

Europe and in Latin America during the Cold War the bourgeois class has at times courted authoritarianism rather than democracy. Global polling shows attitudes toward democracy are waning amongst the global middle class.

There are some slight errors in this slender book. For example, some would translate “kasib” not as “merchants” but rather as “wage earners.” But, these errors in no way detract from the strength of Nasr’s efforts. In 2009 the book was originally published under the unfortunately obscure title of *The Forces of Fortune*. The Council of Foreign Relations, which printed the book through its publishing

arm, has aggressively promoted the text and launched the book with events and conference calls designed to raise awareness of the title. Going even further the text was rebranded and re-released under such titles as *Islamic Capitalism* (2010). Clearly, Nasr’s publishers are aware that this text is at least an equal accomplishment as his 2006 work on the Shia Revival.

Joseph Hammond

Endnote

1. Fouad Ajami, “With Us or Against Us”. *New York Times*, January 7, 2007.

Muslim Marriage in Western Courts: Lost in Transplantation

By Pascale Fournier

Farnham: Ashgate 2010, 206 pages, ISBN 9781409404415.

Pascale Fournier’s book addresses the highly contentious and complex relationship between multiculturalism, gender relations, and family law in liberal states. It adds to the rapidly growing body of legal scholarship that grapples with the legal consequences of cultural diversity within states that once may have contributed through colonialism to the creation of pluralist legal systems ‘elsewhere.’ Unfortunately, this scholarship tends to replicate the historical divide with too little attention paid to the rich analyses of ‘law’ by those working on and within legal systems in what can now be described as the ‘global south.’ Hopefully the series in which Fournier’s book is published (*Cultural Diversity and Law* edited by Prakash Shah) will bridge this gap.

Fournier’s book confronts three major concerns. The first is the ‘problem’ of Islamic law. Politically, particularly in Europe, there is growing Islamophobia and a retreat from multiculturalism, as a state supported project. Muslim minority communities, now long established within their original host state, who seek to live by Islamic values and norms, can be seen as not properly ‘belonging’ and therefore ‘suspicious,’ even though, as Fournier makes clear, that state may have in effect denied them access to citizenship. Islamic law, often hazily and lazily understood in popular parlance as ‘shari’a,’ is a flash point for such anxieties.

The second related issue relates to the role of women in Muslim communities. Feminism faces a major dilemma in the

present political context: analyses of unequal gender power relations within minority communities or campaigns to support women are quickly picked up and used in racist onslaughts. Yet, not engaging in such analyses or action can lead to the reinforcement of dominant power relations within communities and a failure to provide support for vulnerable members of a state. As Fournier demonstrates in Chapter 1 there is no consensus within feminism on the way in which gender relations are understood within Islamic family law.

The third more specifically juristic concern is with the issue of ‘transplantation,’ a topic much discussed within the legal literature relating to colonialism but here considered in the context of metropolitan law. It involves asking the question: do laws in general ‘travel’ and are there particular issues associated with the movement of (Islamic) family laws? As Fournier points out, addressing these questions raises wider analytical questions relating to the nature of ‘law.’ What is this ‘thing’ that travels? A monolithic, unitary, distinct and separate entity (a metaphorical book of rules) extracted from one setting and placed intact in another? Or fluid indeterminate norms that are products of specific religious, social, cultural, political contexts which regulate or provide the bargaining framework for relationships? The conceptual division between ‘the public’ (the appropriate domain of state and its law) and ‘the private’ (not the concern of the state) within liberal thought raises particular challenges for ‘travelling’ family law because it is often seen as more associated with norms than laws and highly context specific.

Fournier sheds light on these broad issues through her study of the Islamic

family concept of *mahr*: the payment that a wife is entitled to receive from her husband in consideration of the marriage. This payment, which is paid to the wife (not her guardian), is obligatory. The different schools of Islamic law construct mahr in different ways but in general mahr is payable at two stages: a relatively modest sum on entry into marriage (prompt) and usually a significantly larger sum on divorce (deferred). Fournier is particularly concerned with the way in which the judiciary of various states understands mahr when it is called upon to adjudicate upon disputes that arise over distribution of assets upon divorce.

The strength of Fournier’s book lies in its detailed and careful coverage of her well defined topic. In chapter 1, she introduces us to the concept of mahr and explains how it works within the wider context of Islamic family law. She shows how mahr operates within the different forms of divorce (talaq, khul, and faskh). Fournier provides an excellent understanding of the way in which Islamic family law structures the economic relations of spouses and maintains regulatory power at the dissolution of marriage. She stresses that mahr is part of the parties’ bargaining strategy “in the shadow of divorce” and argues that there is no such thing as a specific Islamic mahr that could travel homogeneously to Canada, the US, France or Germany.”

She substantiates this claim very convincingly in her detailed discussion of the way in which the judiciary in these four jurisdictions have approached the issue of mahr. She argues that across the jurisdictions, judges have adopted three discernible approaches, all of which are based on different understandings of liberalism. The first (legal pluralist,) considers mahr

as central to the cultural and religious identity of specific communities; the second (formal equality) adopts a positivist stance to law and seeks to incorporate mahr into the domain of a civil contract; the third (substantive equality), reflecting feminist arguments, places mahr within a web of unequal power relations. Interestingly, Fournier argues none of these approaches renders any certainty of outcome: for instance it can be argued within any of these jurisdictions that mahr has the attributes of a civil contract or lacks the certainty to be one. She concludes that all three produce inconsistencies and unpredictability and there is no such thing as a Canadian mahr or a French mahr. What is produced is a “complex contradictory and shifting mahr which exists as a bargaining endowment ‘in the shadow of the law’ ... which ‘does not easily travel.’” (108)

Her final substantive chapter broadens the specific discussion to reflect (to a greater or lesser extent) on the wider questions set out above using a range of ideas drawn from a diverse group of scholars.

While this chapter offers many insights, it has a tendency to appear episodic and it might have been better to concentrate on developing one or two of the very interesting points in more detail.

Fournier deliberately does not provide us with any clear answers to the question: how should ‘transplanted’ mahr be used by the courts. She leaves us, however, with a very clear understanding of how mahr has in fact been used, which is invaluable resource for those interested in shedding clearer analytical light on this complex area. She also leaves us with a strong sense that the judges should be alert to the ways in which bargaining over mahr can reinforce injustices between unequal parties. Despite the complexities of the interactions between state and Islamic family law she considers that the courts guided by concepts of fairness and distributional justice are the preferred location for such matters rather than community based dispute resolution forums.

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