Introduction

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Abstract

This article focuses on adjudication of Muslim family law in countries that range from the Middle East and North Africa to South-East Asia. It begins by shortly summarizing the development of shari'a in pre-modern times, up until the 19th century. We discuss the basic features of marriage among classical jurists and argue that the close connection known today between the family and Islamic law can be traced to the emergence of modern nation states and centralizing state structures. We then provide a description of important personal status reforms during the 20th and 21st centuries and consider the growing body of scholarship that engages with adjudication of Muslim family law in action and in context. Finally, we consider the contribution that the articles contained in the special double issue make to the field of research, including the questions of gender and judicial authority, religion-based judicial activism, and the courts' involvement in larger socio-political processes.

Keywords

shari'a – Islamic law – legal history – ethnography – marriage – gender – family – Middle East – South-East Asia

This special issue¹ addresses the adjudication of Muslim family law behind closed courtroom doors in countries that range from the Middle East to South

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East Asia. In most Muslim-majority countries, Muslim personal status law refers to statutory codifications that govern the relationships between spouses and their families. The articles collected in this special issue focus on courts because they play a crucial role in defining the limits within which rights and obligations concerning marriage, divorce, alimony, and child custody are negotiated. This is reinforced by the fact that litigants from all class backgrounds frequently resort to courts to claim their rights as regards to personal status matters. The reason for focusing on the domain of family law is that this is the field of law most influenced by classical religious precepts. These enactments have adopted doctrines from different law schools, using the techniques of *takhayyur* (choosing from many rules) and *talfiq* (piecing together from various sources in an entirely new way). Notable here is that, in the modern period, these methods were informed by a state's alleged dedication to service the public good (*maṣlaḥa*), but also by an understanding that the (nuclear) family is the basic unit and pillar of society (Ali 2016; Coulson 1964; Hallaq 1997; Peters and Bearman 2014). Shari'a in Muslim-majority and -minority societies today is largely focused on personal status issues, and less on financial or criminal jurisdiction, the two other fields of shari'a typically applied in the modern era. Women's rights advocates and international donors have devoted much attention to revising the personal status codes and, acknowledging that women are often trapped in the tyranny of their own families, view reform as a necessary step to improve women's access to justice (Hasso 2014; UN Women n.d.). However, how female litigants experience processes in courts, and whether Muslim family law is adjudicated in a manner favourable to female litigants, are questions that require concrete on-the-ground studies. As feminist legal studies have shown, legal practice in courts is constituted in a multiplicity of social, legal, and political contexts that all influence how much justice a woman can expect to get (Merry 2009; Mir-Hosseini 1993; Moore 1978; Smart 1989). Similarly, the question of the state protecting the rights of women from the injustices of their families is not straightforward but requires scrutiny.

Muslim family law is a subject that has captured a great deal of scholarly attention during recent decades, yet it is often studied within disciplines that seldom speak with each other. It is for this reason that this special issue brings together scholars across disciplinary divides, such as legal anthropologists (Dahlgren, Edres, Nurlaelawati, Razif, Shehada), legal sociologists (Lindbekk, Sonneveld, Voorhoeve), and a political scientist (Maktabi). The case studies at hand range from the Middle East (Egypt, Kuwait, Israel, and Palestine) and North Africa (Morocco, Tunisia), to South East Asia (Indonesia, Malaysia). The Middle East and South East Asia are historically linked by trade and the

ideational flow of religious and non-religious thought, as well as by diverse imperial projects (Cuno and Desai 2009; Hallaq 2009; Noor 2007). Comparison between adjudication in the countries of the three regions is fruitful since, while each of the countries in question has a long legal history of its own, they share certain features relating to how Muslim family law has gained its form as part of nationalist codification projects. There are also parallels in the ways in which the law is practised, and how the present-day law forms a bridge between modern-day family ideologies and the Islamic normative legacy. The articles in this special issue grew out of a panel convened in connection with the 2017 annual meeting of the Law and Society Association with the help of a grant from the US-based National Science Foundation.

Classical Jurists on Marriage

The history of Islamic family law dates to the time of the emergence of centralizing state rule in the course of the nineteenth century. In order to understand the significance of this process, it is important to have an understanding of how Islamic law in general, understood as the shari'a, emerged and developed in the early years of Islam. In scholarly literature, shari'a is frequently translated as "Islamic law" or "sacred law". Yet, these translated terms do not convey the wide range of meanings that shari'a carries for Muslims, other than those attributed to law in the strict sense, or in the modern Western legal context. In the treatises of Islamic jurists, the broad meaning of shari'a is the way or path to truth, virtue, and justice (Abou Fadl 2015, xxiii; Vikør 2005). A considerable part of shari'a consists of recommendations on how to live a good life and instructions on how to avoid what God set as evil. A distinctive feature of premodern shari'a is how it was developed by scholars (*fuqahā'*) during a period covering many centuries and who, unlike today, were independent of the ruler. The law that the *fuqahā'* created is called *fiqh* ("scholarly understanding") rather than shari'a. *Fiqh* hence earned the epithet "jurists' law", marking the distinction to "God-given law". *Fiqh* relates to a human understanding of the rules of shari'a and to a body of scholarly legal literature. In expanding the law, the classical scholars relied on a methodology called principles of Islamic jurisprudence (*uṣūl al-fiqh*, lit. "the roots of jurisprudence"), whereby shari'a was derived from specific sources. The sacred sources were two—namely, the Qur'an, which embodies the revelations of God to humankind, and the Prophet Muhammad's exemplary practice and utterances, called the Sunna as compiled in hadith collections. During the formative period, the jurists derived rules not only from these literal sources but also through a process called *ijtihād* (independent reasoning).

During the formative period (ca. 750–1000), *ijtihād* signified the efforts exerted by the jurists to arrive at a legal rule. According to the scheme of *uṣūl al-fiqh*, the two primary sources, the Qur'an and the Sunna, were complemented by two other methods of exerting rules: scholarly consensus (*ijmā'*) and reasoning characterized by analogical deduction (*qiyās*) (Vikør 2005, 54). Joseph Schacht (1982, 70–71) famously argued that, in the late ninth century, “the gates of *ijtihād* were closed”. With this, he indicated that the dynamic formative period gave way to a mode of thought characterized less by creativity than by imitation (*taqlīd*). Once the law schools (pl. *madhāhib*) were consolidated and gained followers, scholars occupied themselves mainly with commentary and making marginal notes (Kamali 2003, 160). An important aspect of the “closing of the gates” was the defence of the doctrines developed by the four schools of Sunni jurisprudence that survived from that period, the Ḥanafī, Mālikī, Shāfi'i, and Ḥanbalī schools (Hallaq 2004, 27). The Ḥanafī school eventually won a special position as the official law school of the Ottoman Empire (Vikør 2005). Despite the consolidation of the aforementioned schools during the formative period, the resulting corpus of legal doctrines was not recorded in a format that can be considered a code, but were dispersed among various manuals and commentaries of a particular school, described as “atomistic” in style (Kamali 2003). Before the era of nation states and statutory laws, judges in shari'a courts could decide cases by relying on normative pluralism—that is, by drawing from different schools of law or by reference to local custom.

Wael Hallaq challenged Schacht's thesis of the end of *ijtihād*. According to Hallaq, Islamic legal history has seen creative deduction of rules, even after the formative period (Hallaq 1984). As a method of disseminating such new rules, Hallaq names *fatāwā* (pl. of *fatwā*), scholarly legal opinions given by a mufti (a person inclined to give fatwas). This method became a convention among muftis and scholars who felt the need to comment on topical issues of their times. Such legal opinions became, in time, included in the authoritative literature of the law school and formed part of the literature called *furū' al-fiqh*, literature linked to a particular school. It discusses the branches or subject areas of the law (Hallaq 1984). Furthermore, scholars such as Judith Tucker (2008), Abdel Rehim Abdel-Rahman (1996), and Amira Sonbol (1996) have shown that practice in the premodern shari'a courts remained rather flexible despite the onset of mere imitation (*taqlīd*) of earlier scholars. According to Tucker, during the Ottoman era male judges at shari'a courts often mitigated the rules outlined in the manuals and were protective of female litigators' interests. In this way, shari'a courts softened male abuse of the right to repudiate their wives, while reinforcing a gender hierarchy. In today's perspective, the work of some Islamic reformists, among them Muslim feminists, constitutes

a form of *ijtihād*. For these feminist scholars, it is the task of substituting male bias in history with woman-friendly interpretations (Barlas 2002; al-Hibri 2015; Mernissi 1991; Mir-Hosseini, al-Sharmani, and Rumminger 2015; Wadud 2006). The boldest of the groups, a coalition of women's rights activists, scholars, and organisations called Musawah, is currently in the process of giving entirely new meaning to the notion of marriage in Islamic jurisprudence by using the methods of *uṣūl al-fiqh* rather than by merely issuing *fatāwā*.

The close connection known today between the family and Islamic law can be traced to the emergence of modern nation states and centralizing state structures during the nineteenth century. The commitment to preserving the stability of the “family” (*ʿusra* or *ʿāʾila*) as the fundamental unit of society found in contemporary family codes neither reflects the sources of Islamic law—the Qurʾan, and Prophetic Sunna—nor classical jurisprudence (Stowasser and Abul-Magd 2004, 167). Instead of a distinct sphere called family law, the corpus of classical *fiqh* discussed the rules governing marriage and divorce under several different sections. As scholars have shown, the Qurʾan is silent about household duties (ibid.). From today's perspective, classical jurisprudence takes a fresh outlook on the heterosexual relationship. In contrast to biblical Christianity, which is silent about sexuality, the classical scholars viewed marriage as a contract legalizing heterosexual intercourse and its outcomes. Sexual relations outside marriage (*zinā*) were clearly prohibited (Anderson 1976, 40).

The classical scholars considered marriage (*nikāḥ*) to be a contract determined by offer and acceptance by competent parties in the presence of witnesses. According to these requirements, a marriage is a verbal contract that does not have to be registered with state authorities in order to be valid. The Mālikī, Shāfiʿī, and Ḥanbalī schools required that a female should always have a male guardian contracting her marriage for her (Ali 2008, 14). This position stood in contrast to the Ḥanafī school, which allowed an adult woman of sound mind to marry herself independently of her guardian. The rights and obligations of spouses are mutual and can be summarized as follows: the husband's duty is to supply the wife with a dower (*mahr*) and to provide for her during the marriage, while the wife's duty is to submit her procreativity and sexuality exclusively to him. In discussing these duties, the jurists considered that a woman has the legal right to abstain from submitting herself only in the case where the husband does not fulfil his duties; thus, the notion of a woman's “obedience” (*ṭāʿa*) (Ali 2008, 12; Welchman 2018, 889). According to the majority of scholars, the wife had no duty to nurse her children or undertake housework (Ali 2008, 12), which reinforces the impression of marriage as a contract that renders sex legitimate. The woman gains compensation in the marriage payment and in getting upkeep for allowing the man exclusive access

to her vagina. Thus, the classical jurists were concerned neither with household duties nor with child-caring practices; a marriage is a contract of sexuality between a man and a woman.

As mentioned, the classical legal literature discusses the purposes of marriage in a straightforward language of sexuality. In elaborating these purposes, historian Judith Tucker summarizes:

The contract of marriage or *nikāḥ* is a contract between a man and a woman with the specific purpose of legalizing sexual intercourse: the point of departure in most legal discussions of marriage is the fact that marriage renders sexual relations licit. [...] The common thread in these initial discussions of marriage is that having licit sexual intercourse is both the primary motivation, and the most important effect of the marriage contract. (Tucker 2008, 41)

These legal discussions found their justification in hadith literature, where the Prophet is reported as having explained in reference to the marriage contract: "The stipulations most entitled to be abided by are those with which you are given the right to enjoy the (women's) private parts" (al-Bukhārī 1997, 7:62, *bāb* 81). Thus, a marriage has a different legal status in court if it is consummated (the couple has entered into sexual intercourse) or not. Tucker (2008) further explains that the contract was meant to bring fulfilment to both spouses equally, and that the classical jurists took the legal question of consent seriously. Thus, a contract without a woman's consent when she has reached the age of majority invalidates the marriage among all other schools except the Shāfiʿī. Again, the jurists made a difference between a virgin (*bikr*) and a non-virgin (*thayyib*) woman, with the latter having more freedom to contract her own marriage.

An old and still ongoing debate has to do with the nature of marriage as a duty of every Muslim. In highlighting the Qurʾanic message of marriage as the fulfilment of the moral duties of every Muslim, Muslim scholars and laypeople alike have debated whether marriage should be considered as part of *ʿibāda*, the instructions on how to serve God, or a part of *muʿāmalāt*, the profane relations between people and their communities (Ali 2008, 12). For critics of elevating the obligation to marry to the level of *ʿibāda*, it is important to see marriage in time and place and to recognize what is man-made and what is divinely commanded. It is, after all, a relationship between a man and a woman. In legal writings of the classical scholars, the contractual dimension of marriage took priority over the religious and ethical dimensions. According to medieval Islamic jurists, marriage is not a sacrament, as it is in Christianity, but

rests on a contractual basis. It is sometimes likened to a sales contract (*bayʿ*), whereby the husband purchases the right of sexual access by payment of the dower (Coulson 1964, 221). Pursuant to this payment, the husband does not gain rights over his wife's personhood or property. Recent studies have taken contradictory perspectives on the debate of comparing *nikāḥ* with a sales contract (Mir-Hosseini 2003; Katz 2018). In contrast to many customary practices, a man in classical jurisprudence does not "buy" the daughter from her parents, as marriage payments paid to the bride's parents (i.e., *ṣadaqa*) are sometimes called. The payment that Islam authorizes, *mahr*, remains the wife's property even in cases where the husband is ridden in poverty and cannot provide the family income (Moors 1996; Mehdi and Nielsen 2011; Mir-Hosseini 2003). Neither her husband nor parents have the right to deprive her of it. Thus, the *mahr* remains her property and security against the storms of married life (Dahlgren 2005; Mir-Hosseini 1993).

Moreover, in line with the medieval jurists' view of marriage as a contract rather than a pact, it was not conceptualized as a permanent institution: the man had the unilateral right of repudiation, while the wife could request divorce from a judge in specific circumstances. Classical Islamic rules regarding divorce law are highly gendered, in that men and women have different rights to divorce. The husband has a right to dissolve marriage by making a unilateral pronouncement, while the wife has limited rights to initiate divorce. The three most significant types of divorce are: (1) repudiation by the husband (*ṭalāq*), (2) divorce for compensation (*khulʿ*), and (3) judicial divorce for specific reasons (*tatliq*). A *khulʿ* divorce could take place at the request of the wife against her payment of compensation to the husband, such as the return of her dower (see Lindbekk, this volume). Furthermore, women can initiate divorce in court under specific circumstances. The degree to which the different schools allow women to request divorce from a judge vary tremendously. As an illustration of the heterogeneity of *fiqh*, the Ḥanafī school sanctioned judicial dissolution of marriage only in cases of a sexual defect in a husband or his apostasy. Meanwhile, the Mālikī school recognizes several reasons for allowing a woman to obtain divorce, such as non-support, abandonment, and harm (Ali 2008, 24; Tucker 2008).

Nation States and the Emergence of Statutory Law

In the coming of the era universally called modernity, the impact of nation-state building is crucial to understanding how marriage practices became legislated for. State intervention in restructuring Islamic law, with the aim of

making it more consistent and predictable, is known to have been present much earlier than the actual nation-state building era. For example, as discussed below, there were attempts to unify practices by making the Ḥanafī doctrine the official school of the Ottoman Empire. Nonetheless, the nineteenth century marked a significant shift in the extent and scope of state intervention in Islamic law. European imperial powers played a remarkable role in this regard, in a complex interplay with indigenous elites. In order to rule its colonies, Britain developed a legal system called Anglo-Muhammadan law, where British judges administered Islamic law to Muslims in separate courts, referred to by the British as “shari’a courts”. Similarly, other religious groups, such as Hindus in India and Jews in Aden, had their own courts. The British were in particular interested in Islamic law; the number of textbooks on shari’a that jurists—Englishmen and British-trained Indians—translated and authored as manuals to be used in the “shari’a courts” throughout the empire is extensive. All these courts were presided over by a British male judge, whose understanding of locally practised shari’a, or any shari’a for that matter, was informed by conventions of British common law. In the British Crown Colony of Aden, the system allowed the British judges to consult the local *fuqahā’* on matters lacking clarity, help they hardly ever resorted to (Dahlgren 2010, 91). The ruling system was informed by the declared principle of “not touching the custom and religion”, which in the British reading meant matters dealing with family life. Thus, the colonial power reinforced the patriarchal family structure when leaving women’s concerns under the control of their male custodians. As a remedy, women were administered some justice in the court, but within the limits of British understanding on how unjust and unfair the Muslim law was for women in the first place (ibid.).

Turning to the Malay states and the Indonesian archipelago, the British and Dutch colonial powers significantly interfered in native legal affairs during the nineteenth century. The rationalization and reorganization of the Malay legal system by the British began in earnest in the 1890s, a period during which the British colonials attempted to consolidate colonial rule (Peletz 2003, 49). Meanwhile, the current system of Islamic courts in Indonesia is directly traceable to a system of Islamic tribunals created by the Dutch colonial power. In the beginning, the Dutch believed that Indonesians should live by their own customary rules, except where these violated “general principles of justice and morality”, as understood by the colonial power. However, by the middle of the nineteenth century, the Dutch promulgated new codes and reorganized the judiciary (Lev 2000, 248). Simultaneously, the Dutch created a system of Islamic tribunals charged with the task of adjudicating disputes concerning

matrimonial law and inheritance (Cammack, Bedner, and van Huis 2015; Hallaq 2009). With these measures, shari'a was restricted to the sphere of the family only.

A related significant development took place in the Ottoman Empire. In the nineteenth century, the Ottoman Empire attempted to consolidate its power by creating a new non-religious court system beside the existing shari'a courts as part of a series of reforms aimed at modernizing society, called the Tanzimat. In 1886, legislation was passed that limited the jurisdiction of the shari'a courts to marriage, divorce, *ḥaḍāna* (custody of children), and inheritance (Edres, Lindbekk, and Schneider 2018, 7; Hallaq 2009, 101–2; Vikør 2005). The same period saw the introduction of a distinct sphere of law called personal status (*al-aḥwāl al-shakhṣiyya*) as presented by Muhammad Qadri Pasha (d. 1888) in his famous *Kitāb al-aḥkām al-shar'iyya fī l-aḥwāl al-shakhṣiyya wa-l-mawārith* ("Shari'a rules on personal status and inheritance", 1875). The limited field of law covered issues of marriage, custody, maintenance, and inheritance (Cuno 2015, 78; Vikør 2005, 236). The lumping of these different fields of law under one label contrasted with the practice applied in the corpus of classical *fiqh*, which discussed the rules governing marriage and divorce under separate sections. During the same period, nationalist discourse affirmed the Western-derived ideal of the conjugal family (in place of an extended family) and declared it as fundamental in constituting the nascent nation states (Abugideiri 2004; Stowasser and Abul-Magd 2004, 167–68). Envisioning a social order based on the nuclear family and marriage as a bond between two individuals, prominent Egyptian reformers such as Muhammad 'Abduh and Qāsim Amīn problematized male abuse of polygamy and the right to repudiate the wife (Cuno 2015; Lindbekk, this volume). The new family ideology was accompanied by an emphasis on domesticity and women's duties as homemakers, which coalesced with the pre-existing "maintenance-obedience" model of marriage found in traditional Islamic jurisprudence (Cuno 2015; Hallaq 2009).

Informed by feminist theorizations on modern-era family narratives, and pointing out how the family is women's golden cage, several scholars have critically addressed the linking of the family with marriage laws in modern state legislation. As Deniz Kandiyoti has argued, the emerging nation states constructed a distinction between the "public" and "private" spheres (Kandiyoti 1991). Thus, with the advent of modernity, families became designated as part of "the private", where the ancient patriarchal hierarchies were allowed to dominate. The new family ideal, consisting of a two-parent household, also had implications beyond the private sphere in state-sponsored programmes aimed at achieving national progress (Hasso 2010; Dahlgren 2008). By strengthening the nuclear family over extended kin relations, the codes facilitated projects

of social engineering by decreasing the powers of the senior men of extended families. This reflected the intrinsic competition in loyalty between the extended kin and the nation state, as the sociologist Mounira Charrad (2001) found to be the case in postcolonial Tunisia (see also Hallaq 2009, 120; Hasso 2010, 41). The linking of family and religion entailed that the institution of the family became a bastion of state-endorsed religious law, where reform was viewed as particularly sensitive. These dynamics set the stage for the emergence of family law as a highly contested domain during the last quarter of the twentieth century, leaving its mark on how the struggles over spousal rights have continued to be waged, both in the name of cultural authenticity and as an emblem of modernity, advancement, and development.

Codifying Family Relations

These hybrid discourses and practices laid the foundations of contemporary Muslim family law throughout the Middle East and South East Asia. During the twentieth century, the domain of the family, which thus became the last bastion of *fiqh*, was profoundly transformed and integrated into positive law and a state-controlled adjudication system. These enactments adopted doctrines from different schools, using the techniques of *takhayyur* (choosing from many rules) and *talfiq* (piecing together from various sources in an entirely new way). Notable here is that these methods were informed by a declared dedication to service the public good (*maṣlaḥa*), but also on an understanding that the (nuclear) family is the basic unit and pillar of society (Ali 2016; Coulson 1964; Hallaq 1997; Peters and Bearman 2014).

Codification finally began with the promulgation of the Ottoman Law of Family Rights in 1917. The Ottoman Family Law formed a precedent, first in Egypt in the 1920s and, after the Second World War, in the newly independent states that emerged in Asia, Africa, and the Middle East. Some prominent exceptions prevailed, such as Israel, where parts of the Ottoman Mecelle (Ar. *majalla*) and the Ottoman Law of Family Rights continue to apply to Muslim Palestinians even today, although modified by local legislation (Edres, this volume), and Palestine, which to date has no personal status code of its own despite attempts to draft a comprehensive family legislation (Shehada, this volume). In the 1950s, family law matters were codified in Jordan (1952), Syria (1953), Tunisia (1956), Morocco (1957), and Iraq (1959). This work took place hand in hand with the drafting of civil and criminal codes for the newly independent states. The driving force behind the Iraqi and Libyan civil codes was Egyptian legal scholar ‘Abd al-Razzāq al-Sanhūrī, who in 1948 had authored

the Egyptian civil code. Trained in Islamic and French law and influenced by the progressive ideologies of the time, al-Sanhūrī developed methods of transforming classical *fiqh* into the mould of Western statutory laws (Bechor 2007; Shalakany 2001). The result was often a progressively minded modern code that reflected more the currents of the time than the purposes of classical jurisprudence. Since that time, all these countries have issued either substantive amendments or entirely new personal status laws.

The legal transformation in the Ottoman Empire and Egypt also influenced developments in South East Asia. By the early decades of the twentieth century, improved transport technologies had facilitated overseas travel. Increased contact with the outside world led to a higher number of Malay and Japanese scholars studying in the Arabian Peninsula and at Cairo's Azhar University. (Hallaq 2009; Noor 2007, 126). Another route of contact was developed from South Arabia, with Ḥaḍramī intellectuals joining traders to move over to South East Asia (Othman 1997). This opened an alternative line of religious influence to the region. These developments had the effect of spreading diverse currents of Islamic thought in Indonesia and Malaysia (Peletz 2003, 53), including the ideas of Egyptian reformers such as Muhammad 'Abduh. In the context of Indonesia, efforts to codify Indonesian marriage law began shortly after independence in 1945 but foundered over a disagreement on the question of whether there should be a single marriage law applicable to all Indonesians or separate statutes for each of the country's religious groups. Finally, in 1974, Indonesia witnessed the promulgation of a Marriage Act, which was its first attempt to codify those parts of the shari'a that relate to marriage and divorce (Nurlaelawati, this volume). Similarly, efforts at codifying Islamic rules of marriage and divorce in Malaysia in the early 1980s, and the resulting Islamic family law (Federal Territories) Act of 1984, were to serve as a model to be followed by all Malaysian states (Norani 2008, 184).

As stated earlier, the modern-era law codes represent a departure from notions of marriage in classical Islamic jurisprudence. Rather than rendering heterosexual relations licit, state legislators focused on protecting the integrity of the family as the fundamental unit of society. By way of example, the 2004 Moroccan Mudawwana states in its preamble in a similar tone on the purposes of marriage, "Marriage is a legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family, under the supervision of both spouses according to the provisions of this Mudawwana" (Mudawwana 2004, § 4). The 2004 law replaced the post-independence code, the Personal Status Code of 1957, which had been the outcome of a historical pact between the king and the tribes. This tendency to valorize the nuclear family has been

further consolidated through the creation of specialized state-run family courts tasked with adjudicating family issues, as many of the papers in this thematic issue affirm.

The resulting codes were a hybrid creation, drawing on traditional Islamic jurisprudence but also departing from it in important ways (see also Cuno 2015). In discussing family law reforms in the North African states of Algeria, Morocco, and Tunisia, Charrad summarizes: “Any family law contains within itself a conception of gender and a conception of kinship. [...] Law in effect sanctions the control of women by their own kin group” (Charrad 2001, 28). According to classical Islamic jurisprudence, a marriage does not have to be registered with the authority to make it valid. However, the twentieth century witnessed unparalleled penetration of the state in the areas of marriage and divorce. The implications of codification with regard to women’s rights were paradoxical and contradictory. Several scholars argue that judges on the pre-modern shari’a courts enjoyed a greater degree of discretion than was the case after the codification of marriage rules. In this way, premodern shari’a courts provided women with a space to negotiate marriage and divorce rights without shaking the overall gender hierarchy (Abdel-Rahman 1996; Cammack, Bedner, and van Huis 2015; Haddad and Stowasser 2004; Meriwether and Tucker 1999; Mir-Hosseini 2003; Moors 1999; Sonbol 1998, 1996; Stowasser 1994; Tucker 2008). Another token of the hybrid and paradoxical nature of Muslim family law is that the contemporary codes tend to reaffirm male domination even as they limit the traditional male prerogatives of out-of-court divorce by utterance, and polygamy. This tendency is also evident in that legislation protected women’s rights by setting a minimum age of marriage, by widening women’s access to court-ordered dissolution of marriage, and by granting women increased rights to custody (Dahlgren 2010; Sonneveld and Lindbekk 2015; Voorhoeve, this volume; Yassari, Möller, and Gallala-Arndt 2017; Welchman 2007). Yet, several Muslim personal status codes faithfully adhere to paternalistic constructs of masculinity and femininity by obliging the husband to provide for his wife in exchange for her obedience (*tā’a*). This ambivalence is reflected in Indonesia’s 1974 marriage code, too, which on the one hand reinforces male dominance by labelling the husband as “the head of the household”, while also extending women’s rights on the other. For example, according to the 1974 marriage act, polygamy is only allowed upon the following conditions: the wife could not carry out her duties as wife, the wife has a disability or suffers from an incurable illness, or she cannot become pregnant (§4). Moreover, the consent of the wives is mandatory, and the husband should prove in front of the court that he is able to support all his wives and children (§5). Only upon the fulfilment of these conditions can the court grant permission for a polygamous marriage

(Nurlaelawati, this issue). Similarly, the Malaysian marriage act of 1985 reaffirms a patriarchal vision of marriage and subscribes to women's traditional role as wives (Noriani 2008, 195). In this way, state-sponsored reforms in the area of personal status law have tended to reinforce patriarchal structures in new ways while generating increased state involvement in the intimate lives of citizens.

At present, the Tunisian personal status code of 1956 (and subsequent legislation) is the only code that entirely prohibits polygamy (§18). Alongside the family law of the People's Democratic Republic of Yemen (PDRY) (Law No. 1 of 1974 in connection to the family, PDRY 1976) in force until 1992, the Code du statut personnel of Tunisia (CSP) was, until 2004, the only law that gave men and women equal divorce rights. Furthermore, in both laws, the principle of the matrimonial guardian was dropped. The bride now had to attend her own marriage ceremony and give her verbal consent for the marriage to become legally valid. In Democratic Yemen, the free-choice marriage for women to contract their own marriages was popularly referred to as "the woman's right to choose her husband" (Dahlgren 2010, 155). The free-choice marriage was not a novelty, though; classical Ḥanafī jurists had allowed a woman to contract her own marriage once she reached legal age. The Tunisian law redefined the rights and obligations of husband and wife in marriage so as to make them more equal (Charrad 2007), while the PDRY law, in line with classical *fiqh*, refrained from listing any duties outside those concerning economic support (§17, §20). The latter law was also silent on a wife's duty to obey her husband. In distinction from all other laws, the South Yemeni code stipulated that men and women should have equal duties in providing maintenance for the family (Dahlgren 2010). This provision, South Yemeni women's rights activists ascertained, was an interpretation of Q 4:4: "And give the women (upon marriage) their (bridal) gifts (*ṣaduqatihinna*) graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease" (Dahlgren, forthcoming). While the 1974 Family Law, locally known as the Women's Law (*qānūn al-mar'a*), has been accused of deviating from shari'a, in actual terms it follows classical jurisprudence more closely than any other modern code in dropping the family clauses typical of nation-state era family laws (*ibid.*). In distinction to most Arab laws, a maximum age gap of 20 years between spouses was stipulated to protect women younger than 35 from marriages with elderly men (§7, §9). After Yemeni unity, this progressive law was set aside once the unified Yemen Republic adopted a new personal status law (Law No. 30 of 1991). The new law, based on the conservative North Yemeni family law (Law No. 3 of 1978), was promulgated by presidential decree during the Ramadan recess of the parliament. The Tunisian CSP has, since the 1960s, undergone a number of reforms

in the form of amendments to the original code, all aimed at enhancing women's rights (Charrad 2007; Voorhoeve, this volume). For instance, in 1993, the government abolished the wife's duty to obey her husband (Voorhoeve 2015, 5) and, in 2018, the Tunisian cabinet approved a law allowing men and women equal inheritance rights.

The adoption of family legislation in Muslim-majority countries has taken place through a process of adaptation and borrowing, whereby countries have modelled their codes on the codes of other countries. The same applies to the court structure. As a legacy of the colonial period, in Indonesia, Israel, Malaysia, and Palestine, Muslim personal status law codes are applied through a system of shari'a courts separate from the civil courts. In Egypt, the system of shari'a courts was abolished in 1955, with family law applied in the civil courts of the nationally unified legal system. French-style hierarchical courts were introduced to ensure that judges applied the codified laws consistently. These courts were staffed by judges trained in Western-style law schools (Dupret et al. 2019; Wood 2016). In a recent major adjustment to the Egyptian court system, in effect since 2004, family courts have been established to deal with all personal status issues. Today, family courts are found in Bangladesh, Egypt, Iran, Israel, Kuwait, Morocco, Pakistan, Saudi Arabia, and Yemen. In Egypt, the creation of family courts followed on the heels of Law No. 1 of 2000, the so-called Law of *khul'*. §20 of this law significantly expanded women's right to judicial divorce by providing it in exchange for renouncing their financial rights and restoring the prompt dower (Sonneveld 2012; Lindbekk, this volume). In Morocco, the establishment of family courts coincided with the 2004 Mudawwana reform, which sought to cast marital duties as shared responsibilities. By way of example, the law's preamble places family care under the joint responsibility of both spouses. In keeping with this, the law abolished women's obedience to their husbands and instead gave each spouse equal responsibility for the management and care of the household and children's affairs (§51). The law also granted the wife and husband the possibility to divide assets acquired during marriage equally in the event of divorce (§49). The latter provision represents a departure from traditional Islamic jurisprudence, where, in principle, marriage has no bearing on the property rights of spouses. The 2004 Mudawwana also raised the legal age for marriage to 18 for both males and females (§19), abolished the need for a marriage guardian (§24–25), and placed strict limitations on polygamy. Furthermore, it gave women (and men) access to unilateral divorce (§94–97; Voorhoeve, this volume). Like the 1956 CSP of Tunisia and the 1974 PDRY Family Law, the Mudawwana expanded women's rights and responsibilities in the family considerably and, similar to the Egyptian legislation, was

celebrated domestically and internationally as having made significant steps in the direction of greater gender equality.

Muslim Family Law in Action and in Context

Recent decades have witnessed a growing literature on shari'a, not only as a text but also in practice. This has been reflected in scholarly interest in various parts of Africa, Asia, and the Middle East, with a need to shed light on the actual adjudication of Islamic law (Agrama 2005; Hirsch 1998; Katz 2014; Peirce 2003; Stilt 2012; Welchman 2007). This followed developments in legal studies at large, influenced by feminist sociological and anthropological approaches, where a shift in paradigm took place in changing the focus from law as rules in doctrinal works (of Islamic jurisprudence and modern law codes) to law as process (Moore 1978; Smart 1989). Equally important was the debunking of pervasive Orientalist assumptions which posited Islamic law as a monolithic entity instead of exploring its embeddedness in a variety of legal and social contexts (i.e., Agmon and Shahar 2008; Bowen 2003; Buskens 1999; Carlisle 2007, 2019; Dahlgren 2010, 2012; van Eijk 2012, 2016; Lindbekk 2013, 2016; Peletz 2003; Rosen 1989; al-Sharmani 2009, 2017; Shehada 2005; Sonneveld 2012; Voorhoeve 2012, 2014). Studies on Islamic legal practice in present-day courts have gained inspiration from studies on premodern Muslim court records. The latter-mentioned studies have revealed how the assumed rigidity of Islamic law as inscribed in written sources was highly exaggerated. Also, the presumption of women lacking rights in Muslim legal practice has been proved to be a product of a historically stratified male bias in scholarship (Marsot 1996; Stowasser 1996; Tucker 2008).

This body of scholarship has provided invaluable insights into the role of courts and litigants' ability to negotiate the court system to their advantage. What the studies brought to light was a woman's agency in managing her legal rights over her body, her children, and her material property, which the present-day nation state-legislated personal status codes more often than not curtail. Applying an intersectional approach, these studies have shown how a woman's social position and economic leverage influence her ability to claim her rights. What history has taught us is that women's rights in front of the law should never be taken for granted; they are always a source of struggle over politics, power, and economic resources. Increasingly these works also demonstrate that courts are important sites for the cultivation of subjectivities and social relationships (Peletz 2003, 2015).

The special issue at hand builds on these insights and adds some new aspects to existing scholarship through rich ethnographic studies combined with analyses of court documents. In the approaches adopted here, legislation and judicial discourse are seen to have important constitutive effects by promoting discourses on family, marriage, and gender while being embedded in a particular legal and social context. What the articles in this special issue show is how the courts studied interpret the gendered rights and duties of marriage, and what legal consequences such rights and duties might have. While a monogamous marriage has two parties, the legal outcomes of a divorce involve many parties, not only in childcare arrangements but also in residence patterns, financial considerations, and extended family concerns. To ensure a strong thematic unity, all articles in this special issue share the common focus of exploring a combination of variables that influence the performance of judges, ranging from judicial training and court rituals to personal attributes such as age, marital status, gender, social class background, place of birth, and political preference. One of the central assumptions underpinning the article collection is that judges are actors who enjoy a great deal of interpretive creativity in applying the law and constructing legal facts.

It is well established in sociolegal scholarship that, by interpreting and applying the law, courts play an important role in the development of law (Guarnieri 2002). According to Elisa Giunchi (2013), the semi-legislative function performed by courts acquires considerable importance in countries where the legislature and executive powers are unable, or unwilling, to reform the law, such as is the case with the law of personal status in Palestine. Nahda Shehada opens the special issue with an ethnographic account about the work of shari'a court judges in Gaza. Heterogeneity and flexibility in *fiqh* are often counterposed to modern state law based on a supposition that shari'a in the format of European-style codification does not leave much room for interpretation, thus rendering the state-derived shari'a uniform and static (Hasso 2014, 112; Kholoussy 2010, 327–28; Moussa 2011, 131; Sonbol 1996, 238). In contrast to scholarship that considers that the codification of family law undermined judges' ability to exercise discretion in seeking a just solution to individual cases, Shehada portrays each judge as a "single universe". Like their premodern forebears, contemporary shari'a court judges in Gaza retain a dynamic link with the society around them. This characterization seems to correspond with Max Weber's theory of "Kadijustiz" in Islamic courts (Weber 1967, 63; see also Agmon and Shahar 2008 and Masud, Peters, and Powers 2006). However, rather than being a product of irrational thinking, the judges' concern with maintaining social harmony through amicable settlements is also a prominent theme in societies of which the Muslim courts are part (see also Peletz 2003; Rosen

1980, 217–18). Shehada describes the work of shari'a court judges as ranging from enforcing specific moral standards to redistributing wealth in accordance with Islamic inheritance rules. She shows how judges in shari'a courts in Gaza evince much concern with ascertaining the social background of litigants, and how they place emphasis on reaching amicable settlements rather than making law a zero-sum game. In continuation of this point, they tend to protect the weaker member of society while preserving the prevailing social order. Thus, in a manner similar to their premodern Ottoman predecessors, contemporary judges in the shari'a courts in Gaza redress some of the worst gender inequalities upheld by the statutes. According to Shehada, an important feature of the Gazan shari'a courts is orality, which renders it impossible to accumulate case law. This stands in contrast to several Muslim-majority countries where rule formulation and interpretation are constrained through the precedents of supreme jurisdiction, formal or informal digests of quotations, and templates in a manner that has little to do with the classical method, which prohibited judicial precedent (Dupret et al. 2019).

The following article turns to Morocco, the country that adopted the much-celebrated new code in 2004. Various academic studies have concluded that the implementation of the *Mudawwana* 2004 in practice is obstructed by a set of issues, including poverty of the litigants, women's ignorance of the law, and importantly, corruption and conservatism among judges (Sonneveld 2012; Carlisle 2019; Engelcke 2019). Meanwhile, in her article in this thematic issue, Nadia Sonneveld shows how difficult it is for judges, both male and female, to implement major reforms introduced in one field of law (family law), when these reforms are not upheld by accompanying reforms in other relevant fields of law and changes in normative beliefs among society at large. She takes up the legal problem of premarital sex. As mentioned, the 2004 *Mudawwana* raised the legal age for marriage to 18 for both males and females, thus making extramarital sexual relations among people below that age legally punishable. As she shows, this forces young people to either delay first sexual intercourse or perform clandestine sexual relations. Theoretically, Sonneveld discusses how judges, in finding a court solution to premarital sex cases (that leave the culprits without punishment), in fact navigate between recognition of other legal orders (such as customary practices, a process she calls external recognition) and applying internal incompatibilities within and between the laws. In doing so, judges aim to respect Morocco's multifaceted social reality.

The case of child custody is discussed by Maaïke Voorhoeve in the broader context of social and political transformations in post-independence Tunisia, where consecutive regimes have sought to consolidate views on what a family is and how child-rearing should be legislated for. These political processes

have coincided with an increasingly dominant perception of the mother as the better caregiver. She proceeds to analyze the role played by the judiciary in interpreting the state-legislated principle of the best interest of the child in some custody cases. According to a law from 1966, custody is granted in divorce to one of the parents or to a third person based on considerations of the child's best interests. Voorhoeve shows how judges in a number of Tunisian courts fail to scrutinize the social conditions of the litigants and thus do not consider the best interest of the child on a case-by-case basis. The result is often detrimental for male litigants. As Voorhoeve argues, such a conceptualization is influenced by a dominant societal perception of mothers as better caregivers. To elaborate this point, she sheds light on a mode of legal reasoning where judges do not take into consideration the specific circumstances of the child, but instead make decisions based on generalized notions of gender, reflective of what the author calls a "maternity myth".

Another focal point in this thematic issue is the question of gender and judicial authority. As Sonneveld and Lindbekk (2017) have recently shown, while adjudication in Muslim courts has long been a predominantly male exercise, the last decades have seen a significant increase in the appointment of women to the bench in Muslim-majority countries in the Middle East and South (East) Asia. Hence, women are an increasingly significant voice among the judiciary. There is also an increasing number of women among lawyers, prosecutors, and court personnel, as well as among social workers consulted in court cases. In Morocco and Tunisia, the first women judges were appointed in the 1950s, a move that may have been motivated by the need on the part of the newly independent and modernizing states to fill positions left vacant by the exiting colonial rule in the expanding state bureaucracy. While women's appointment to the civil courts in Morocco and Tunisia was a smooth process, it has met with considerable resistance in some other civil law countries, such as in Egypt (Lindbekk, this volume). In countries with separate secular and religious courts, there is a distinction between women's appointment to civil courts and to religious courts, where their appointment has met with considerable opposition (Sonneveld and Lindbekk 2017). Such is the case regarding the shari'a courts and rabbinical courts in Israel, where the appointment of female judges has been met with protracted opposition from different segments of society, including litigants, male magistrates, and academic (religious) scholars. In her article in this thematic issue, Nijmi Edres situates the controversy surrounding the appointment of the female judge Hana Mansour-Khatib to the shari'a court against the background of Israel's complex political and legal framework. The article also provides insights into Mansour-Khatib's experiences with working in a male-dominated environment.

The next two articles focus on the ways in which contemporary judges and other legal professionals deploy the Islamic legal tradition as a normative resource. Monika Lindbekk contributes to scholarly literature on religiously inspired judicial activism by looking at how Egyptian family court judges and other legal personnel deploy notions of an idealized past to rearticulate notions of family, marriage, and gender as part of court cases dealing with *khul'*, the no-fault court divorce legislated for women in 2000 to release them from an unwanted marriage. She highlights two functions played by family court judges and other legal professionals. First, she argues that Egyptian family court judges and other legal professionals enjoy considerable discretionary power in interpreting and implementing the personal status code. She shows that they tend to privilege the conjugal family at the expense of the extended family. In looking at the religious discourses applied in court, judges seem to echo a set of themes which have become commonplace. Second, Lindbekk argues that legal professionals sometimes use the court and other legal spaces as a platform to voice anxieties over a perceived increase in female-initiated divorce, and to articulate alternative notions of family and marriage. She situates these contradictory practices against a background of contestation of early twenty-first century reforms that marginalized male authority in the family, in particular the 2000 law of judicial *khul'*.

In her contribution to this thematic issue, Euis Nurlaelawati investigates the attitude of judges in Indonesian religious courts towards the controversial issue of polygamy. In her ethnographic study in a number of Indonesian courts, she looks at how judges interpret the ambiguous legal rules on polygamy in law. In the cases she studied, she focuses on judges' judicial discretion and the legal facts drawn upon. Of particular interest are cases where judges grant a polygamy appeal. Her interest is to see how the judges observe whether the conditions of polygamy as specified by laws are fulfilled. Nurlaelawati makes visible the Islamic legal rationale applied in the judgments and how the judges deploy the notion of *maṣlaḥa* (public good) to fortify their judgments, while at the same time attempting to service the public good. Her article links to two other contributions in this volume, which discuss the pertinent question of courts participating in protecting society from *zinā*, sexual intercourse outside marriage. Razif also addresses this topic in her case study of Malaysians unable to marry in their home country and thus contracting the marriage across the border in Thailand. *Zinā* is also present in Sonneveld's case study of Moroccan youngsters left outside the protection of the law once the legal age for marriage was raised to 18 (see above).

In Malaysia, shari'a courts have complex historical legacies and are centrally involved in state power relations, including processes of state building

and constellations of governance. In her article, Nurul Huda Mohd Razif explores how Malaysian shari'a courts adjudicate cases of *khalwat* (illicit proximity, i.e. sexual relations)—a crime of passion under the Malaysian penal law, punishable by a fine or imprisonment, and a source of public shaming. While Malaysian society and state are strict in relation to extra- or premarital sex, a moral police force, called “religious enforcement officers”, is authored to hunt down possible culprits. Razif suggests that moral policing should be seen as an aspect of shari'a entanglement with state surveillance, discipline, and control. As in several other Muslim-majority countries, religious authorities and state agents—alongside the concerned parental families—try to find solutions to curb premarital sex. In the Malaysian case study, Razif explores how *khalwat* trials unfold in syariah (shari'a) courts, against the background of the relatively flexible and comprehensive nature of the law. According to Razif, the law operates beyond a decontextualized focus on gender, taking instead family background and marital and social circumstances into account. In recent years, however, the increasingly aggressive criminalization of illicit sexuality has contrasted with a loosening of the laws and lighter sanctions on elopement to southern Thailand, a phenomenon that continues to grow.

At the end of this thematic issue, Rania Maktabi's article on Kuwaiti family courts explores links between court reform and the boosting of state power. In Kuwait, the establishment of specialized family courts was influenced by the creation of similar courts in Egypt and Morocco. Another stated objective behind the reform was to provide litigants with a more accessible and efficient justice system, a goal that was supported by international donors. In her scrutiny of the changes in the legal system, Maktabi argues that in addition to the reform of family courts, other reforms in the legal sphere are relevant to understand how the state has expanded its administrative powers. Another important step has been the establishment of the Kuwait Institute for Judicial and Legal Studies, a law school that admits law graduates from the Faculty of Shari'a to become legal advisors in the state's administrative structure. Since 2014, Kuwait has also allowed the appointment of female lawyers to first-time entry positions as public prosecutors. Other legal reforms that have strengthened the state's rule over family affairs include the Law of the Child enacted in 2015, and the more visible role given to state authorities in addressing domestic violence. Maktabi argues that the establishment of family courts was an institutional means to strengthen Kuwaiti women's civil rights in marriage and divorce, while at the same time it provided an avenue for managing religious pluralism in a state where one third of the population is Shi'i Muslim. All these wide-ranging juridical reforms came as an institutional response to the

challenges posed to autocratic rulers in the 2011 Arab uprisings, thus consolidating the ruling Āl Ṣabāḥ regime's grip on power.

References

- Abdel-Rahman, Abdel Rehim. "The family and gender laws in Egypt during the Ottoman period." In *Women, the family, and divorce laws in Islamic history*, edited by Amira Sonbol (Syracuse, NY: Syracuse University Press, 1996), 96–112.
- Abou Fadl, Khaled. *Reasoning with God: Reclaiming Shari'ah in the modern age* (London: Rowman and Littlefield, 2014).
- Abugideiri, Heba. "On gender and family." In *Islamic thought in the twentieth century*, edited by Suha Taji-Farouki and Basheer M. Nafi (London: I. B. Tauris, 2004), 223–60.
- Agmon, Iris, and Ido Shahar. "Introduction: Theme issue: Perspectives in the study of shari'a courts: Methodologies and paradigms." *Islamic Law and Society* 15 (2008), 1–19.
- Agrama, Hussein Ali. *Law courts and fatwa councils in modern Egypt: An ethnography of Islamic legal practice*. PhD thesis (Johns Hopkins University, Baltimore, Md., March 2005).
- Ali, Kecia. "Marriage in classical Islamic jurisprudence: A survey of doctrines." In *The Islamic marriage contract: Case studies in Islamic family law*, edited by Asifa Quraishi and Frank Vogel (Cambridge, Mass.: Harvard University Press, 2008), 11–46.
- Ali, Shaheen Sardar. *Modern challenges to Islamic law* (Cambridge: Cambridge University Press, 2016).
- Anderson, J. N. D. *Law reform in the Muslim world* (London: The Athlone Press, 1976).
- Barlas, Asma. *Believing women in Islam: Unreading patriarchal interpretations of the Qur'an* (Austin: University of Texas Press, 2002).
- Bechor, Guy. *The Sanhuri code, and the emergence of modern Arab civil law (1932 to 1949)* (Leiden: Brill, 2007).
- Bowen, John. *Islam, law, and equality in Indonesia: An anthropology of public reasoning* (Cambridge: Cambridge University Press, 2003).
- al-Bukhārī, Abū Abdallāh Muḥammad b. Ismā'īl. *Ṣaḥīḥ al-Bukhārī* (Riyadh: Dār al-Salām lil-Nashr wa-l-Tawzī, 1997).
- Buskens, Léon. *Islamitisch recht en familiebetrekkingen in Marokko* (Amsterdam: Bulaaq, 1999).
- Cammack, Mark, Adrian Bedner, and Stij van Huis. "Democracy, human rights, and Islamic family law in post-Soeharto Indonesia." *New Middle Eastern Studies* 5 (2015).
- Carlisle, Jessica. "Raconter des histoires: L'arbitrage des demandes de divorce judiciaire à Damas." In *La Syrie au présent: Reflets d'une société*, edited by Baudouin Dupret,

- Zouhair Ghazzal, Youssef Courbage, and Mohammed al-Dbiyat (Paris: Broche, 2007), 661–70.
- Carlisle, Jessica. *Muslim divorce in the Middle East: Contesting gender in the contemporary courts* (London: Palgrave, 2019).
- Charrad, Mounira. *States and women's rights: The making of post-colonial Tunisia, Algeria and Morocco* (Berkeley: University of California Press, 2001).
- Charrad, Mounira. "Contexts, concepts, and contentions: Gender legislation as politics in the Middle East." *Hawwa* 5 (2007), 55–72.
- Coulson, Noel. *A history of Islamic law* (Edinburgh: Edinburgh University Press, 1964).
- Cuno, Kenneth. *Modernizing marriage: Family, ideology, and law in nineteenth- and early twentieth-century Egypt* (Syracuse, NY: Syracuse University Press, 2015).
- Cuno, Kenneth, and Manisha Desai. "Introduction." In *Family, gender, and law in a globalizing Middle East and South Asia*, edited by Kenneth Cuno and Manisha Desai (Syracuse, NY: Syracuse University Press, 2009), xiii–xx.
- Dahlgren, Susanne. "Women's *adah* vs. 'women's law': The contesting issue of *mahr* in Aden, Yemen." *Egypte-Monde Arabe* 1 (2005), 125–44.
- Dahlgren, Susanne. "Introduction. The Middle Eastern family revisited." *Hawwa* 6 (1) (2008), 1–11.
- Dahlgren, Susanne. *Contesting realities: The public sphere and morality in Southern Yemen* (Syracuse, NY: Syracuse University Press, 2010).
- Dahlgren, Susanne. "Making shari'a alive: Court practice under an ethnographic lens." In *Ethnographies of Islam: Ritual performances and everyday practices*, edited by Baudouin Dupret, Thomas Pierret, Paulo G. Pinto, and Kathryn Spellman-Poots (Edinburgh: Edinburgh University Press, 2012), 153–61.
- Dahlgren, Susanne. *Different roads to modernity: The making and unmaking of the South Yemeni state* (forthcoming).
- Dupret, Baudouin, Adil Bouhia, Monika Lindbekk, and Ayang Yakin. "Filling gaps in legislation: The use of fiqh by contemporary courts in Morocco, Egypt, and Indonesia." *Islamic Law and Society* 26 (2019), 405–36.
- Edres, Nijmi, Monika Lindbekk, and Irene Schneider. "Introduction." In *Uses of the past: Shari'a and gender in legal theory and practice in Palestine and Israel*, edited by Nijmi Edres and Irene Schneider (Wiesbaden: Harrassowitz, 2018), 1–20.
- Engelcke, Dörthe. *Reforming family law: Social and political change in Jordan and Morocco* (Cambridge: Cambridge University Press, 2019).
- Giunchi, Elisa. "From jurists' *ijtihad* to judicial neo-*ijtihad*." In *Adjudicating family law in Muslim courts*, edited by Elisa Giunchi (New York: Routledge, 2013), 1–31.
- Guarnieri, Carlo. "Introduction." In *The power of judges: A comparative study of courts and democracy*, edited by Carlo Guarnieri and Patrizia Pederzoli (Oxford: Oxford University Press, 2002), 1–17.

- Hallaq, Wael. "Was the gate of ijtihād closed?" *International Journal of Middle East Studies* 16 (1984), 3–41.
- Hallaq, Wael. *A history of Islamic legal theories: An introduction to Sunni uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997).
- Hallaq, Wael. "Can the shari'a be restored?" In *Islamic law and the challenges of modernity*, edited by Yvonne Haddad and Barbara Stowasser (Lanham, Md.: AltaMira Press, 2004), 21–53.
- Hallaq, Wael. *An introduction to Islamic law* (Cambridge: Cambridge University Press, 2009).
- Hasso, Frances. *Consuming desires: Family crisis and the state in the Middle East* (Stanford, Calif.: Stanford University Press, 2010).
- Hasso, Frances. "Bargaining with the Devil: States and intimate life." *Journal of Middle East Women's Studies* 10 (2014), 107–34.
- al-Hibri, Aziza. *The Islamic worldview: Islamic jurisprudence: An American Muslim perspective* (Chicago, Ill.: American Bar Association, 2015).
- Hirsch, Susan. *Pronouncing and persevering: Gender and the discourses of disputing in an African Islamic court* (Chicago, Ill.: University of Chicago Press, 1998).
- Kamali, Hashim. *Islamic law: An introduction* (Oxford: Oneworld, 2003).
- Kandiyoti, Deniz. "Introduction." In *Women, Islam and the state*, edited by Deniz Kandiyoti (New York: Palgrave Macmillan, 1991), 1–21.
- Katz, Marion Holmes. *Women in the mosque: A history of legal thought and social practice* (New York: Columbia University Press, 2014).
- Katz, Marion Holmes. "Is marriage really like a sale? Marriage and its metaphors in the fifth-sixth century AH/eleventh-twelfth century CE." Unpublished paper presented at the 1X International Conference of the International Society for Islamic Legal Studies, Tampere University, Finland, 6–9 June 2018.
- Kholoussy, Hanan. *For better, for worse: The marriage crisis that made modern Egypt* (Stanford, Calif.: Stanford University Press, 2010).
- Lev, Daniel. *Legal evolution and political authority in Indonesia: Selected essays* (The Hague: Kluwer Law International, 2000).
- Lindbekk, Monika. "Enforcement of personal status law by Egyptian courts." In *Adjudicating family law in Muslim courts*, edited by Elisa Giunchi (New York: Routledge, 2013), 87–106.
- Lindbekk, Monika. "Inscribing Islamic shari'a in Egyptian divorce law." *Oslo Law Review* 2 (2016), 103–35.
- Marsot, Afaf Lutfi al-Sayyid. "Women and modernization: A reevaluation." In *Women, the family, and divorce laws in Islamic history*, edited by Amira El Azhary Sonbol (Syracuse, NY: Syracuse University Press, 1996), 30–51.
- Masud, Muhammad Khalid, Rudolph Peters, and David S. Powers (eds.). *Dispensing justice in Islam: Qadis and their judgements* (Leiden: Brill, 2006).

- Mehdi, Rubya, and Jörgen S. Nielsen. *Embedding mahr in the European court systems* (Copenhagen: Djöf, 2011).
- Meriwether, Margaret L., and Judith E. Tucker. "Introduction." In *Social history of women and gender in the modern Middle East*, edited by Margaret L. Meriwether and Judith E. Tucker (Boulder, CO: Westview Press, 1998), 1–24.
- Mernissi, Fatima. *The veil and the male elite: A feminist interpretation of women's rights in Islam* (Cambridge, Mass.: Perseus Books, 1991).
- Merry, Sally Engle. *Gender violence: A cultural perspective* (Malden, Mass.: Blackwell, 2009).
- Mir-Hosseini, Ziba. *Marriage on trial: A comparative study of Islamic family law in Iran and Morocco* (London: I. B. Tauris, 1993).
- Mir-Hosseini, Ziba. "The construction of gender in Islamic legal thought and strategies for reform." *Hawwa* 1 (2003), 1–28.
- Mir-Hosseini, Ziba, Mulki al-Sharmani, and Jana Rummingner (eds.). *Men in charge? Rethinking authority in Muslim legal tradition* (Oxford: Oneworld, 2015).
- Moore, Sally Falk. *Law as process: An anthropological approach* (London: Routledge & Kegan Paul, 1978).
- Moore, Sally Falk. "Certainties undone: Fifty turbulent years of legal anthropology, 1949–1999." *Journal of the Royal Anthropological Institute* 7 (1) (2001), 95–116.
- Moors, Annelies. *Women, property and Islam: Palestinian experiences, 1920–1990* (Cambridge: Cambridge University Press, 1996).
- Moors, Annelies. "Debating Islamic family law: Legal texts and social practices." In *Social history of women and gender in the Middle East*, edited by Margaret Meriwether and Judith Tucker (Boulder, Colo.: Westview Press, 1999), 149–75.
- Moussa, Jasmine. *Competing fundamentalisms and Egyptian women's family rights* (Leiden: Brill, 2011).
- Noor, Zanaria. "Gender justice and Islamic family law reforms in Malaysia." *Kajian Malaysia* 2 (2007), 122–56.
- Noriani, Nik. "Legislative provisions and judicial termination of the marriage contract in Malaysia." In *The Islamic marriage contract: Case studies in Islamic family law*, edited by Asifa Quraishi and Frank Vogel (Cambridge, Mass.: Harvard University Press, 2008), 183–200.
- Othman, Mohammad Redzuan. "Hadramis in the politics and administration of the Malay states in the late eighteenth and nineteenth centuries." In *Hadrami traders, scholars and statesmen in the Indian Ocean*, edited by Ulrike Freitag and William G. Clarence-Smith (Leiden: Brill, 1997), 82–97.
- Peirce, Leslie P. *Morality tales: Law and gender in the Ottoman court of Aintab* (Berkeley: University of California Press, 2003).
- Peletz, Michael Gates. *Islamic modern: Religious courts and cultural politics in Malaysia* (Princeton, NJ: Princeton University Press, 2003).

- Peletz, Michael. "A tale of two courts: Judicial transformation and the rise of a corporate Islamic governmentality in Malaysia." *American Ethnologist* 42 (2015), 144–60.
- Peters, Rudolph, and Peri Bearman. *The Ashgate research companion to Islamic law* (Farnham, Surrey: Ashgate, 2014).
- Rosen, Lawrence. "Equity and discretion in a modern Islamic legal system." *Law & Society Review* 15 (2) (1980), 217–46.
- Rosen, Lawrence. *The anthropology of justice: Law as culture in Islamic society* (Cambridge: Cambridge University Press, 1989).
- Schacht, Joseph. *An introduction to Islamic law* (Oxford: Clarendon Press, 1982).
- Shalakany, Amr. "Between identity and redistribution: Sanhuri, genealogy and the will to Islamise." *Islamic Law and Society* 8 (2001), 201–44.
- al-Sharmani, Mulki. "Egyptian family courts: A pathway of women's empowerment?" *Hawwa* 7 (2009), 89–110.
- al-Sharmani, Mulki. *Gender justice and legal reform in Egypt: Negotiating Muslim family law* (Cairo: American University in Cairo Press, 2017).
- Shehada, Nahda. *Justice without drama: Enacting family law in Gaza City Sharmila Court* (Maastricht: Shaker Publishing, 2005).
- Smart, Carol. *Feminism and the power of law* (London: Routledge, 1989).
- Sonbol, Amira El-Azhary. "Law and gender violence in Ottoman and modern Egypt." In *Women, the family, and divorce laws in Islamic history*, edited by Amira Sonbol (Syracuse, NY: Syracuse University Press, 1996), 277–89.
- Sonbol, Amira El-Azhary (ed.). *Women, the family, and divorce laws in Islamic history* (Syracuse, NY: Syracuse University Press, 1996).
- Sonbol, Amira El-Azhary. "Ta'a and modern legal reform: A rereading." *Islam and Christian-Muslim Relations* 9 (1998), 285–94.
- Sonbol, Amira El-Azhary. "Muslim women and legal reform: The case of Jordan and women's work." In *Islamic law and the challenges of modernity*, edited by Yvonne Haddad and Barbara Stowasser (Lanham, Md.: AltaMira Press, 2004), 213–32.
- Sonneveld, Nadia. *Khul in Egypt: Public debates, judicial practices, and everyday life* (Cairo: American University in Cairo Press, 2012).
- Sonneveld, Nadia, and Monika Lindbekk. "A revolution in Muslim Family Law? Egypt's pre- and post-revolutionary period (2011–2013) compared." *New Middle Eastern Studies* 5 (2015).
- Sonneveld, Nadia, and Monika Lindbekk. "Introduction: A historical overview of gender and judicial authority in the Muslim world." In *Women judges in the Muslim World: A comparative study of discourse and practice*, edited by Nadia Sonneveld and Monika Lindbekk (Leiden: Brill, 2017), 1–23.
- Stilt, Kristen. *Islamic law in action: Authority, discretion, and everyday experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2012).

- Stowasser, Barbara Freyer. *Women in the Quran, traditions, and interpretation* (Oxford: Oxford University Press, 1994).
- Stowasser, Barbara, and Zeinab Abul-Magd. "Tahlil marriage in shari'a, legal codes, and the contemporary fatwa literature." In *Islamic law and the challenges of modernity*, edited by Yvonne Haddad and Barbara Stowasser (Lanham, Md.: AltaMira Press, 2004), 161–82.
- Tucker, Judith E. *In the House of the Law: Gender and Islamic law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998).
- Tucker, Judith. *Women, family, and gender in Islamic law* (Cambridge: Cambridge University Press, 2008).
- UN Women. "Women's access to justice." UN Women: Asia Pacific, n.d., available online: <http://asiapacific.unwomen.org/en/focus-areas/governance/womens-access-to-justice>.
- van Eijk, Esther. "Divorce practices in Muslim and Christian courts in Syria." In *Family law in Islam: Divorce, marriage and women*, edited by Maaïke Voorhoeve (London: I. B. Taurus, 2012), 147–170.
- van Eijk, Esther. *Family law in Syria: Patriarchy, pluralism and personal status laws* (London: I. B. Tauris, 2016).
- Vikør, Knut. *Between God and the sultan: A history of Islamic law* (London: Hurst, 2005).
- Voorhoeve, Maaïke. *Family law in Islam: Divorce, marriage and women* (London: I. B. Tauris, 2012).
- Voorhoeve, Maaïke. *Gender and divorce in North Africa: Sharia, custom, and the personal status code in Tunisia* (London: I. B. Tauris, 2014).
- Voorhoeve, Maaïke. "Women's rights in Tunisia and the democratic renegotiation of an authoritarian legacy." *New Middle Eastern Studies* 5 (2015).
- Wadud, Amina. *Inside the gender jihad: Women's reform in Islam* (Oxford: Oneworld, 2006).
- Weber, Max. *Law in economy and society* (New York: Simon & Schuster, 1967).
- Welchman, Lynn. *Women and Muslim family law in Arab states* (Amsterdam: Amsterdam University Press, 2007).
- Welchman, Lynn. "A historiography of Islamic family law." In *The Oxford handbook of Islamic law*, edited by Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2018), 886–932.
- Wood, Leonard. *Islamic legal revival: Reception of European law and transformations in Islamic legal thought in Egypt, 1875–1952* (Oxford: Oxford University Press, 2016).
- Yassari, Nadjma, Lena-Maria Möller, and Imen Gallala-Arndt. "Synopsis." In *Parental care and the best interest of the child in Muslim countries*, edited by Nadjma Yassari, Lena-Maria Möller, and Imen Gallala-Arndt (The Hague: Asser Press and Springer, 2017), 325–52.