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# Secular Rule and Islamic Ethics

## *Engaging with Muslim-Only Marriages in the Netherlands*

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### Abstract

From the mid-2000s, Dutch policy makers, the media, and others have started to define Muslim-only marriages as a problem. This contribution unpacks a recent hype, when a Dutch TV station broadcasted the conclusion of a polygamous marriage at a mosque, while simultaneously the largest right-wing political party presented an initiative to further criminalize Muslim-only marriages. In both the TV program and the policy initiative, the same feminist organization, Femmes for Freedom, was involved. Using liberal arguments such as freedom of partner choice to limit the freedom of a religious minority, interestingly, the dividing lines were neither between Muslims and non-Muslims, nor between more 'mainstream' and more 'Salafi-oriented' mosques. Arguing for the need to protect women, many supported the current Dutch law demanding that couples conclude a civil marriage prior to a religious marriage, as the former would protect women better, while others called for better educating Muslims about women's rights in Islam. Whereas the voices of women in Muslim-only marriages were not heard, our research with converts entering into polygamous marriages indicates that they may opt for these marriages themselves with their main concerns centering on the equal treatment of wives and men's openness about polygamy.

## Keywords

muslim marriages – unregistered marriages – polygamy – converts – the Netherlands

## Introduction

In October 2016, the Dutch TV program *Undercover in the Netherlands* aired an episode that aimed to provide evidence that illegal, and even polygamous, Muslim marriages are concluded at Dutch mosques. This broadcast coincided with an initiative of the right-wing liberal party (VVD) to enforce and extend the criminalization of Muslim marriages that are concluded prior to a civil marriage. Shortly after the program, in which the chairman of a mosque was caught on camera willing to perform the marriage, a wide variety of Muslim authority figures voiced their opinions on the matter.

In this article, we analyze the *Undercover* episode as an extended case study, drawing attention to how the media, a politician, and an NGO cooperated in making a presumed Islam-related form of abuse visible to the public. We start with a brief note on how marriages of Muslims and, more specifically, religious-only marriages are perceived as a problem in need of regulation. We then focus on how Muslim authority figures felt pressured to respond to the content of the TV program, yet simultaneously used their response to position themselves in the political and religious field. We end our paper foregrounding some elements from the narratives of the women who are actually involved in polygamous marriages, one of the most contested forms of religious-only marriages.

## Muslims and Marriage in the Netherlands: The Production of a Problem<sup>1</sup>

According to the Dutch Civil Code, ‘religious functionaries’ are only allowed to conclude a religious marriage after a civil marriage has been concluded (Article 68 Book 1 Civil Code).<sup>2</sup> This regulation had emerged in the early nineteenth century, when in the Napoleonic period marriage became a civil matter

<sup>1</sup> This section builds on Moors (2013) and Moors and Vroon-Najem (forthcoming).

<sup>2</sup> Van der Leun and Leupen (2009: 8ff) describe debates in the field of law about the relation between civil and religious marriages.

only. Except for the occasional discussions about a possible infringement of the freedom of religion, this regulation hardly drew any public attention until it was revitalized in 2008 in the course of debates about imams who concluded an Muslim marriage prior to a civil marriage. At first, civil marriages were modelled after Christian marriages, that is monogamous, heterosexual, with no possibility for divorce, including the rule that women ought to obey their husbands. Whereas over time, the prohibition of divorce and the obedience rule were abolished and same-sex marriages have been permitted since 2001, polygamous marriages have remained prohibited.

In colonial times the Dutch administration was most concerned about the misuse of *civil* marriage. According to the mixed marriage act of 1898, a European woman (in the Dutch East Indies or in the Netherlands) who married a 'native' husband (often a Muslim) became subjected to 'native laws,' while a European man could make a 'native' woman European by marrying her.<sup>3</sup> The aim was both to discourage European women from entering into such an undesirable marriage and to prevent 'native' men from concluding possibly fraudulent marriages that would provide them with access to the Dutch nationality (Stoler 1992: 543). The same principle was present in Dutch citizenship law. Until 1964, a woman who married a foreigner automatically lost her citizenship, while a foreign woman who married a Dutch man automatically became Dutch (De Hart 2006: 11).

By the early 1970s, with the growing presence of 'guest workers' in the Netherlands, policy makers became concerned about 'migration marriages' that would negatively affect the well-being of white Dutch women, as they might be tricked into fraudulent marriages by migrant men. In the 1980s and 1990s, the focus started to shift to post-migrant women, seen as victims of their families, who might marry them off for a high dowry to men from the country of origin who were eager to migrate and gain residency rights. In the decades to follow, women brought to the Netherlands as 'import' brides, increasingly considered as victims of forced marriages, became the target of policy making (Bonjour and De Hart 2013: 67–68).

Problematizing these migration marriages was, implicitly or explicitly, linked to 'Islam.' This fits well with the broader trend that saw (post-)migrants from Muslim majority countries such as Turkey and Morocco become increasingly addressed as Muslims, simultaneously with Islam defined as incompatible with the Dutch way of life. This was already the case in the early 1990s, when polygamy became a topic of discussion, while the 'dower marriages' refer to a central element of the Muslim marriage contract. In the later 2000s,

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3 Native refers to the language used by the Dutch at the time (i.e. *inheems*).

cousin marriages and underage marriages also became labeled as undesirable practices first and foremost associated with Muslims, the former emerging in debates about marriage migration from Turkey and Morocco, and the latter in a more recent case of Syrian refugees. As indications of forced marriages, a host of policy measures were taken to counter these practices (Bonjour and Kraler 2014; De Koning et al. 2014; Sterkx et al. 2014).

From 2000 on, with the rapid growth of neo-nationalism, both public debate and policy making have become more explicitly assimilationist (Geschiere 2009; Gingrich 2006; Moors 2009). It did not take long for 'Muslim marriages' to become a topic of debate in itself (Moors 2013). The first hype emerged in 2005 in the context of the trial of members of the Hofstad network (an alleged terrorist organization), when journalists reported about 'Muslim marriages' that were concluded in the circles around this network. Not only were these marriages not preceded by a civil marriage, they were also concluded in a highly informal manner, without the knowledge or involvement of the parents of the young women. In early 2006, one of the Dutch security services published a report asserting that such Muslim marriages formed a threat to national security (NCTb 2006).

In 2008, Muslim marriages again became a topic of extensive public and parliamentary debate. This time the target was imams attached to *Salafi*-oriented mosques, who were accused of concluding Muslim marriages between partners who had not yet performed a civil marriage. Members of parliament, from the left to the right, played a pivotal role in turning Muslim-only marriages into a matter of public concern, considering these as evidence of and an instrument for the development of a strictly orthodox Islamic 'parallel society' that purposely distanced itself from Dutch society. Similar arguments had been presented in the reports produced by the Dutch security services (especially AIVD 2007).

Whereas two different categories of Muslims were the target of these two hypes, first violent jihadists and later *Salafi*-oriented imams, the women entering into these marriages were, in both cases, defined as victims. During the first hype it was argued that they were recruited by male extremists, who employed grooming ('loverboy-like') practices in order to mobilize them for the jihad (NCTb 2006: 22). In the case of *Salafi*-oriented imams, they were considered as victims of Muslim men wanting to institutionalize the shari'a and gender inequality, which would enable polygamous and underage marriages (AIVD 2007: 68).

More recently, starting in 2014, public debates about 'Muslim marriages' center on women travelling to Syria, to areas held by IS (Islamic State) and other jihadist groups. At first, these women were considered naïve victims of

male recruiters, similar to the case of the women associated with the Hofstad network. By early 2016, however, the Dutch security services expressed a different point of view, also considering female travelers as participants in the struggle of IS (AIVD 2016:15; Navest et al. 2016).

In short, over time, we have witnessed a shift from attempts to prevent the misuse of civil marriages toward the problematization of ‘Muslim marriages.’ As Bacchi (2015), building on Foucault, has argued, producing and presenting particular issues as a problem is part and parcel of the process of governing. When practices are turned into problems, the language used does not simply describe reality, it also (co)produces it. The most recent hype about religious-only Muslim marriages further contributes to this.

### A Note on the 2016 VVD Initiative

On 5 October 2016, the right-wing liberal party (VVD) presented a written plea or initiative to further criminalize ‘illegal Muslim marriages.’<sup>4</sup> This initiative started with the firm statement that ‘The Dutch marriage law does not discriminate: in the Netherlands, as a woman or man you are free to arrange your love life the way you want, regardless of descent or religion.’ It then continued with the phrase, ‘In the Netherlands you decide yourself whom to fall in love with, whom to sleep with and whether or not to marry, and if so, with whom, and in which order you choose to do so.’ Central to this initiative is the premise that ‘undermining Dutch marriage law is not just a violation of the law’ but a ‘rejection of the equality between men and women, the Dutch way of life and the history of emancipation that Dutch marriage law has gone through.’ In the prevailing Dutch marriage law, a civil marriage is to be concluded prior to a religious marriage. ‘That was the law already, but now we are going to enforce it, and more rigorously apply it. The state should not look away, but act.’

The initiative consists of five policy proposals:

1. Intensified enforcement of the rule that religious marriages should be preceded by civil marriage. For example, through undercover actions on religious (often Islamic) dating sites.
2. Extending the law which considers only the religious service provider as punishable by law to everyone who is directly and voluntarily involved in concluding an illegal (religious) marriage with a maximum sentence of 7

4 <https://zoek.officielebekendmakingen.nl/dossier/34565/kst-34565-2?resultIndex=1&sorttype=1&sortorder=4> (in Dutch).

months in prison or a fine of maximum 20.500 euro. In the case of illegal sharia practices equal rights for women by definition do not apply; therefore this measure is believed to support the Dutch application of the UN Women's Treaty.

3. Filing a legal complaint should be possible from a distance and digitally with all violations included in one report.
4. Setting up a special police help line for women who are victims of marital captivity, marital force, marital rape, and marital abandonment.
5. Dutch women abroad who are the victim of forced marriage should receive assistance from a Dutch Forced Marriage Unit.

It is important here to highlight that this initiative was written with the support of Shirin Musa, the director of Femmes for Freedom (FFF), an organization which promotes marital freedom and the equality of men and women and fights against forced marriages, child marriages, forced abandonment, hidden women, and marital captivity.<sup>5</sup> The text includes two cases that Musa had presented to the VVD MP to substantiate the policy proposals. The first case concerned an illegal immigrant. Through a dating site he finds a third wife. He also locates a 'religious service provider' (imam) willing to conclude the marriage, even though the imam was aware of the fact that such a practice is prohibited. The first two proposals are to prevent this. The second case involved a Somali-Dutch woman born and raised in the Netherlands. Her family took her to Somalia and forced her to marry a man twice her age, who already had two wives. She then is forced to have sex with her husband and she was only able to return to the Netherlands with the help of FFF, as the Dutch embassy was not willing or able to provide support. The last three proposals are to support women who find themselves in such a situation.<sup>6</sup> In other words, the VVD initiative itself reveals traces of the partially overlapping and partially different agendas of, on the one hand, the VVD and, on the other, FFF. Whereas the former is interested in further criminalizing Muslim marriages, for FFF the measures that will force state institutions to support victims of forced marriages are at least as important.

5 See the website of Femmes for Freedom, <http://www.femmesforfreedom.com/>.

6 Shirin Musa herself expressed some concern about the publicity around the VVD initiative. She much regretted that the media highlighted so much the first two proposals, while paying little attention to the other three proposals, see <http://denieuwemaan.ntr.nl/illegale-huwelijken/>.

### Undercover NL: The Plot and the Frame

It was not the VVD initiative in itself that turned ‘Muslim marriages’ once more into a topic of public debate. The publication of the initiative was only one step in a carefully staged sequence of events that would lead to a media hype, parliamentary questions, and a law proposal. On October 6th, the day after the initiative was made public, the Dutch commercial TV channel SBS6 launched the trailer of a new episode of the program *Undercover in the Netherlands* titled ‘Imams conclude illegal polygamous marriages.’<sup>7</sup> The next day, on Friday, October 7th, the producer of this episode was extensively interviewed in the popular late-night talk show *Pauw*. Finally, two days later, on Sunday October 9th, the episode itself was aired, presenting the enactment of the first case mentioned in the initiative—an illegal polygamous marriage—to the public.

*Undercover* is a TV format in which reporters go undercover to reveal serious abuse, in this case that of imams concluding illegal polygamous marriages in mosques. The reporter is careful to point out that religious marriage in itself is not the problem. But if these marriages are concluded prior to a civil marriage, they are illegal, and this is the more so if one of the parties is already married. The problem, it is posed, is that women are often not aware that their husband is already married or intends to marry more than one wife, and that, following such a marriage, it is impossible for them to get a divorce if the husband does not cooperate. They are stuck in a situation of ‘marital captivity,’ and if they decide to leave anyway, they face grave danger and may even be killed.

The trailer provides a sense of the sensationalist ways in which this TV program presents the case, through the use of strongly affective language, image, and sound. While we see shots of fully covered women from the back and of the inside of a mosque, the reporter’s voice-over explains:

Tonight we go undercover as a Muslim woman, we’ll try to show with a hidden camera that illegal acts are taking place in mosques in the Netherlands. There are rumours that it is possible to conclude an illegal marriage in a mosque.... I will prove that! Illegal marriages can have grave consequences for the Muslim woman if she wants to divorce.

Then a woman comments, her face blurred and her voice distorted, ‘If I would have done something like that [leaving her husband], I would be killed.’ The reporter asks, ‘In the Netherlands?’ to which the woman answers, ‘by the community.’ The trailer ends with the reporter firmly stating, ‘Once I had

<sup>7</sup> <http://www.hartvannederland.nl/top-nieuws/2016/imams-sluiten-illegaal-polygame-huwelijken/>



enough evidence, I decided to confront those who are responsible and to seek redress in the mosque...' Suspenseful music...and then the 45-minute episode starts.

In order to prove that imams conclude these marriages, one of the members of the *Undercover* team presents herself as a Muslim woman, wearing a full-length loose black robe, gloves, and a headscarf, calling herself Bouchra. She finds a Muslim dating site and goes online in search of a polygamous husband. After Skyping and meeting him in person—and briefly talking to one of his two other wives—the couple goes to a mosque to conclude the marriage. She brings two witnesses, the one another member of the *Undercover* team who presents herself as a convert to Islam, and the other Shirin Musa (FFF) herself, who covers her face in order not to be recognized. After a conversation with the sheikh, they leave the mosque and the *Undercover* reporter confronts both the husband-to-be and the sheikh, who unconvincingly attempt to deny their involvement. The program ends with comments from two members of parliament, one a Christian Democrat, the other from the Socialist Party. Stating 'This is incredible' and people 'need to obey the law,' they promise to pose parliamentary questions. The VVD then calls for new legislation, along the lines of the initiative mentioned above.

Next to the *Undercover* team, the two politicians, and Shirin Musa, there are two other women who appear in this episode. One of them is the above-mentioned anonymous woman, who presents a moving story about how she had been stuck in marital captivity for over 25 years, until the death of her husband. The other is Machteld Zee, introduced as a researcher who recently published her book *Holy Identities. Towards a Shari'a State?*<sup>8</sup> Taking up the position of expert, she presents herself as a strong opponent of Muslim marriages and Sharia councils, and as an advocate for 'one law for all.'

In short, *Undercover* presents 'illegal Muslim marriages' as a large-scale problem, as marriages that may also be polygamous, without the women concerned being aware of it. Women in these marriages run the risk of ending up in marital captivity. The solution proposed is a stricter implementation of the law and the criminalization of a wider range of people involved in these marriages.

Still, the *Undercover* episode itself only supports these lines of argumentation to some extent. No evidence is presented that such polygamous marriages

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8 A few weeks prior to this broadcast Machteld Zee had published her book *Holy Identities: On the Way Towards a Shari'a State?* This is a popularized Dutch-language version of her 2015 PhD thesis *Choosing Sharia?—Multiculturalism, Islamic Fundamentalism and Sharia Councils*. The Hague: Eleven International Publishing.

are taking place on a large scale, and the male protagonist has difficulty finding an imam willing to conclude such a marriage. The female protagonist is actively looking for a polygamous husband, the fact that it concerns a polygamous marriage is openly discussed in the mosque, and the sheikh himself explains that such a Muslim marriage contract is not valid in the Netherlands. Neither is the link between illegal Muslim marriages and marital captivity substantiated. Machteld Zee argues that women in a religious marriage who want a divorce may encounter huge problems if their husbands do not cooperate. However, this problem of marital captivity is not different if the couple has also entered into a civil marriage, as the victim mentioned above had actually also concluded a civil marriage.<sup>9</sup>

### State, Religion and Gender Relations: Reactions from the Islamic Field

The criminalization of Muslim marriage concluded prior to a civil marriage fits with the post-2000 turn to identity liberalism in the Netherlands. Identity liberalism is a perspective that brings together those who consider the identity liberal values of majority populations under threat by those minorities whose values are deemed incompatible with the liberal national culture. They consider assimilation as necessary to include minorities in wider society, which will simultaneously also protect marginalized subgroups within minorities (Tebble 2006: 473).<sup>10</sup> The VVD initiative is a strong case of majoritarian identity liberalism.

Legitimizing the further criminalization of Muslim-only marriages, by making the liberal claim that in the Netherlands people are free to arrange their love life the way they want, its protagonists produce Islam in general or particular strands of Islam as incompatible to Dutch national values. Such an approach contributes to the racialization of Muslims (Balibar 2007; Bonjour and Duyvendak 2017; Stolcke 1995), producing them as a problem-space, a discursive field that has become increasingly hard for Muslims to navigate. It does not come as a surprise then that the media hype engendered by the *Undercover* episode pushed those claiming some kind of Islamic authority in the Netherlands to respond on behalf of their constituency and to take a stand on 'illegal

9 In contrast to what Zee states, in Muslim majority countries women can, under certain conditions, turn to the court to ask for a divorce (Welchman 2007: 107ff).

10 This is similar to the arguments Susan Okin (1999) presents when she argues that multiculturalism often turns out to be bad for women.

Muslim marriages.' In doing so the various parties concerned positioned themselves simultaneously in relation to the Dutch state and with respect to other actors in the Islamic field.

The landscape of those claiming Islamic authority in the Netherlands is fragmented, with no obvious figures who have the authority to speak on behalf of larger Muslim publics (Boender 2007). Most Dutch mosques are organized on the basis of ethnic orientation (mostly Turkish and Moroccan, but also Somali, Surinamese, Moluccan, and others), religious divides (mainly Sunni, with some Shia, Ahmadiyya, and Sufi orders), and their relations with religious organizations in the countries of origin (especially for the Turkish mosques, see Sunier et al. 2016). In addition, there are also branches of the Muslim Brotherhood, the Tablighi Jamaat, and Hizb ut Tahrir active in the Netherlands as well as several mosques and individual preachers that claim to follow a *Salafi* orientation. The latter, active since the 1980s, have from the beginning of this century become increasingly present on the market for Islamic knowledge with courses, lectures, and conferences for young Dutch-speaking Muslims (De Koning 2012).

Already from the 1990s on, Dutch policy makers had attempted to bring together Muslim organizations, especially the larger Turkish and Moroccan ones, in a representational structure to solicit support for integration and counter-radicalization policies. In 2001 a national umbrella organization was established that exists up to this day, the Contactorgaan Moslims Overheid (CMO, Contact Muslims Government), which claims to represent 450 mosques.<sup>11</sup> The G4, four large mosque organizations from Rotterdam, Utrecht, The Hague, and Amsterdam, which took up a leading role in many of the debates regarding Islam in 2016, are also part of this organization. Whereas the G4 includes one *Salafi*-oriented mosque (the as-Soannah mosque in The Hague), *Salafi*-oriented networks and centers have by and large remained excluded from cooperation with the state. They, in turn, have been highly critical of those Muslim organizations and imams they consider co-opted by the state (De Koning 2012). However, in the responses to the *Undercover* episode the lines of demarcation were not so clear-cut. The first reaction came from a group of Dutch imams and representatives of mosques (including the G4), who produced a statement that was published by a daily newspaper, *Trouw*, on 16 October 2017.<sup>12</sup> The

11 The Turkish-Dutch Diyanet, the Turkish-Dutch branches of Milli Görüş, the Dutch-Surinamese World Islamic Mission, and the Moroccan-Dutch union of mosques.

12 *Trouw*, Fatwa of Dutch imams against illegal marriages (Fatwa van Nederlandse imams tegen illegale huwelijken), <https://www.trouw.nl/home/fatwa-van-nederlandse-imams-tegen-illegale-huwelijken-agf8a285/> last accessed 20 April 2017.

newspaper labelled it as a 'fatwa' from Dutch imams about Muslim marriages claimed to be binding for all Muslims. In fact, it appears more a clarification than an authoritative 'advice,' let alone one binding for all Muslims, but the term 'fatwa' seems to have been used to give it more weight.<sup>13</sup> According to the statement, Muslims have to abide by the law of the country in which they live. This also pertains to matters related to marriage. If the Dutch law only allows for a religious ceremony to be held after a civil marriage has been concluded, a Muslim has to follow this law. The statement then proceeds by claiming that:

Besides complying with the law, a marriage contracted by the legitimate authority safeguards the rights of husband and wife. This is very important given the adverse effects a non-registered marriage may sometimes have for a couple, in the particular the wife.

Its religious framing is also evident when they explain further that:

The aim of Islam is to safeguard the honor and to protect the rights of humans. Because these can only be claimed if they are officially registered by a civil service, doing so is obligatory. The Islamic principle is: 'What is necessary to uphold an obligation, is also an obligation.'

Much attention is paid to the need to protect women against all kinds of abuse:

In recent years we have seen the possible consequences of marriages not registered by the civil registrar. Women who are captive in situations they did not choose to be in. Harrowing stories of mistreatment, exploitation and abuse. All of this because some men do not fear Allah and do not respect the rights of their wives.

The statement appeals to mosques and imams to follow the example of the undersigned not to conclude an Muslim marriage without a prior civil marriage.

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13 Among Sunni Muslims a fatwa is considered an authoritative, but not a binding advice. It is unclear who introduced the term 'fatwa.' The journalist and the spokesperson both explained, independent from each other, that it emerged in the course of their conversation. The full statement can be found at <http://religionresearch.org/act/2016/10/10/press-release-dutch-mosques-and-imams-no-more-unregistered-islamic-marriages/> last accessed 20 April 2017. The use of this term is also why several opinion makers and politicians opposed the statement.

Simultaneously, however, it is also an appeal to the state to give these Islamic organizations and their representatives a say in the matter:

Therefore, we urgently but politely ask the mosques and imams in the Netherlands to no longer conduct Muslim marriages unless they have seen a document that states that the marriage is registered at the public registrar. We also ask the state to meet with the Islamic organisations and Muslim representatives soon to find a solution for this problem.

As soon as the statement was published, others responded. Those critical of the statement not only blamed the Dutch state for its attempts to interfere with Muslim marriage but also the imams and the mosques that had signed it. Organizations, such as Hizb ut Tahrir, and preachers, such as Fawaz Jneid, the former imam of the As-Soannah mosque, denounced them for submitting to state authorities rather than to Islam.<sup>14</sup> Jneid appealed to those who had signed the statement to repent, as they outlawed what God has allowed (referring to polygamy in particular).

In a widely circulated Facebook post, a well-known *Salafi* preacher questioned the role of imams altogether, as they are not needed to conclude a Muslim marriage. In his words, 'If they do not want to cooperate, we do not need them anyway.' He argued that imams should pressure the state to recognize Muslim marriage rather than unreflectively carrying out state policy. More generally, the question was raised that 'If we have to follow the law, this means that polygamy is out of the question, while it is allowed in Islam. And what about those people who cannot engage in a civil marriage?' Muslim marriage, according to him and many others, is important as a protection against *'haram* relations.'<sup>15</sup> Some people who responded to the As-Soannah mosque's participation in the newspaper article on its Facebook page also presented this issue

14 Fawaz Jneid had been the imam singled out in the 2008 debate on Muslim marriages for concluding Muslim-only marriage. He was later fired by the board of the As-Soannah mosque, that claimed he had continued to do so. Jneid, in turn, claimed that he had actually been present at the Muslim marriages of some of these board members. See: NRC Handelsblad, 'Iedereen bij moskee wist van shariahuwelijken' ['Everyone at the mosque knew of the shariamarrriages'], <https://www.nrc.nl/nieuws/2014/11/01/iedereen-bij-moskee-wist-van-shariahuwelijken-1436272-a454193>, last accessed 10 January 2018.

15 Statement on Facebook by Abdul-Jabbar van de Ven, <https://www.facebook.com/abduljabbar.vandeven.5/posts/1717247465265493>, last accessed 1 December 2017. Later he posted an additional statement, The Shariah of Allah is enough for our women (De Shariah van Allah is genoeg voor onze vrouwen): <http://bewustmoslim.nl/blog/de-shariah-van-allah-is-genoege-voor-onze-vrouwen>, last accessed 1 December 2017.

as an example of the double standards employed by policy makers, as in legal terms an Muslim marriage is similar to cohabitation which is not prohibited.<sup>16</sup>

Others, however, expressed support for the statement. It is important to note that the positions taken by mosques and individual preachers did not neatly follow a fault line between, on the one hand, those labelled as moderate or mainstream and, on the other, those considered radical or *Salafi*-oriented. First of all, some mainstream Muslim organizations simply refrained from engaging in this debate, neither supporting nor criticizing the statement. But there was also unexpected support for the imams and the mosques that had issued the statement. Not only the as-Soennah mosque had signed the statement, but also another *Salafi*-oriented organization, the Dawah Group, expressed its support, stating that the imams who had signed the statement did so ‘only for the satisfaction of God.’ Its spokesperson furthermore argued on Facebook that if people only marry according to Dutch law, this does not mean that their marriage is invalid according Islamic law: if all requirements of Islamic law are fulfilled (such as the presence of two Muslim witnesses), then the marriage is valid. It is the need to protect women against abuse by men that gave rise to this statement. To the idea that the presence of an imam is not necessary, the spokesperson responded with the rhetorical question ‘Do these criticizers maintain their position once their little sister or daughter is involved? Experience tells us that then suddenly they are very, very quiet.’<sup>17</sup>

The above indicates that the Dutch state has an impact on the authorization of Islamic practices, not only through law-making, but also because Muslim organisations need to position themselves vis-à-vis such policies and state attempts to co-opt them, which simultaneously impacts on their position vis-à-vis other actors in the Islamic field. However, supporters of the statement are not only those with close connections to the state. As the support of the Dawah Group indicates, it is also concerned about the position of women in unregistered marriages. Such concerns were voiced more broadly. A well-known convert active in public debate welcomed the *Undercover* report precisely because ‘brothers’ abuse ‘sisters.’ He called upon the Muslim community ‘to better educate the community in particular the sisters about their rights in Muslim marriage, the conditions which have to be met, their rights in case of

16 Al-Yaqeen Facebook page, <https://www.facebook.com/alyaqeenweb/posts/1182715408434068>, last accessed 10 January 2017. Similar statements were widespread. See also on the Facebook page of prominent activist and convert to Islam: <https://www.facebook.com/nourdeenw/posts/1279332455410602?pnref=story>, last accessed 10 January 2018.

17 Statement on Facebook by Jalal el Farissi, <https://www.facebook.com/jalalelfarissi/posts/1301007619951959>, last accessed 1 December 2017.

a divorce and their rights to divorce, in order to prevent them from becoming the victim of men only looking out for their own interests.<sup>18</sup>

Another recurring pattern in the reactions among Muslims online, was the fear that this report would reinforce Islamophobia. Some had already expressed this fear even prior to the program being aired. Others, however, stated that it was the practice of 'illegal marriage' and men taking advantage of women that fuelled such Islamophobia.

The only woman participating in mainstream media debates was Shirin Musa, who had also been an active participant in the policy-initiative of the VVD and in the *Undercover NL* episode. At first sight, the statements of mosques and preachers that point to the risk of Muslim men abusing Muslim women in Muslim marriages resonates with the position that Shirin Musa expressed. Still, her reactions to the statement were mixed. On the one hand, she was happy to 'finally' see imams taking a stand, explicitly endorsing Dutch law. In her view, 'exposing wrongs and external interference challenges the community.'<sup>19</sup> On the other hand, she is generally opposed to the state cooperating with Islamic institutions.<sup>20</sup> Except for the comment sections of social media, however, the voice of Muslim women, who actually engage in Muslim marriages, was absent.

### Polygamous Marriages among Dutch Converts to Islam

Portraying Muslim women as the victims of Muslim men, *Undercover NL*, foregrounding a man wanting to marry a third wife, plays into the well-worn oriental image of the Muslim man and his harem. Our long-term research with how converts in the Netherlands conclude their marriages provides a different perspective. In the following, we present converted women's motives, desires, and ability to act with respect to such marriages, which remain absent in the *Undercover* episode.<sup>21</sup>

18 Statement on Facebook by Nourdeen Wildeman, <https://www.facebook.com/nourdeen/w/posts/1279332455410602?pnref=story>, last accessed 1 December 2017.

19 Tweet by Shirin Musa, in response to the newspaper article on the 'fatwa' <https://twitter.com/ShirinMusa/status/785508324716453888>, last accessed on 10 December 2017.

20 For example, her interview in RTL's talk show *Dunk*, on 13 October 2016.

21 For motivations to first conclude an Muslim marriage among converts more generally, this section builds on Moors and Vroon-Najem (forthcoming). For this article, Moors and Vroon-Najem extensively talked to nine women who are or have been married to a polygamous man. We also asked dozens of other converts how they felt about polygamy and whether they could imagine themselves living a polygamous marriage.

It remains unclear whether it is particularly meaningful that the second wife, who does not know that she is part of a TV program, is a convert. Contrary to her portrayal, converts to Islam in the Netherlands (as well as elsewhere) often experience cultural continuity in many areas of life, including a prevalence of monogamous marriages (Vroon-Najem 2014). Polygamy among converts does exist, but it is well worth mentioning here that this concerns only a small minority. As polygamy is a controversial practice also among Dutch Muslims in general, a young woman entering into a polygamous marriage as a third wife, as presented in *Undercover NL*, would be even more exceptional.

At the beginning of the *Undercover NL* episode, the producer states that there is no intrinsic problem with religious marriages, only with 'illegal ones' (those concluded before a civil marriage). A 'legal polygamous marriage' is, however, an oxymoron in the Dutch context, as it is impossible to lawfully marry multiple partners. Whereas most converts are well aware that an Muslim marriage is a ritual without legal consequences, some do not realize that this sequence (concluding an Muslim marriage first) is prohibited by Dutch law. Even if they do know, they often find it hard to comprehend this prohibition. A convert whom we interviewed about her decision to become a second wife phrased this common sentiment as follows:

I do not think Muslim marriages in the Netherlands should be such an issue. Only if it would have legal consequences. Currently, it is no different than standing on your head, doing a little ritual to sanctify your marriage. It is just to be able to be together. To have peace of mind, that, in the eyes of God, it [engaging in a sexual relationship] is allowed.

However, converts do not only enter first into an Muslim marriage because their partner is already married. Also in the case of monogamous marriages, they may well have good reasons to opt for an Muslim marriage first, which may then be followed by a civil marriage at a later stage (Moors and Vroon-Najem, forthcoming). Contrary to the common notion that women convert to Islam because of marriage, many female converts are single. They often want to marry soon after they have said the *shahada* (the Muslim testimony of faith), as conversion is believed to wipe out all sins, and a new Muslim may well want to adhere to the Islamic rule that sexual relations are only allowed in the context of marriage. Taking into account the high value placed on marriage in Islam (exemplified in the often-quoted hadith 'marriage is half the faith') and converts' need to build a network of Muslim friends to share experiences they cannot share with non-Muslim family and friends, single converts often express the desire to marry quickly. Especially those who do not want to engage



in premarital dating would otherwise enter very quickly into a civil marriage, with all its legal consequences.<sup>22</sup>

Yet, finding a spouse can be difficult. Converts lack Muslim family to help or guide them; they have little knowledge of how to conclude an Muslim marriage; they are unfamiliar with the notion of the *mahr* (dower); and their father, as a non-Muslim, is not able to function as their *wali* (marriage guardian). Especially when a convert is in her thirties, forties, or older, divorced, and/or a single mother at the time of conversion, the chances of (quickly) finding a Muslim husband are dire. While also among these women most marriages are monogamous, it is among this latter category that polygamous marriages occur more frequently.

Still, it is not unheard of that young single women marry as a second wife. Two of our interlocutors had married a polygamous man when they were in their early twenties. Both are still married, but in hindsight, consider themselves rather naïve at the time. As one of them exclaimed, 'It could have gone terribly wrong! There are many men who take advantage of ignorant [convert] Muslim women.' Explaining that she knew very little about marriage in Islam, this very same woman was, however, fully aware of the fact that her husband was already married, and she willingly became his second wife. The first wife was also informed about the marriage. Our interlocutor was pleased that her husband had married neither of them according to Dutch civil law, in that respect treating both of them equally. Were he to marry one of them legally, that would have prevented him from recognizing the children born out of his union with the other woman. While our interlocutor did not mind being his second wife, she would have found it very upsetting if he had not been able to recognize their children.

The other woman who had married shortly after conversion, while she was quite young, also considers herself in hindsight to have been very gullible. Her husband had been much less straightforward about the fact that he was already married. When she found out herself and confronted him, he told her that he and his wife were on the brink of a divorce. It turned out to be much more complicated, as his first wife was pregnant at the time. When he eventually did divorce, he later married again, leaving her feeling misled by his suggestion that his polygamy was just a matter of circumstance.<sup>23</sup>

22 Also, men concluding a civil marriage may do so for alternative motives (such as gaining access to a residence permit). Acquiring a civil divorce may also be difficult (and costly), especially if the husband does not cooperate (see also Parveen, this issue).

23 Being in a loveless, arranged marriage is a line that Muslim men seeking a second wife employ often. This resonates with arguments non-Muslim married men use to engage in extramarital affairs.

Although there are various Islamic opinions about whether a man is obliged to inform his first wife of his intention to marry again, or his new wife of the fact that he is already married, most converts we talked to were uncomfortable with the idea that their marriages would need to be kept secret from their husband's other wife(s).<sup>24</sup> They often already felt the need to hide the fact that they are in a polygamous marriage from their non-Muslim relatives for lack of understanding, and in many cases, also from other Muslim women for fear of negative reactions. One of the women felt unable to tell her sister, even though she was a Muslim, too:

My sister is also a convert to Islam, but very different from me. I once started a conversation about polygamy, and she said she could not imagine it. Her [Muslim] husband added that he believed polygamy was something of the past. So I realized this is not something they think about at all. Some of my husband's aunts and cousins [who do know about her marriage] cannot stand me. I am their living nightmare: that their husbands might want to marry again, too.

In some cases, women will only agree to enter into a polygamous marriage if the first wife agrees with such a set-up. One of our interlocutors, a divorced woman in her thirties with a young daughter, had put this as a condition when a married man asked her to become his spouse. When she went to visit the first wife and discovered that the latter was against her husband's second marriage, she did not accept the marriage offer. Another woman, a divorcee with a young son (divorced on her own request), twice married an already married man. The first polygamous marriage did not work out, mainly because he was not being straightforward with his first wife, who much resented his second marriage when she found out. The second marriage was ongoing, with both wives well aware of each other's existence and occasionally visiting each other.

More generally, women who agree to become a second (or, rarely, third wife) are usually older, with children from previous marriages. Often, they point out that it is simply very difficult to find a Muslim husband when they are more mature, have previously been married, and perhaps have children from these earlier marriages. One woman, the previously mentioned divorcee with a young son, who had remarried in her early thirties, explained that when other Muslim women feel threatened by her, she tells them to wait and see what they

24 In many Muslim majority countries, restrictions are imposed on polygamy. Often these include the obligation to inform both wives of the fact that the husband is already married or intends to marry another wife (Welchman 2007: 81).

would do if they were to become a single mother in their thirties or forties: 'Would you not want to have someone to take care of you?'

Other women present entering into a polygamous marriage as a more positive choice. They intend to, or have done so, because they are used to live on their own and no longer fancy the idea of a full-time husband. As a divorced convert in her late thirties explained, 'I would consider it an option to marry as a second wife. I have children, I do not necessarily want more children. Unless I meet Prince Charming, I would definitely be open to the idea.' Another convert considered polygamy an acceptable or perhaps even a desirable option, as she did not want to have children at all. Recognizing the importance of marriage in Islam, she considered a part-time husband who would have children with another woman, as a workable solution.

Women entering into a polygamous marriage often show no lack of agency in trying to make these marriages work. Consider, for instance, this story of a woman who converted in her early forties. Divorced, with grown-up children, not eager to get married again, she nevertheless met someone:

He was very honest with me. He told me he was already married, and that he was an illegal immigrant. His wife and children were still in his home-country. We really liked each other so I thought of a way to legalize him. He needed to divorce his wife, and marry me. After five years he could get a Dutch passport, divorce me, remarry his first wife, and then she would be able to come to the Netherlands. I thought about it for a long time. He told me he could not just dump her. She had been a good wife and a good mother for his children. Because he spoke of her that way, I trusted he would not dump me either. I feared that if I would end the relationship, I would regret it for the rest of my life. So I thought 'God help me, we'll see where it will end up.' Now we all live together, with my co-partner and the children from his first marriage.

For this woman, who was well versed in legal issues, it had worked out well.<sup>25</sup> In general, however, the lack of a legal framework may be problematic, as it leaves women without enforceable rights to decision-making in case of the husband's serious illness or to a husband's pension or property. Particularly when the husband is legally married to one of the wives, there is a situation of great inequality, as the legally married one has far more rights under the law than the other. As mentioned above, some polygamous men try to avoid

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25 This sequence dates from the later 1990s, shortly before navigating the Dutch legal system and making such arrangements became far more difficult.

this inequality by refraining from a civil marriage altogether. Yet, even then, a husband can be registered at only one address and can only be a fiscal partner with one woman. These very real problems confronting women in polygamous marriages remain outside of the framework that the *Undercover NL* episode presents.

If we were to believe *Undercover NL*, a happy Islamic, polygamous marriage or a smooth Islamic divorce are non-existent. The program's experts' voices, Machteld Zee and Shirin Musa, both highlight that women need to be protected from these kinds of marriages, because they will never be able to leave them, and if they try, they run the risk of being murdered. Without glossing over existing problems, this is an oversimplification of how Islamic polygamous marriages are lived in the Netherlands. Interestingly, the only woman among our interlocutors who had actually married as a third wife was a highly educated professional. After about one year and a half, she considered the marriage too demanding of her time and energy; she then discussed this with her husband and he granted her a divorce without much ado.<sup>26</sup> As we have mentioned elsewhere (Moors and Vroon-Najem forthcoming), what seems to matter most is the particular positionality of the women concerned. Women who are financially independent, well educated, and well informed about the legal consequences of marriage (or the lack thereof) and have a strong network are a priori in a better position than those who are isolated and have little access to economic, social, and educational resources. This is the case if they cohabit, if they first conclude a Muslim marriage, and if they first enter into a civil marriage. However, it is often taken for granted that a civil marriage functions as a protection for women. A civil marriage may indeed be a convenient way to arrange paternity, rights to pensions and property, and in the case of divorce, rights to alimony and child custody. But a civil marriage is no guarantee against domestic violence or other forms of exploitation, and a civil divorce may also be an emotionally draining and financially costly process (see also Parveen, this issue).

### Conclusion

Attempts to further criminalize Muslim marriages can be seen as a strong case of majoritarian liberal identity politics. However, the lines of demarcation between those who support and those who criticize the VVD initiative are not drawn simply between Muslims and non-Muslims, nor between those

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<sup>26</sup> Moreover, it overlooks the fact that other types of relationships (cohabitation or civil marriages) may be disastrous as well.

whom state actors tend to consider good ('moderate' or 'mainstream') and bad ('radical' or '*Salafi*-oriented') Muslims (Mamdani 2004). As a result of the media hype engendered by the vvd initiative and the *Undercover* episode, various actors claiming some kind of Islamic authority felt the need to respond. In their public statement, certain imams and mosques argued that it is an Islamic requirement to adhere to the law of the land. Some *Salafi*-oriented actors have underwritten this. Others, however, *Salafi*-oriented or not, have also used a variety of religious and liberal arguments (including that of double standards) to criticize this statement.

The vvd initiative legitimizes its stance on Muslim-only marriages by making the strongly liberal claim that in the Netherlands people are free to arrange their love life the way they want. This rather paradoxical use of a liberal frame raises then the question whether and for whom such 'illegal Muslim marriages' are harmful.<sup>27</sup> All parties concerned (politicians, the media, and the Islamic field) use the argument of the need to protect women's rights, but with a different take.

The vvd initiative seeks a solution in the further criminalization of 'illegal Muslim marriages.' Shirin Musa supports this. She has, in fact, also been successful in using the court system to fight marital captivity in both her own case and that of others, by convincing the courts that the refusal of granting an Islamic divorce to women can be considered as constituting a wrongful act.<sup>28</sup>

Islamic authority figures are divided in their opinion as to what women's rights entail. Some agree with state actors that 'illegal Muslim marriages' are harmful for women. Their argument is, however, not that women are forced into such marriages (a Muslim marriage requires the consent of the parties concerned), but rather that some men may use the pretext of a Muslim marriage to quickly enter into a short-term sexual relationship rather than aiming for the longer-term commitment that the women may be expecting. As a civil marriage may, indeed, turn a relationship into a more serious affair, in recent years many mosques have publicly stated that they will not conclude an Muslim marriage if there is no evidence of a civil marriage.

Others argue that Islamic law provides women with all rights. They also blame men for not following the Islamic rules: the 'brothers' who, contrary to Islamic teachings, abuse 'sisters,' are the problem. Their solution is not the imposition of a civil marriage, but rather, providing more information to their

27 It is remarkable that those holding a strong liberal, secular point of view frame illegal Muslim marriages as oppressive only, and do not entertain the possibility that such marriages may also enable young people to exert some form of agency.

28 See, for instance, (in Dutch), <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOBR:2016:4140>.

constituencies about the correct ways to conclude an Muslim marriage, warning young people against arranging marriages by themselves, as well as trying to prevent the abuse of women in such marriages

The common ground in these different positions is that men are always considered as the active party and women as passive victims. However, this does not do justice to the narratives that the women who enter into these Muslim marriages shared with us, as those women entering into polygamous marriages may well have opted to do so themselves. More generally, it may make sense for women to first conclude a Muslim marriage, which makes an intimate relationship *halal*, rather than rushing immediately into a civil marriage.

The argument that it is necessary to first conclude a civil marriage builds on the assumption that a civil marriage protects women's rights better. For women in polygamous marriages this is beside the point, as they cannot enter into a marriage with a man who is already married. Issues that concern them most are that both wives are aware of and consent to a polygamous relationship, that their rights are as much as possible arranged in an equitable way, and that they can indeed get an Islamic divorce. Whereas some may be willing and able to use the legal system to protect themselves, for others ethical-religious considerations are paramount. They may benefit from a broader awareness of the possibilities available in Islamic law, in particular through the inclusion of conditions in the marriage contract, such as the delegation of the right of divorce to the wife, and the option to have the marriage automatically dissolved if the husband concludes a Muslim marriage with another wife.

The solution proposed by the vvd initiative, that is, the further criminalization of Muslim-only marriages, may in fact be counterproductive, as it stands in tense relation to ways in which the Dutch state regulates religion: granting a certain autonomy within the confines of the law by not interfering into the substance of a religion. There is a range of opinions among Muslim authorities about the validity of a Muslim marriage related to issues such as the dower, the bride's marriage guardian, the extent of publicity, and, if we include Shi'a Muslims, temporary marriage. In order to act, the Dutch public prosecutor would need to take a stance on the validity of a Muslim marriage. Such an intrusion of state actors into the substance of religion will be hard to implement. This then turns the vvd initiative into a symbolic act that first and foremost contributes to the construction of Muslims as a problem-space. The effect may well be that it makes it more difficult to have a discussion about the protection of women's rights with respect to Muslim marriages. Some will consider any religion-inspired solution as an undesirable intrusion of religion in the secular field, while others will consider such a discussion as contributing to the further

problematization of Islamic practices. Rather than providing pragmatic solutions, symbolic politics may engender more problems.

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