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Editorial

New Perspectives on Gender in *Shari'a*-Based Family Law Studies: Moving Beyond the Women's Issue

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Introduction

This Special Issue is the result of a conference on Islamic Family Law that we organized in the Netherlands in 2013, entitled: *Islamic Family Law in Modern Europe and the Muslim World – Legal and Empirical Approaches beyond the Women's Rights Issue*. Most of the contributions in this volume were presented at this conference. But above all, this theme issue is the result of our discussions as colleagues with different academic backgrounds (anthropology, sociology of law, and law) and different links to the field of Islamic family law: as an insider (Sonneveld), newcomer (Sportel), and outsider (De Hart). Our discussions, questions, amazement, and at times concerns about the traditions, aims and future of Islamic family law studies revolved around recurring questions that we aim to address in this Special Issue. We believe that the field of Islamic family law could profit from similar dialogues across disciplines, especially sociology of law, gender studies, and critical legal studies.

The issues we address in this introduction are inspired by insights from these disciplines and made us wonder about assumptions and understandings underpinning the study of Islamic family law, most importantly: the stereotyping of Muslim men, the concept of gender, and the concept of law.

The Stereotyping of Muslim Men: Do Muslim Women Need Saving?

In her thought-provoking book *Do Muslim Women Need Saving?*, Lila Abu-Lughod (2013) shows how in Western popular culture and media, Muslim women attract extensive attention as the ultimate symbols of how problematic Muslim religion, culture and, in particular, Muslim men are. As she demonstrates, this

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image of Muslim women as the ultimate victims is interconnected with a range of geo-political and historical developments. For example, Abu-Lughod argues that saving Muslim women provided a justification for western governments to launch a post 9/11 'war on terror' in Afghanistan and Iraq. In a twist on Spivak's famous quote that 'brown women' are seen as in need of saving from 'brown men', it seems that in the Global North academics, policy makers, and pundits alike feel that Muslim women need saving from Muslim men (Spivak 1988). In her book, Abu-Lughod advocates 'writing against culture' by taking into account the individual experiences of all people involved, as well as the larger geo-political and historical structures they live in.

The discourses Abu-Lughod describes for popular culture seem not to be limited to the field of popular culture. In Islamic family law studies, women tend to be the main focus. This applies both to studies which focus on family law systems in Muslim-majority countries and those that focus on Muslim minorities living in the Global North (Al-Sharmani 2008, 2013; Ali 2000; Bano 2012a, b, Benradi 2004; Carroll 1997; El Fadl 2014; Esposito and DeLong-Bas 2001; Jansen 2007; Khir 2006; Mashhour 2005; Mir-Hosseini 2006; Nasir 2009; Shah-Kazemi 2001; Storms 2017; van Huis 2015; Voorhoeve 2012; Welchman 2004; Zoglin 2009). While not all studies on Islamic family law have such a strong focus on gender, those that deal with gender in any way almost exclusively deal with women. To our knowledge, there are no major publications on men in Islamic family law that accompany the dozens of books and edited volumes on women and Islamic family law (for an exception see Sonneveld and Lindbekk 2015; Žvan Elliott 2015).¹ While most of this literature tries to dismantle the stereotypical image of Muslim women being passive subjects, in an important part of these studies the concept of gender is nevertheless used to discuss the inferior position of women in *shari'a*-based family law legislation, including contested issues such as divorce, repudiation, and polygamy (For example Mashhour 2005; Moghadam and Roudi-Fahimi 2005; Shah-Kazemi 2001; Zee 2016). As Muslim women are depicted as the victims of patriarchal family laws, they are ascribed little room for agency and few possibilities to claim their legal rights.

According to Hirsch, these images are based on a simplistic dichotomy of Muslim women (silenced through law) as the 'Others' of western women (liberated through law) (Hirsch 1998: 2). Zakaria strikingly describes this dichotomy in her personal essay *Sharia, Justice and the Politics of Intimacy*:

[...] saving Muslim women is advertised as a purported aim for broad and varied campaigns that in actuality have little to do with them. In private conversations and in public forums on these issues, the questions on many lips are inevitably 'But doesn't Islam really oppress women?' or 'Doesn't Sharia law treat women as second class citizens?' Because these observers see Islam, Sharia, and Muslim women [as] undifferentiated monoliths, the answers to their questions consequently fit the binaries that produce them: good and bad, just and unjust, oppressive and liberating. The assumptions buried inside these perceptions rest on western law, in which gender equality is safe, while in Sharia law, its specter hung with images of hacked hands and stoned women, it is not (Zakaria 2011: 7)

¹ Even though there are some studies on Muslim men and masculinities (For example: De Soudy 2015; Inhorn 2012; Ouzgane 2003, 2006), they lack the specific focus on family law of the studies quoted on women and women's rights.

In the past two decades, the study of Islamic family law has taken a high flight, with an increasing number of researchers focusing on the practical implementation of family law reforms in the courts and its impact on women in Muslim-majority countries and the West (Al-Sharmani 2008; Bernard-Maugiron and Dupret 2008; Carlisle 2007; Carroll 1997; Giunchi 2014; Hirsch 1998; Jansen 2007; Khir 2006; Mehdi 2003; Mehdi and Nielsen 2011; Mir-Hosseini 2000; Moors 1999, 2003; Osanloo 2006; Sadiqi and Ennaji 2006; Salime 2009; Shaham 1999; Shah-Kazemi 2001; Singerman 2005; Sonneveld 2012; Van Eijk 2013, 2016; Voorhoeve 2009, 2012; Zoglin 2009). While the importance of these studies, shedding light on the complex implementation practices of Islamic family law by courts, judges, lawyers, and family members can hardly be underestimated, they have kept Muslim women at the center of attention. The impact of law reforms on men and, to a lesser extent, children, is a question that few researchers have asked.² At best, men have been portrayed as a uniform category with too many *shari'a*-based rights from which women needed to be protected.³

As studies focusing on men and masculinities in the Muslim world are rare (Inhorn 2012; Ouzgane 2003, 2006), the field of Islamic family studies may miss out on important developments in family life and family law. New forms of masculinity emerge not only in the 'western' but also in the Arab world (Inhorn 2012) and new family practices and relationship forms are continually being created. Ignoring the ways in which femininity and masculinity are being transformed by cultural, social, political, and economic processes, many of which are of a global nature, gives us a limited view of these processes (see also Inhorn and Patrizio 2015). Furthermore, ignoring men and masculinities may perpetuate the stereotypical portrayal of Muslim men as terrorists, religious zealots, and brutal oppressors of women, especially since 11 September 2001. These are stereotypes, which scholarship dealing with Muslim-majority countries should be keen to dismantle. If Muslim men are either absent or perpetrators, they remain without voice, and are denied humanity as well as vulnerability (Wray 2011). In the end, such images harm not only men, but also women.

Of course, adding men as subjects in the study of family law does not mean that power inequalities are ignored.⁴ Like any other families, Muslim families are full of tensions, conflicts, power struggles and inequalities, and Islamic family law may work out differently for different family members. What may be opportunities for one family member may be the constraints for another.

The Concept of Gender

So far, Islamic family law studies have taken a rather traditional theoretical stand on the role of gender, and, by and large, have not taken into account the

² See however Sonneveld (2017) for an analysis of the impact of the 2004 Moroccan family law reform on children.

³ Exceptions are Sonneveld and Lindbekk (2015) who analyze the emergence of organizations for the rights of fathers in Egypt. These organizations criticize the profound changes which a decade of family law reforms in Egypt has brought them. Sonneveld and Lindbekk show how changing notions of masculine and feminine roles inside the family are not reflected in Egyptian Muslim family law reform.

⁴ See also Korndorfer (2009) and Korndorfer and Hunt (2012).

theoretical developments in the field of women and gender studies. At least since the 1990s, the field of gender studies has started to include the study of men and masculinities as well as women and femininities, and sexualities. It is probably needless to say in a journal like *Religion and Gender*, but in these approaches gender is not understood as a natural concept with a clearly demarcated content, but as a social construction, meaning that masculinity and femininity can have different meanings in different social and cultural contexts and times; consequently, these meanings should not be assumed but studied.

Furthermore, whether and which men are in an advantaged legal position, and whether and which women are in a disadvantaged legal position, and how, depends not only on gender, but also on intersections of gender with other inequalities such as class, ethnicity and sexuality (Crenshaw 1991). *Intersectionality* refers to the mutually constitutive relations among social identities such as gender and social class, which may reinforce and naturalize one another and are always interrelated. It means that social positing is connected to power and inequality in complex ways. One can be privileged in one social position but disadvantaged in another, or the way women or men are viewed may be informed by, for instance, their class position (Lutz et al. 2016; Phoenix and Pattynama 2006; Shields 2008; Verloo 2006). In studies on gender and Islamic family law, however, such an intersectional approach is largely missing (Charrad 2011). The danger is that the unitary category of women is naturalized and reified, and that important differences between women are being ignored, resulting in the exclusion of certain categories of women, such as rural women, non-Muslim women, and migrant women inside Muslim-majority countries. In this manner, the study of Islamic family studies is at risk of not fulfilling its emancipatory ambitions.

The Concept of Law

Our third and last point refers to the concept of law. Scholars tend to treat Islamic family law as inherently different and separate from family law in other parts of the world.⁵ However, it is rarely questioned to what extent this othering is justified. Moreover, in times of globalization, which includes the circulation not only of goods, but also of people, norms, ideas as well as law, it seems hardly tenable to view Muslim-majority countries, including developments in Islamic family law, as disconnected from the rest of the world.

Studying Islamic family law as inherently different from family law in other parts of the world is not only in danger of confirming stereotypical othering of Islamic family law in the Western world. Moreover, the field of Islamic family law remains largely empirically descriptive and seems to be largely disconnected from theoretical insights and developments such as in sociology of law, critical legal studies, and feminist legal studies. We suggest that the field could profit from absorbing insights from the study of family law in other parts of the world, such as: a critical analysis of the role that perceptions of motherhood and fatherhood play in family law (Boor 1999; Boyd 2004; Collier 2009, 2010; Collier

⁵ Similar observations can be made on Jewish family law, both in Israel and in the West.

and Sheldon 2006; Hacker 2005; Rhoades 2002; Smart 1991); the consequences of equality and rights discourses in family law (Diduck 2011); and studies on children's rights (VandenHole et al. 2015).

Monika Lindbekk's contribution in this Special Issue is a case in point. Father's rights movements that came up since the 1980s have been studied extensively for countries like the United Kingdom, United States, Canada, and Australia (Bertoia and Drakich 1993; Boyd and Young 2007; Collier 2009; Collier and Sheldon 2006, 2008; Crowley 2008; Dragiewicz 2008; Jordan 2009; Kaye and Tolmie 1998; Williams and Williams 1995). Lindbekk analyses the public emergence of the father's rights movement in Egypt after the Egyptian 25 January 2011 revolution. This raises fascinating questions for comparison. How do the discourses of the Egyptian father's rights movement compare to those in the other countries? What are similarities and differences and how can they be explained? Do notions of 'new fatherhood' (Collier 2009) play a role in this country that has the largest population in the Arab world?

One of the most important insights from sociology of law concerns the limitations of a 'law first' approach that characterizes many studies of Islamic family law. Such a 'law-first approach' entails a strong belief in the power of law in shaping people's lives. Law is seen as an instrument that can be used to bring about social change, such as better living standards for women. However, this approach neglects an important understanding in the sociology of law that has demonstrated time and again that the impact of law cannot be assumed, but rather should be the subject of study. Sociology of law questions if law has any impact at all, and in case it has, when, why, and how (Griffiths 2003). There is often a disconnect between 'law in the books' and 'law in action', that can only be understood by looking at the social and institutional context in which legal actors (including street-level bureaucrats and ordinary people) work with and address the law. Such a 'social working of the law' approach seriously questions the impact that law has in the social lives of people, and points to its often unintended, unforeseen, and contradictory consequences. In this approach, law is not an external factor working independently upon society, but rather part of social processes, and just one of the norms with which legal actors deal (Ewick and Silbey 1998; Merry 2006; Moore 1973; Silbey 2003). Hence, instead of asking how reform of *shari'a*-based family law impacts on the position of (Muslim) women, a 'social working of the law' approach would ask how people of different backgrounds deal with such issues as divorce and what role (family) law plays a in this process.

The 'law first' approach is also remarkable because it centralizes the state as the actor that, through legal change, is instrumental in bringing about social change. This starting point has not only been seriously criticized by feminist and critical legal studies, but is especially questionable in the contemporary geopolitical context in which many regimes are not democratic. This is a point succinctly taken up by Nadia Sonneveld in her contribution to this theme issue. Sonneveld analyses gender inequality in authoritarian states by highlighting the case of family law in the Muslim-majority country of Egypt, both past and present. She asks why and to what extent notions of manhood and womanhood have changed over the course of almost a century of family law reform in Egypt. In answering this question, she draws on the work of two Egyptian intellectuals, who, in contrast to most studies dealing with Islamic family law, have analysed the effects of authoritarian leadership on men's position in the family and society.

Aim of the Special Issue

In this special issue, we aim to demonstrate what a critical, intersectional, and socio-legal approach to Islamic family law could look like and how dialogues with other disciplines could bring new perspectives into the field of Islamic family law studies. We aim to move beyond a women's rights perspective by which we mean two things. First, we do not limit ourselves to the study of women as a general unspecified category, but instead recognize that notions of womanhood are constructed in interaction with other social categories, such as class, race, age, religion, socio-economic status, and citizenship status (migrant/non-migrant). Mulki Al-Sharmani's contribution is a clear example of how notions of womanhood change in a situation of migration. She shows how Somali migrant women's access to divorce is facilitated by the provision of state welfare resources as well as a new religious discourse emerging in the Somali migrant community in Finland.

Second, we do not limit our focus to an analysis of different categories of womanhood, but analyze the construction of different categories of manhood as well. In our view, a complete gender analysis requires that we explain how different notions of manhood and womanhood are created and how they impact on the everyday lived experiences of men and women alike, both inside and outside the Muslim world. For example, where Al-Sharmani demonstrates how Muslim women's access to divorce is facilitated in a situation of migration to Finland, Iris Sportel's contribution shows how the opposite applies to divorced Muslim male migrants in The Netherlands who want to remarry but whose foreign divorce certificates are not recognized on the ground of violating the Dutch public order, as it is considered to violate principles of gender equality.

Through an intersectional approach we believe we can develop a more critical gender approach for the field of *shari'a*-based family law studies. Sportel's contribution demonstrates the importance of taking such a critical approach, as she demonstrates how perceptions of Muslim men and Islamic family law in European countries disadvantages Muslim migrant men to the extent that they have less possibilities to divorce than non-Muslim men, while at the same time upholding such perceptions serves the goals of restrictive migration policies.

We take into account the context of authoritarian and colonial and post-colonial contexts and their impacts on the development of Islamic family law. Both Sonneveld's and Lindbekk's contributions show the detrimental effects which top-down family law reforms can have on the position of men and women inside the family and society in a situation characterized by authoritarian rule and oppression. We propose a socio-legal approach to Islamic family law, which decentralizes the state and state laws and that takes into account men and women as active legal actors, who navigate law, state, social norms, and religious institutions. We consider law as a practice that can both constrain and enable agency, depending on other power constellations involved, including ethnicity and class (Chunn and Lacombe 2000). Especially in Al-Sharmani's contribution, the value of a law in the everyday life approach is demonstrated. Answering to a call, also outside the context of Islamic family law studies, to include men as involved in reproduction, as partners, lovers, fathers and decision makers, we include Muslim men as fathers. We do not only do this from

a theoretical point of view, but also because, as all contribution clearly show, Muslim men themselves demand to be included and treated as fathers.

Editors

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Nadia Sonneveld (PhD University of Amsterdam 2009) has an academic background in anthropology, Arabic, and law. She works at the Radboud University in Nijmegen, The Netherlands. Generally, the common factor in all her research activities is the focus on *shari'a* as a lived and contested reality that must be studied against the black letter of state-codified Islamic law. She has conducted extensive research in Egypt and Morocco on the introduction and implementation of *shari'a-based* family law reform. Previously, she was a guest scholar at the School of Oriental Studies (SOAS) in London, and Al-Akhawayn University in Ifrane, Morocco. She authored *Khul' Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life* (2012), and has co-authored with Monika Lindbeek *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice* (2017) and with Doris Gray *Women and Social Change in North Africa: What Counts as Revolutionary?*, which will be published by Cambridge University Press in the fall of 2017.

Iris Sportel (PhD Radboud University Nijmegen 2014) is an early-career fellow at the Lichtenberg Kolleg, the Göttingen Institute for Advanced Study in the Humanities and Social Sciences. She wrote *Transnational Families and Divorce, Marriage, Migration, and Family Law* (2016), on the interactions of transnational families with multiple legal systems in case of divorce. She has also done research on living conditions in reception centres for failed asylum seekers; forced marriages and marital imprisonment; the comprehensibility and acceptability of criminal court judgments; and conflict resolution in administrative law cases.

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