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Muslim Marriage in Western Courts: Lost in Transplantation

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Reviewed by Werner Menski

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***84** This richly documented study focuses in six chapters on the concept of*mahr*or dower as an integral part of Islamic marriage law, wraps it into a transplantation discourse and shows how various value-laden and mostly liberal strategies of handling this internally plural concept of*mahr*in practice may lead to very different and often entirely unpredictable outcomes.Fournier constructs an elaborately worded study that results, as Marie-Claire Foblets elegantly says on the back cover, in a superb and ‘unusually sophisticatedbook’.Part of the Cultural Diversity and Law Series under Prakash Shah's editorship, this is an important addition to knowledge for practitioners and scholars of comparative family law and private international law.

Fournier, a young Canadian scholar, dares to question established norms and truths.Earlier she wrote an eyebrow-raising piece on ‘Flirting with God’.In thisbook, she flirts with the concept of law and highlights explicitly the ‘perversity of flirting with the law of the land’ (p 112).However, the intensity of this flirtation may be questioned.Another catchy phrase flagging up the author's agenda is that ‘contradictory forces may undermine a Muslim woman's position within the family, and law in theory is rarely a depiction of law in practice’ (p 24).

So thisbookclearly tries to connect theory and practice, which an increasing number of writers now attempt to do in relation to ethnic minorities, whose legitimate concerns may indeed be lost in transplantation.Somewhat tired of theorising about legal pluralism, we urgently need to know more today about how adequate, gender-sensitive choices can be made in often highly contested scenarios.Fournier does not tell us much about the wider context of legal pluralism within which such studies need to be placed.This is appropriate for abookthat focuses more on decision making than theory.But one wonders why she does not like to flirt intensely enough with ‘deep’ or ‘strong’ legal pluralism, a methodology which extends well beyond viewing state law as the only law.Is legal pluralism itself still a dirty concept?Insufficient depth of analysis about the manifold problems of handling legal pluralism - and thus of effectively using law itself as an internally plural entity - is going to remain a major barrier for understanding one of thebook'scentral messages, namely that a distributive reading of*mahr*is actually a model study in critical legal pluralism in today's globalising world.Telling an interesting set of stories is not good enough any more.

Since the author hesitates to tell us explicitly about this pluralist elephant in the room, one must wonder why. The final sentence in chapter 6 reinforces this vagueness.Identifying the complexity of legal pluralist inquiry

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when it comes to issues of Muslim marriage generally, and*mahr*in particular, Fournier concludes that '[t]his profound disorientation is, perhaps ironically, our only stable point of reference'.That is almost the same as simply stating that all law is confusingly dynamic, or that legal practice is full of trip wires for lawyers, their clients, judges, and also for academics.We need to ask further what this 'profound disorientation' means and why it should be a stable point of reference.Is this not just an elaborately constructed phrase to hide the disturbing fact that there is actually no global agreement about what we mean by 'law'?Law itself, I am now teaching at SOAS, is almost always a 'pop' structure, a plurality of pluralities, which therefore needs to be navigated and managed, perhaps like a kite flying in the sky, subject to sudden gusts of wind and many unforeseen turbulences.So of course we can never fully predict what the next second in the courtroom will bring.Lawyers dealing with immigration and asylum cases know that feeling particularly well.Fournier might have written***85** that it might matter whether the judge enjoyed his or her breakfast, or whether something disturbed the decision maker's mental peace on the way to court or in the courtroom itself.There are many factors making for 'profound disorientations' in assessing the outcomes of people's actions in approaching formal courts.One of those factors today is often 'religion' in a legal context.

Raising such rudimentary points about basic but profound disorientations when it comes to law itself and to legal management and pluralist legal analysis were maybe perceived as too simple for inclusion in this highly intricate study about choice making in relation to*mahr*.However, clearly highlighting such simple and critically important truths, maybe from the very start, as Meena Bhamra's forthcoming study on legal pluralism in the same Ashgate series this year is going to do, would help a wider readership understand the key messages of current pluralism research more clearly.Of course, it is not that anything goes when we talk about pluralism.But if we cannot even agree on what we mean by 'law', there would inevitably have to be 'profound disorientations' the moment we examine how any one particular internally plural legal concept, such as*mahr*,is applied in different contexts and various jurisdictions.Since we also know that law is everywhere situationspecific and culturespecific, we should not be surprised that particular liberal or illiberal strategies of arguing for or against*mahr*will often lead to largely unpredictable and contradictory outcomes, as is shown so well in thisbook, in the courtrooms of the USA, Canada, France and Germany.

The last sentence of thebookwith its key message of 'profound disorientation' is thus a give-away for what is not said explicitly in this elegantbookand thus perhaps is not analysed in sufficient depth in terms of assessing the lawyer's tool kit.Fournier demonstrates well what confusing range of outcomes may be possible in terms of manipulative practice as well as critical analysis if we apply pluralist methodology in the multidimensional struggle of Leila and Samir over financial arrangements.When it comes to*mahr*,Leila might lay claim to a pot of gold, or she might end up with nothing, even debts, or funnily a ton of yasmine, if she was trapped into romantic inclinations.Samir might actually be a 'bad man' and get away with dumping Leila virtually on the street.But in another court, he might be forced to share his wealth and then to give Leila the agreed pot of gold on top of that.Depicting*mahr*as internally plural is surely the correct methodology, but this is simply telling us what first year law students anywhere should know in this globalised world: All legal concepts are on closer examination 'pop' phenomena, or a plurality of pluralities, that would then be applied in dynamic fashion in different contexts, combined with certain ideological agendas, and this could then indeed lead to rather unpredictable outcomes.

Fournier wants to predict these outcomes by focusing on certain liberal strategies of choice making, but one would wish to see deeper analysis of her findings in relation to the globally present pop phenomenon of law. *Mahr*as a manifestation of Islamic law is therefore never just 'religious'; it is a fundamental methodological mistake to see everything in Muslim law (or Hindu law and others, for that matter) as religious.If such phenom-

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ena are at the same time religious and secular, social, moral/ethical and also a matter of the woman's human rights, and thus of international law today, this covers all four corners of the kite of law that has now emerged as a tool for training pop stars in law at SOAS.

So one may read this probably unwitting (as lawyers in the UK might say) silence about the increasingly visible pop structure of law as confirmation that pluralism is still a ‘dirty word’ today, while liberalism, Marxism, feminism and all sorts of critical studies are*halal*or*kosher*ingredients for legal scholarship of the highest order.More must be said about this central role of pluralist turbulences in future practicefocused studies on choice making.This otherwise excellent study also clearly identifies the key role of equity as a tool of fine-tuning***86** justice in ethnic minority scenarios, a major finding that should not be ignored by practising lawyers and by judges.Equity permits the reintroduction of lost voices and claims in a formally acceptable manner, not just in common law courts, as several international conferences on these themes have discovered.While it is certainly correct to argue that equity itself means different things, and is thus another ‘pop’ element in law, the biggest challenge for judges in the various Eurocentric legal systems that seek to maintain a semblance of legal uniformity today, but do not wish to slip into Asian and African personal status law systems, becomes to avoid creating an impression that listening to claims about*mahr*means giving special favours to Muslim women in Western courts.As always in law, the key challenge remains to find the ‘right law’, but we will forever disagree over what that is.Fournier'sbookcertainly helps readers to become more sensitive to that central challenge for virtually all legal practitioners.As indicated, we are far from a scenario where firm predictions about legal outcomes in relation to Muslim marriages in Western courts can be made.

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