Book Reviews

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In this meticulously researched, accessible and thoughtful book, Clarke contributes to the emerging field of studies on religious engagement with medical and bioethical issues in the Middle East. As an anthropologist, Clarke relates his research to the subject of “new kinship,” that is to say, changes in the epistemology of kinship as a result of new technologies that facilitate procreation, such as sperm or egg donation and surrogacy.

Clarke critically examines a central theme of the discussion of the new kinship: the issue of material “substance,” i.e., the construal of kinship ties in terms of the transfer of bodily substances, including, but by no means restricted to, procreative materials, especially sperm. In addition to sperm, blood or milk also may serve as a basis for kinship construction, a phenomenon that has received increasing attention in scholarly literature since the 1980s, with a strong focus on the analysis of milk kinship. It is widely known that in Middle Eastern countries (albeit not uniquely, as demonstrated in recent research) breastfeeding creates kinship ties of a limited kind, e.g. marriage prohibitions apply but no inheritance rights are created. At first sight, the ties created by breastfeeding appear to link the construction of forms of kinship to physical “substance.” However, Clarke points out that this interpretation reduces a highly complex array of legal positions and physiological theories to a single interpretation that cannot explain the diverse textual and empirical evidence. In addition, he reminds us that many issues arising in the context of contemporary assisted reproductive technologies are not new. For example, forms of artificial insemination are documented for England as early as the 18th century, and the status of a child conceived by means of artificial insemination is discussed in Islamic legal texts before the 20th century. For instance, the 19th century jurist Ibn ʿAbidīn (among others) discusses the legal implications of scenarios such as a woman’s gathering her husband’s sperm in a vessel and inserting it into her vagina after the sexual act. Also, changes in patterns of kinship occurred long
before the rise of assisted reproductive technologies (ARTs), as Clarke shows with the case of the British Deceased Wife’s Sister’s Marriage Act of 1907, passed after decades of intense debate. The Act was the first of several that had a significant impact on the construction of kinship along affinal lines, treating marriage ties as equivalent to “genetic” ties. In the first half of the 20th century, anthropologists like Malinowski and Mead played a pivotal role by communicating to an English reading audience the ways in which kinship was constructed in other parts of the world such as Samoa and the Trobriand Islands— a point to which Clarke returns at the end of his book.

In chapter two, Clarke shows how religious authorities compete with each other by issuing statements or expressing opinions that are regarded as more or less “liberal and advanced” or “restrictive” than those expressed or issued by other authorities either within the same community or outside of it. Clarke vividly describes how religious scholars such as Ayatollah Muḥammad Ḥusayn Faḍlallah (d. 2010) responded to requests for guidance that flooded into their offices on a daily basis. In this chapter Clarke repeatedly alerts the reader to the difficulties of analyzing the interplay between religious norms and social practice. For example, adoption (tabannī) is clearly forbidden by classical Muslim jurists, while fostering (takafful) is not. In daily practice, however, the two terms are not always used consistently to express separate legal concepts. Especially when it comes to the fostering of orphans within the extended family, the practice “often seem[s] to shade into adoption proper” (p. 74). A similar ambiguity applies to the terms laqīṭ or foundling and walad al-zinā or child born out of wedlock. In the latter case, in particular, the ambiguity works to the disadvantage of families who fear that a foundling raised by them will be stigmatized as a “bastard” if it is discovered that the child’s biological parents are unknown.

In Chapters three through six, Clarke outlines “test-tube fiqh” (his term) as articulated by Sunni and Shi‘i authorities and as understood by medical doctors. Whereas Sunni jurists consistently hold that any form of heterologous infertility treatment is forbidden, the views of Shi‘i authorities are more wide-ranging, sometimes paralleling those of Sunnis while at other times legitimizing egg donation, sperm donation, and embryo transferal, all on the condition that it is possible to establish a legitimizing legal framework for the act of conception (e.g. Ayatollah ‘Ali Khāmeneʿī’s position). The social controversies over different forms of ARTs are covered in chapter 5, which focuses on medical doctors, with special attention to differences in the assessment of sperm and egg donation.

In his concluding chapter, Clarke returns to analytical categories. He argues—convincingly in my view—that it is misleading to treat Khāmeneʿī as a jurist who is attempting to liberate himself from tradition. In fact, Khāmeneʿī uses