Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation*, Farnham: Ashgate, 2010. ISBN: 978-1-4094-0441-5, 228 pp.

Pascale Fournier has analysed the *Mahr*, the mandatory payment (and sometimes deferred payment) of a dowry upon marriage by the Muslim husband to the Muslim wife in order to provide a valid marriage in Islam. The gift is given by the bridegroom when both parties agree to marry and becomes the property of the bride. Fournier examines the concept of the *Mahr* as invoked by Muslim minority groups in Western societies (namely Canada, the United States, France and Germany) where Muslims have asserted their rights vis-à-vis the court systems and where a variety of approaches affect the lives and choices of Muslim women who find themselves in matrimonial difficulties (p. 1). Fournier focuses on these four jurisdictions because she believes it is here that Muslim minority communities have mostly claimed recognition of their religious autonomy.

The main objective of the book is the examination of how Western states deal with Islamic rules of marriage in their own domestic settings. However, this is not merely a descriptive account. Fournier tactfully examines how and to what extent Islamic rules of marriage are 'transplanted' from Islamic law to secular countries and how Muslim husbands and wives subsequently 'strategise' their positions in light of the varied possible outcomes in western courts. Many of the legal cases Fournier cites in her book relate to Muslim women seeking the assistance of 'secular courts' when the dissolution of a marriage is imminent and where Muslim women seek to enforce their 'right' to the amount agreed upon in deferred *Mahr*, which the (soon-to-be-divorced) Muslim husband now contests. As part of her methodological approach, she uses a fictitious Muslim couple (known as Samir and Leila) in each of the jurisdictions under examination to illustrate just how Muslim women can negotiate and fight using the *Mahr* and (sometimes) Western courts as weapons to protect themselves or seek revenge against their husbands (p. 6). Fournier will be remembered for her depictions using this fictitious couple to highlight the complexities and contradictions in the application of laws across the world. She provides detailed accounts of the approaches taken in different courts in the penultimate chapter (pp. 139–147), where the *Mahr* can become a penalty for the wife and bonus for the husband, or vice versa, depending on the laws of that state. This methodological approach is useful as it helps to explain the varied application of the laws across the four jurisdictions and the different possible outcomes.

Early on in the book Fournier explains the roots of the *Mahr* and its basis in Islamic scriptures and its opposing views through feminist arguments. She notes that while the *Mahr* is seen by Islamic scholars as a religious symbol of dignity, respect and love (and as a symbol of empowerment for women through the right to hold property), it is simultaneously negative and a patriarchal sign of the 'sale' of her vagina, in that embedded within the fluctuating amount of the *Mahr* is the

 DOI: 10.1163/187103211X576116

expression of *that* woman's socio-economic status, reputation and worth at the particular *time* of marriage (p. 7). In this regard, Fournier highlights that the *Mahr* can be interpreted differently and is multi-faceted: it produces "inconsistent characteristics" (p. 7) which appears to be equally valid depending on the viewpoint of the reader (Fournier herself appears to refrain from making her own judgement whether the *Mahr* should be viewed positively or negatively, which if provided would have been useful). As part of the feminist agenda, the *Mahr* is either 'good' or 'bad' for Muslim women; it either emancipates them by giving them the power to enter into a contract for marriage or views them like an object (p. 13). She then moves on to explore the various sources of Islamic law that provide the origins of the *Mahr*, through the explanation of the Qur'an, the Sunnah and the Four Islamic Schools of Law. The four schools all unanimously recognise the status and importance of the *Mahr* although they vary in the amount and nature of the *Mahr*. Fournier demonstrates that the *Mahr* is a fundamental aspect of Sharia law.

Fournier moves on to analyse the role of *Mahr* and divorce when, for example, a Muslim husband seeks to divorce his wife by stating the three *Talaqs*. In Islam, a husband is permitted to unilaterally divorce his wife in order to dissolve a marriage. However, this 'freedom' of the husband to divorce can prove very costly upon the utterance of the third *Talaq*. This is because the *Talaq Mahr* is an attempt to make 'a real settlement' in favour of the wife and is "a check on the capricious exercise by the husband of his almost unlimited power to divorce" (p. 21). Fournier explains that *Talaq Mahr* therefore acts as 'deterrent' and causes a Muslim husband to think before divorcing, therefore empowering a Muslim woman who does not wish to divorce her husband. Also, the higher the *Mahr*, the greater the chance the husband will hesitate divorcing thereby giving the wife greater 'leverage' in the relationship (p. 21).

Conversely, Fournier points out that for the wife who does want a divorce (and who acts in a disobedient manner in order to provoke the Muslim husband to utter the three *Talaqs*), the higher the *Mahr*, the less chance there is that the husband will divorce—therefore, the *Mahr* becomes the very opposite of security and signals how some women may become trapped in a marriage they no longer wish to be in (p. 21).This is interesting because it reveals the complexities created by the *Mahr*—it is not simply a gift given by the bridegroom to the bride. Potentially, the *Mahr* has far-reaching consequences to the (continued) relationship between the husband and wife should their marriage break down. If he does divorce, then this comes at a cost—the price of behaving in a disgraceful manner and having one's reputation tarnished (page 21). Indeed, Fournier highlights this in her hypothetical case of Samir and Leila, where Leila finds herself not obtaining a *Talaq* from Samir no matter how bad a wife she tries to be (pp. 24–25). Fournier notes the changing behaviour of Samir (now facing a disobedient wife)

and how he now begins to tolerate her new behaviour than he would perhaps if her *Mahr* had been lower (p. 25).

Allied to the disobedient behaviour of the wife a further disastrous consequence emerges in Fournier's hypothetical case: polygamy is permissible in Islamic law and Samir now decides to marry a second wife (p. 26). If so, Leila becomes powerless—she can only seek a divorce if she can prove that she is harmed (materially or emotionally) by the new marriage. Since she has behaved in a disobedient manner in order to induce her husband to utter the three *Talaqs*, Fournier believes that it seems likely that an Islamic court would observe her as being the "disobedient wife" (p. 26). She then falls into exactly the same position as before—she remains married—but with the added pressure of now being one of two wives competing for already scarce resources (p. 26). These are just some of the difficulties the *Mahr* can create for Muslim women (p. 28). In these circumstances, it can discipline a woman who acts disobediently; it can empower a woman by her acquiring property; it can sometimes be utterly useless, especially if the *Mahr* agreed upon is (romantically) just a ton of jasmine (p. 29); or it can even make the marital relationship worse (through polygamy).

Fournier explains in her book how the issue of *Mahr* has been received by Western courts in Canada, the United States, France and Germany, and dedicates several chapters to explaining the nature of laws in those respective countries. This includes the Canadian Charter of Rights and Freedoms 1982; the American Constitution; the French Constitution of 1958; and the German Constitution, as well as the relevant case law interpreting the rights contained therein. She also explains how the *Mahr* is acknowledged and enforced in differing ways in secular systems and how the enforcement of the *Mahr* can sometimes be viewed as a *penalty* against some Muslim husbands. This is the result when courts attempt to deal with both secular and religious laws together, in stark contrast to the position if only domestic law had been applied (for instance, a marriage agreement would replace the "marital equitable regime") or where Islamic law had only been applied (the *Mahr* would be granted, plus maintenance during the *Iddah* period). Fournier discusses the Canadian Supreme Court case of *Nathoo* v. *Nathoo* (1996) at pages 66–70. In this case, the Canadian Supreme Court felt that the contractual principles that govern other secular contracts did not govern Muslim marriage agreements and that the *Mahr* agreement in question would be valid. From the Muslim husband's perspective, he was penalised through the enforcement of the *Mahr* (p. 69) together with the reapportionment of family assets. Fournier believes that this produces an inconsistent and unpredictable enforcement (or non-enforcement) of the *Mahr* in secular systems (p. 100). This also centres on the issue of *distribution*—is it right for a poor Muslim woman to get the *Mahr* but not any share of the matrimonial propriety? Is it fair that a poor Muslim husband has to pay both? As Fournier explains, even though Canadian, American, German and

French courts appear to be chasing the same principle (i.e. to receive and deal with an influx of Muslim immigrants), the pursuit of this goal still produces completely different results. For her, this is the consequence of rules (both Islamic and western) being 'mixed,' 'confused' or 'lost in transplantation,' when courts have to deal with complex issues and rules alien to their own.

Many English readers in the United Kingdom will be disappointed that no analysis of the English family case law on the *Mahr* is undertaken by Fournier, given that her focus is on those Western systems where Muslims communities have attempted to claim recognition of their religious particularity and autonomy—this surely applies to the United Kingdom as much as America or France (see, for instance, *R (On the Application of Begum)* v. *Headteacher and Governors of Denbigh High School* [2006] UKHL 15, albeit on the issue of Islamic dress in state schools).

Nevertheless, this is a very good book, highly recommended for those interested in Islamic family law as applied in Western jurisdictions, as well as those who are generally interested in the migration of Muslim communities into western societies.

How and what should Western courts do with the issue of *Mahr*? This is a question that Fournier has repeatedly faced (by her own admission—p. 151). Unfortunately, this was a question that Fournier did not address and she resists the temptation to provide an answer, presumably because she is aware that it is impossible to provide a basic model to jurisdictions where each country is unique and applies its laws differently. In any event, this was not the purpose of Fournier's research—her focus was to simply highlight how Islamic rules of marriage are 'lost in transplantation' in secular systems and what the varied outcomes are when Muslim wives attempt to enforce their 'rights' in secular courts.

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