
Maaike Voorhoeve has collected a set of essays whose authors write from the perspective of the anthropology and sociology of law. As social scientists, they are not concerned with the normative features of law, but only with how it operates in practice in specific contexts. Throughout this valuable volume, this descriptive position raises interesting questions about Islam and the *Shari’a*. In Muslim societies, their foundational constitutions often assign a privileged position to the framework provided by the Qur’an, the *hadith* and the *Shari’a*. In Iran Ruhollah Khomeini, claiming there was no need for ‘man-made laws’, proposed that the Qur’an and the Sunna contain all the laws necessary for human happiness. In the Egyptian Constitution (Article 2), the *Shari’a* is recognized as the source of law and in Tunisia Article 1 provides that Islam is the state religion and the President must be a Muslim. Yet in these societies, the legal field is an unstable contest between religious and secular courts. Contemporary Muslim societies are characterized by legal pluralism in which there are diverse legal sources – secular law, the *Shari’a*, ‘custom and habit’, legal precedent, constitutions, international law, and human rights conventions. Consequently laws governing the everyday lives of Muslims are manifold, resulting legal decisions are often unreliable and inconsistent.

Legal pluralism is associated with globalization. However many Middle Eastern societies have historically functioned with different legal traditions and institutions. In Syria, Esther van Eijk shows how the Law of Personal Status is based on Islamic sources, but Druze, Jews and Christians have limited legislative autonomy and access to their own personal status courts. Lebanon is a parliamentary republic with nineteen religious communities, each of which has its own legal codes and religious courts. Within these competing legal traditions, judges have considerable scope for ‘discretion’. Because a general law can never cover all particular cases, there is a wide area in which authorities have discretionary powers. Leal discretion expands as judges are confronted by social change producing more complex cases such as inter-faith marriage, the care of illegitimate children, inheritance by non-Muslims, and families in which the income of an employed wife undermines traditional marital arrangements based on maintenance and obedience. The idea of ‘judicial discretion’ is brilliantly analyzed by Voorhoeve on Tunisian personal status law. It is widely acknowledged that Tunisian law is progressive. It is said to have successfully adapted Islamic law to the empirical complexities of a modern state. However, there are many gaps in the Tunisian system where judges have to exercise discretion for example over establishing ‘harm’ (*darar*) as grounds for divorce. Various legal sources can limit judicial discretion including the *Shari’a*, legal precedent, academic journals, the Constitution and international convention. Despite these official sources, judges often make judgements that clearly contradict the legal code. For example the law does not explicitly prescribe that a woman should cohabit with her husband. However judges will often refer to the reciprocal rights and duties within marriage (Article 23 PSC) under the idea of ‘custom and habit’. This umbrella notion offers wide discretion for a judge to regard the absence of regular cohabitation as ‘harmful’. Similarly there is a gap between judicial...
decisions based on ‘custom and habit’ and those based on the constitution and international conventions in recognizing paternity of children born out of wedlock or allowing marriages between Muslim and non-Muslim partners.

These essays raise one fundamental question: what is marriage? The issue is complicated by the distinction between ‘formal’ and ‘informal’ marriage contracts. In simple terms, Nadia Sonnveld observes that an informal marriage is one that has not been registered, but the empirical reality is more complex. Because marriage is the principal means by which women acquire social status, there are many strategies surrounding marital unions. So-called ‘urfi or customary marriages are often secret, and are publically condemned in allowing for temporary passionate liaisons. However, in a polygamous situation, the second marriage can often remain ‘secret’ with respect to the first wife, while offering the second wife some degree of legitimacy as a married woman. Many of these secret arrangements are novel rather than customary (‘urfi). For example in Misyar marriages there is no formal registration, and husband and wife agree not to live together and the husband has no financial obligations to his wife. For widows ‘urfi allows them to remarry and to retain the state pension of their deceased husband. Divorced women who may lose custody of their children sometimes remarry through ‘urfi arrangements.

The political question behind these essays is simply: is the legal status of women, despite modernization and social reform, in decline? Susanne Dahlgren shows how, with the unification of the Yemen in 1990, women’s rights have been eroded. After Southern independence in 1967, the government pursued a robust policy of women’s emancipation in the ‘Corrective Move’ of 1969. Women were not only encouraged to acquire education and to join the labour force, but men were instructed to treat women equally in everyday encounters. Following unification these reforms were ‘forgotten’ and women were no longer involved in building society but were treated as part of the harim, the sacred private space. In Iran, women’s rights have also had a turbulent history. In the 1979 Revolution, both religious and secular groups mobilized Iranian women as the symbolic antidote to Western values and the Veiling Act of 1983 made the chador a symbolic attack on the commodified women of the West. Mohammad Khatami’s presidency produced a radical improvement in women’s status; no longer simply wives and mothers, they were also individuals and citizens in the civil sphere. In 1998 Khatami created the Centre for Women’s Participation (CWP). However the Council of Guardians finally rejected the ratification of the Convention on the Elimination of Discrimination Against Women because its provisions were not compatible with Islamic principles. There has been a further erosion of women’s rights in favour of women’s duties with the election of Mahmoud Ahmadinejad in 2005, and these reactionary tendencies are illustrated by the change in CWP to the Centre for Women and Family Affairs. Obedient women are treated as primarily agents of social stability not social change.

Finally, these contributions to the study of family law illustrate the fact that changing women’s status to enhance their social rights is never easy or complete. Traditional Muslim jurists interpret the binary qiwamah/wilayah as that which signifies male authority in Muslim majority societies and subsequently as fundamental to social order. Justice is slow and Christine Hegel-Cantarella describes how