migrants in Malaysia (Nisa, this issue).

Many European states, where Muslims are a religious minority, have attempted to set up governmental bodies that can represent Muslim communities (Bowen 2016). Large mosques are often still linked to particular migrant

constituencies that maintain links with the country of origin, as has been re-ported for Turkish-Dutch and Moroccan-Dutch Muslims (Sunier et al. 2016) and Pakistani-British Muslims (Bowen 2016). Next to such 'ethnic mosques,' there are also mosques affiliated to particular Islamic traditions such as those close to the Muslim Brotherhood or with a *salafi*-orientation, with sermons conducted in the vernacular. These mosques often cater to younger Muslims with a variety of ethnic backgrounds (Parveen, this issue).

In spite of differences in forms of secular rule (see Bowen 2011), we gener-ally witness a shift toward greater control of state institutions over the pub-lic presence of Islam and, with the securitization of Islam, an increased state surveillance of mosques and religious functionaries. The organizations invited by state institutions to represent the Muslim community are often the larger mainstream ones. Their leaders, in turn, strive to have a say in government attempts to regulate Islamic practices and are careful not to be too critical of state policy. This is evident in the support of major Dutch mosques—including some that are close to the Muslim brotherhood—for the criminalization of Muslim religious-only marriages (Moors et al., this issue).

In addition to questions about the circumstances in which religious mar-riages should be recognized, there is also a debate as to whether civil marriages may themselves be Islamically valid. This position has already been accepted by some French Islamic authority figures as well as by the European Council for Fatwa and Research (Bowen 2011). A similar argument has been made in the Netherlands by a wide range of Islamic authority figures. The administrators of some of the main mosques in Norway have even gone further in that they actually refuse to conclude a separate Muslim marriage contract (Bredal, this issue). This may turn out to be harmful for women, especially for those with a strong religious commitment. Including the delegation of the right to divorce as a condition in the Muslim marriage contract would enable them to obtain an Islamic divorce, also if the husband is unwilling to cooperate.

4   The Perspectives of the Parties' Concerns

Next to the association of Muslim religious-only marriages with forced mar-riages, there is also a tendency to frame these marriages in terms of a narrative of unscrupulous men who trick naïve young women into a sexual relationship, making them believe that they are entering into a serious Muslim marriage and then leaving them after a few weeks or months. Whereas it is possible to find Muslim marriages that follow such a script, many of them are in fact consen-sual and at least intended as longer-term projects. This is the case for female

converts in the Netherlands who enter into polygamous marriages (Moors et al., this issue), Indonesian migrant workers in Malaysia (Nisa, this issue), and Pakistani-British women in Manchester (Parveen, this issue), as well as, in a different format, for the women who cohabit in Tunis (Kolman, this issue).

Women who enter into an Muslim religious-only marriage often present two major lines of argumentation. Some highlight that they do so for ethical reasons. As committed Muslims they do not want to engage in a sexual relationship outside of marriage as they consider that sinful (Moors et al., this issue; Parveen, this issue). Others foreground their desire to accommodate the concerns of significant others, be it family members or the village community, who would strongly disapprove if they were to engage in a relationship outside of a Muslim marriage. Many would in fact draw on both lines of argumentation to explain their entry into an Muslim religious-only marriage (Nisa, this issue).

This still begs the question why these couples do not also enter into a state-registered marriage. One main set of arguments centers on their inability to do so. Many states have implemented a minimum age for marriage, even if these differ (such as between Syria and Jordan, see Zbeidy, this issue), and in many countries polygamous marriages are prohibited or only allowed if particular conditions are fulfilled (Welchman 2007). Refugees and other undocumented people may not have the kinds of documents needed to able to marry (Zbeidy, this issue), while state actors may also actively prohibit certain categories of migrants, such as the Indonesian migrant workers in Malaysia, from marrying (Nisa, this issue). In other words, some couples who would have preferred to enter into a state-registered marriage are not able to do so, *because of* state policies.

In other cases, entering into an Muslim religious-only marriage is intended to be only a temporary status (Akhtar 2017) to be followed by a state-registered marriage in due time. In various contexts the parties involved refer to the conclusion of the marriage contract with the term 'engagement,' also when it actually is a state-recognized marriage (Zbeidy, this issue). Whereas it is true that for some the Muslim marriage is the moment when the parties concerned feel 'really married' (Parveen, this issue), others find it important to conclude a state-recognized or civil marriage, as they value that as 'the real marriage' (Moors 2013). But there are also many couples who only enter into a civil or state-registered marriage because a state-registered marriage is an easy way to arrange for fatherhood, when they decide to buy a house, or when they become concerned about pension rights and other financial and legal aspects of their relationship. In other words, their arguments are very similar to those of cohabiting couples (see Barlow and Smithson 2012), who also may decide to marry for similar pragmatic reasons. On the other hand, there are also couples who feel that they are actually pushed into a state-registered marriage.

This was, for instance, the case for Pakistani-British men or women who needed a state-registered marriage to bring their partner from Pakistan (Parveen, this issue). And the cohabiting couples in Tunis generally expect to enter into a registered marriage when they start thinking about having children, because of the strong censure of society of single motherhood and the ensuing legal issues (Kolman, this issue).

The problematization of Muslim religious-only marriages does not only create problems for couples who need to find ways to navigate an increasingly complex field. It also may have the effect of idealizing civil marriages. Both state authorities and religious actors argue that couples need to enter into a state registered marriage as this protects the rights of women and children. The women themselves are not always convinced of such benefits. Some of the Pakistani-British women in Birmingham, who had both married and divorced according to civil and religious regulations, expressed a preference for a Muslim religious-only marriage in the future, as they considered a civil divorce as far more burdensome than a religious divorce (Parveen, this issue). Such an argument, moreover, depends very much on the particular rights and obligations such a marriage entails. Many women have experienced that concluding a civil marriage is neither a protection against financial exploitation nor against domestic violence.

These six contributions provide insight in how a variety of actors engage with the field of Muslim religious-only marriages. Different locations witness different kinds of problems. Policy makers in Muslim-majority settings are mainly concerned about a loss of control over the younger generation, who may enter into transgressive sexual relationships. Liberal secular societies worry about a very different aspect of these marriages, that is their Islamic character. In both cases, state authorities, often supported by religious actors, women's organizations, and other concerned parties, point to the need to protect women from men with the wrong intentions. However, for some of the women concerned it is the legal system itself or the negative representation of Muslim religious-only marriages that pose major problems.

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