

Notes

Marriage in Islam

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A time of inter-religious dialogue—and that is all too often forgotten, is necessarily also a time of inter-religious marriages. Too little is known about the marriage customs and theologies of the “Other”—until it is too late and disappointment and profound irritation about the Other’s ways of acting and thinking in this matter take place. Thus, inter-religious marriage needs inter-religious dialogue. The following is a small step in this direction.

Introduction

As in Heaven...

Marriage digs deeply into the mystery of creation. As so many other religions also in Islam it all begins with the creation of woman and man. Without this mystery of “two”, the double “zawal”; no marriage, no getting married “nikah” (see text 1).¹

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¹ The Arabic transcription has been simplified.

And nowhere else there is a more tender description of the nature of the relationship “à deux” than in Qur’an, Surah 30, 18-21: to find rest in one another, to love and to have compassion, sukun, mawadat and rahmat. All too often this is forgotten in the midst of the legal practices, divorce battles, jealousy dramas and so forth. Only 30, 18-20 makes marriage meaningful, a life project that is worth its promise (see text 2 [Surah 30. 21]).

...so on Earth

However, the religious and sociological organization of marriage is needed—sex and society are asking for their rights. This problem, however, should not be attacked with fear, as A. Yusuf in his commentary to Surah 4, 1 tells us:

Sex, which governs so much of our physical life... deserves not fear, or contempt, or our amused indulgence — but our reverence in the highest sense of the term.

Here is how it works...

The male discovers the female and tries to protect what he sees:

O community of young people. Whoever among you is capable of providing a home should marry, for it averts the glance and is protection for the vagina. And whoever cannot, should fast in order to repress the sexual urge.²

² Ibn Hanbal, see Sindawi, 21.

Organizing the “mystery”

Central to the whole net of marriage regulations is the personal role of the Prophet, to whom we, today, are linked through a chain (*isnad*) of transmitters who transmit consideration:

Whatever people may say, I fast and break my fast, pray, sleep, and marry women. Whomever does not like what I do is not of mine.³

In this way we assist slowly at an enormous ramification of laws and practices, organizing sex and marriage⁴, based however in Islam, on the social male supremacy regarding women de facto as objects. There are women and there are slave girls, orphans, and widows; there is the regard of lust, but also the call for mercy and protection. Both impulses can be found in Surah 4, 2,3, where the rich are allowed to take up to four women — but “four” is not considered a limit, it might be more than four⁵ — all treated equally (!), while a poor man, who cannot do so, has to be content with what “his right hand possesses”, a slave girl (see text 3).

There exist three conditions for a canonically valid marriage⁶: 1) Both partners must be free of any condition that would prevent a valid marriage; 2) The woman’s guardian must give his explicit oral consent (*ijab*); 3) The groom or his representative must give his explicit oral consent. And, finally, there is the *bridal money*, the dowry (*mahl*), little or much, as required by Surah 4,4

³ Al Bayhaqi, Sindawi 21, note 27.

⁴ See the development of the classical law schools: by Abu Hanifa (699-767) Kufa; Malik Ibn Anas (†795) Medina; al-Shafi (†820), lower Egypt, Syria, India; Ahmad Ibn Hanbal (†855), most rigid, conservative, Saudi Arabia. [see Internet].

⁵ See Paret, Der Koran, Kommentar, 90/1.

⁶ For the following, see Sindawi, 19.

(see text 4). Divorce is possible, but considered to be “the most odious of the permitted things”.⁷

Treat the women kindly! Marriage as “covenant”

In sum, marriage has to negotiate a way through the fundamental opposition that traverses all human relationship: a way between dislike (hatred) and kindness: *karaha* and *'arafa*, Surah 4, 19 (see text 5). A successful marriage might reflect the deeply optimistic outlook, while the spiritual position is reflected at the start of the present text, where we listed rest, love, and compassion according to Surah 30,18-21 as the basic elements of a happy marriage. Theologically speaking, marriage could then be elevated to the status of a *covenant*, albeit the term “*mîthâq*” is used for marriage only in Surah 4, 21 (see text 6).

Unfortunately, the context of 4, 21 is a sad one (slandering and wrong doing, see 4, 20). However 4, 21 then turns into a graphic description of the marriage act,⁸ action which is then interpreted as firming the “*mîthâq*”— which means nothing less than the remaking of the *original* pact between God and humankind, Surah 7, 172 ss... (see text 7). The “*mîthâq*” signifies the primeval covenant between God and humankind (here rendered in a quasi mythological form), through the acknowledgment of monotheism (“am I not your Lord?”) for now and forever! To call marriage a “*mîthâq*” would elevate this human action on the level of a kind of “primeval sacrament”, to use a Christian terminology. It is certainly up to Islam to explore the spiritual pastures offered by the “*mîthâq*” and thus not getting lost in the

⁷ Quoted after Sindawi, 22, note 35.

⁸ “To break open” *فَضَّ* (*fadda*, Wehr, 717) and then “to go into the other”...

ocean of mere economical, sociological, etc., speculations. Having expressed this wish, we now turn to...

Some variances of the marriage practice

Nikah shighâr (dowry free marriage)

It runs like this: a man says to another: I will give you my daughter in marriage if you give me yours. It is called *shighâr*, because this transaction is “empty” (free) of bridal money. Instead of dowry money you can have all kinds of merchandise,” even unclean objects such as wine or a pig...”⁹

*Zawâj al-washm*¹⁰ (Tattoo marriage)

“This is a ‘marriage’ contracted between a man and a woman in the form of a tattoo mark which each of them makes on some part of their body.”¹¹

Al-zawâj al-siyâhî (Tourism marriage)

“A secret short-term marriage contracted between a tourist of either sex and a local resident in the presence of a guardian and witnesses and with payment of bridal money.”¹²

We are touching here also the “jurisprudence of emigration” (*fiqh al-ightirâb*)¹³. Example: “Is it permitted to a Muslim when traveling to the West to marry a European or non-European with the intention of divorcing her ... Is permanency a necessary condition for a valid marriage?”¹⁴ The answer the case study by Sindawi gives us is surprising. On the one side the

⁹ Sindawi, 33. Not for nothing, this form of marriage is celebrated in Australia and Melanesia (PNG). (See *ibid.*, 33).

¹⁰ *al-washm*, tattoo (Wehr, 1071).

¹¹ Sindawi, 56.

¹² *Ibid.*, 50. “*sâh,a*”, to travel, Wehr, 439.

¹³ See Sindawi 80, etc.

¹⁴ See *ibid.*, 81.

consulted legal expert affirms marriage has to be permanent. On the other he rules: “If a man marries in a non-Muslim land and has the intention of divorcing his wife when his stay there comes to an end, his marriage is valid from the perspective of canonical law. But he must inform his wife of his intention. If she agrees, then there is nothing wrong. If not, then he is a deceiver and a sinner, if he does not inform her before contracting the marriage.”¹⁵ In sum, it is one of the great challenges for Muslim law to operate with respect to local laws.¹⁶

*Zawâj al-dam wal-tashbîka*¹⁷ (Blood oath marriage)

“In this type of marriage, the boy and the girl prick their thumbs with a pin until it draws blood. Then they press their thumbs together so their blood mingles, following which they consider themselves married.”¹⁸

Zawâj al-intarnit/al-zawâj al-iliktrûnî (internet marriage/electronic marriage)

“The prospective groom writes an email message containing an affirmative statement of intent... the prospective bride must pronounce her agreement (orally...) in the presence of her guardian, who must also agree, and two witnesses.”¹⁹ Also consider this: “...it is not permissible for a girl to put a picture of her uncovered face on the site. In order to solve this problem, there should be a committee of pious people which would store the data in complete secrecy. Anyone in a certain country who wants to marry will thus apply to this committee in

¹⁵ Ibid., 81.

¹⁶ See *ibid.*, 81, note 112.

¹⁷ See “shabaka”, entanglement, Wehr, 453.

¹⁸ See Sindawi, 57.

¹⁹ *Ibid.*, 53.

order to be allowed to see the prospective bride's picture."²⁰

*Nikâh al-tasarri*²¹ (concubinage)

The Qur'an allows concubinage with a slave girl. "Concubinage was very common in early Islamic times and during the age of Conquest... the Concubines were showered with love and luxury..., while free born wives were ensconced in their homes, with no education.... The sons of the concubines were preferred by their fathers... This undermined the foundations of the family...The Caliphs of the Abbasid period... were all the children of concubines."²² The economic basis of concubinage was slavery, foreign women being abducted in slaves raids. "The institution of concubinage died out with the abolition of slavery."²³

Usufruct (mut'a) marriage

One of the most controversial verses in the Holy Book is Qur'an 4, 24 (see text 8): "So whatever you enjoy of sexual pleasure (mut'a) from them [the women], give them their due compensation as an obligation." The problem is not the allowance of sexual "extra-spouse" | pleasure (mut'a) for men; that the pleasure is not subject to any time limit, namely that the mut'a contract could cover a minute, an hour, hours, days, months, or years or could function as disguised prostitution—with the difference that the woman was "treaty" protected and that "children born of such union are deemed legitimate and have a right to bear their

²⁰ Ibid., 55.

²¹ "sarra" to make happy, "tasarri" to take a concubine, Wehr, 404.

²² Sindawi, 32, with two exceptions: Abu al- Abbas al-Saffah and Muhammad al-Amin. (See *ibid.*, 32).

²³ Ibid., 32.

father's name and inherit from him²⁴ — all this is *not* what makes this verse so controversial! Rather it is the fact that this verse, i.e., the “marriage” practice based upon it, is no longer tolerated by the Sunnites, but still functions as a social marker for the Shia. The Sunnites admit that the praxis existed at the time of the Prophet and that 4, 24 is part of the Qur’anic revelation, but that this specific revelation has been abolished in time and is no longer valid. In other words, they bring into play the principle of *abrogation* (نسخ)

Whatever we delete of our verses (revelation) or make it forgotten, we replace it with something nice or similar. (2, 106) (See text 9)

In fact, Islamic theology has here a formidable tool in hand to keep the interpretation of the holy text “up to date”. This, obviously, is especially important in the matter of marriage. There remains only one last question: Who has the power to interpret?

²⁴ Ibid., 34: “although according to some legists this requires that the children be recognized by their father” (ibid, 34).

Texts (Excerpts)

Text 1

<p>In the name of Allah, the Beneficent, the Merciful.</p> <p>1. O people! be careful of (your duty to) your Lord, Who created you from a single being and created its mate of the same (kind) and spread from these two, many men and women; and be careful of (your duty to) Allah, by Whom you demand one of another (your rights), and (to) the ties of relationship; surely Allah ever watches over you.</p>	<p>سورۃ النساء</p> <p>بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ</p> <p>يٰۤاَيُّهَا النَّاسُ اتَّقُوا اللّٰهَ الَّذِیْ خَلَقَکُمْ مِنْ وَّاحِدٍ وَّخَلَقَ مِنْهَا زَوْجَهَا وَنَسَّآءَ الْاٰلِیْنَ اَوْ اَسْآءَ وَاَتَقُوا اللّٰهَ سَآءَ لَوْنٍ بِهٖ وَالْاَرْضَ اِنْ اَنَّ اللّٰهَ حَآنٌ</p>	<p>Question</p> <p>Surah 4, 1</p> <p>Text ①</p>
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Text 2

<p>21. And one of His signs is that He created mates for you from yourselves that you may find rest in them, and He put between you love and compassion; most surely there are signs in this for a people who reflect.</p>	<p>۲۱- وَاٰتٰتِیْهِمْ مِنْ اَنْفُسِهِمْ اَزْوَاجًا لِيَتَسَكَّنُوْا فِيْهَا وَجَعَلَ بَيْنَهُمْ مَوَدَّةً وَرَحْمَةً ۗ اِنَّ فِيْ ذٰلِكَ لَاٰیٰتٍ لِّقَوْمٍ یَّتَفَكَّرُوْنَ</p>	<p>Text ②</p> <p>Surah 30, 21</p>
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rest, love, compassion

Text 3

<p>2. And give to the orphans their property, and do not substitute worthless (things) for (their) good (ones), and do not devour their property (as an addition) to your own property; this is surely a great crime.</p>	<p>بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ</p> <p>وَلَا تَتَّبِعُوْا اَمْوَالِ الْوٰثِقِیْنَ اَمْوَالَهُمْ اِلَى اَمْوَالِكُمْ ۗ</p>	<p>Text ③</p> <p>Surah 4, 2, 3</p>
<p>3. And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two and three and four; but if you fear that you will not do justice (between them), then (marry) only one or what your right hands possess; this is more proper, that you may not deviate from the right course.</p>	<p>اَوْ حٰوَالِیْبِكُمْ</p> <p>مَّا اَلَّا تَقْسِطُوْا فِی السَّخْمِ ۗ اِن كُنْتُمْ اَلَّا تَعْمَلُوْنَ فَاُولٰٓئِکَ اَمَّا مَلَکَتْ اَیْمَانُکُمْ فِی الْاَلْوٰثِقٰتِ</p>	

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Text 4

4. And give to the women (whom you marry) their *Mahr* (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allāh has made it lawful).

Mahr = dowry

وَأُولُو الرِّسَاءِ صَدَقَاتٍ مِّمَّا مَلَكَتْ أَيْمَانُكُمْ
فَإِنْ طِبَّ لَكُمْ عَنْ شَيْءٍ
مِنْهُ فَكُفُّوا
عَنْهُ حَيْثُ مَلَكَتْ أَيْمَانُكُمْ

text (4)
Surah
4, 4

Text 5

19. O you who believe! it is not lawful for you that you should take women as heritage against (their) will, and do not straiten them in order that you may take part of what you have given them, unless they are guilty of manifest indecency, and treat them kindly; then if you hate them, it may be that you dislike a thing while Allāh has placed abundant good in it.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا
النِّسَاءَ كَرِهًا لَكُمْ وَلَا تَعْضَلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ
مَا آتَيْتَهُنَّ مِنَ الرِّثَاءِ إِنْ تَأْتَيْنَّ بِفَاحِشَةٍ مُّبِينَةٍ
وَعَايِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ
فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَجَعَلَ اللَّهُ فِيهِ
خَيْرًا كَثِيرًا ۝

text (5)
Surah
4, 19

Text 6

20. And if you wish to have (one) wife in place of another and you have given one of them a heap of gold, then take not from it anything; would you take it by slandering (her) and (doing her) manifest wrong?

وَأَنْ أَرْتُمْ أَسْبَدَالَ رِزْقٍ مَحْكَانَ رِزْقٍ ۚ
أَتَيْتُمْ أَحَدَهُنَّ فَنظُمَ الْفُلَا تَأْخُذُوا مِنْهُ شَيْئًا
أَتَأْخُذُونَ مِنْهُمَا تَأْخُذُوا لِمَا بَيْنَكُمْ
وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَقْبَى بَعْضُهُمْ إِلَى
بَعْضٍ وَآخُذَانَ يَنْتَظِرُ الْفُلَا كَيْفَ يَكُونُ

text (6)
Surah
4, 20, 21

21. And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant?

Text 7

text (7)

172. And (remember) when your Lord brought forth from the Children of Adam, from their loins, their seed (or from Adam's loins his offspring) and made them testify as to themselves (saying): "Am I not your Lord?" They said: "Yes! We testify," lest you should say on the Day of Resurrection: "Verily, we have been unaware of this."

١٤٦ وَإِذْ أَخَذْنَا مِنْ بُنْيَانِ آدَمَ

مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ

وَأَشْهَدَهُمْ عَلَىٰ أَنفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ

قَالُوا بَلَىٰ

شَهِدْنَا

أَن نَّقُولَ إِذْ يُنَادَىٰ لِلرَّاسِخِينَ

إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ ۝

Surah 7, 172

Text 8

text (8)

Then as to those whom you profit by, give them their dowries as appointed:

text (9)

106. Whatever communications We abrogate or cause to be forgotten, We bring one better than it or like it. Do you not know that Allah has power over all things?

Surah 4, 24

فَمَا اسْتَسْتَعْمَرُوا بِهِ وَمُنْهَنَ

فَأُولَئِكَ أَجُورُهُمْ فَرِيضَةٌ

Surah 2, 106

مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنسِخْهَا نَأْتِ بَهَا خَيْرٌ مِنْهَا أَوْ

مِثْلَهَا أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ ۝

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