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## Muslim Marriage in Western Courts: Lost in Transplantation (review)

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**Pascale Fournier**

*Muslim Marriage in Western Courts: Lost in Transplantation.* Farnham, UK: Ashgate, 2010, 206 p.

Cutting across many of the most important debates around religion and religious diversity, Pascale Fournier presents a riveting tale of the transplantation of Muslim marriage in Western courts. Fournier draws into her critical legal economic analysis questions about legal pluralism, women's equality, legal realism, and the "othering" that takes place in Western courts when they are presented with *mahr* on divorce. The result is a compelling analytical framework for making sense of the ways in which *mahr* is dealt with by the courts. "Making sense" may be misleading here, for what Fournier demonstrates is that the transplantation she documents across four legal systems (Canada, France, Germany, and the United States) has no rational or consistent application. As Fournier puts it at the beginning of her book, *mahr*, once it has been transplanted, can never go home again, and it roots itself in its Western soil, which includes the history, politics, social, and economic contexts of its new host. This transplantation results in interesting hybrid formations and, for the individuals involved, sometimes surprising resolutions.

Setting up a fictional couple, Samir and Leila, as a reference point, Fournier works through the possible consequences of marriage breakdown in the context of *mahr*, which is a gift given by the husband to the wife at the time of marriage. It is negotiated in a variety of ways, for varying amounts, and with a range of triggering events. It is generally made up of two parts: prompt *mahr*, which is paid "up front" at the time of marriage, and deferred *mahr*, which is paid on the end of the marriage through divorce, death, or other triggering events (p. 1). Although the implications of the *mahr* arrangement are most evident on marriage breakdown, in many ways *mahr* acts as a bookend to marriage by framing both its beginning and its end. Fournier demonstrates the complexity of *mahr* as a religious and legal institution by illustrating the variety of ways in which it can protect and disadvantage both men and women.

Fournier's finding that *mahr* takes new and inconsistent forms in its Western gardens should not surprise us; despite law's reputation in some circles for neutrality and consistency, the critical legal enterprise has shown us the fluidity of legal processes and the application of legal rules. Further, it is not only law that is fluid—so too is religion. For those who work in the domain of the social scientific study of religion, the subjective nature of religious practice, most often described as "lived religion," is an integral component of understanding the many ways in which people live and practise their religions. The intertwining of the interpretive realities of both law and religion virtually ensures a complex process of transplantation. *Mahr* thus exists not only in the shadow of law, as pointed out by Fournier, but in the shadow of religion as well.

In this work, Fournier rectifies a frequent problem of writing and interpreting law. Through her clever integration of Leila and Samir the reader is reminded of the role of emotion in the motivations and choices of individuals. Given that *mahr* is situated in the throes of the beginning and ending of a relationship at times when emotions run high, Fournier's subtle reminder is a beautifully crafted integration of legal analysis, religious studies, and the recognition that legal and religious doctrines situate themselves in the lives of people. Thus, love, fear, bitterness, and indifference all enter into the decision-making process about the ways in which *mahr* is constructed, contracted, and enforced by individuals.

This work raises one of the thorniest questions in feminist scholarship: that of women's agency. Religion is often seen as an oppressor of women. Although some view *mahr* as an early marker of the equality and power of women within Islam that carries forward to today's context, others see *mahr* as the selling of a woman's vagina (p. 13). How does women's agency play out in such contexts? If there is any issue that has dogged feminist scholarship it is the issue of agency and when women "really" exercise it. Despite more than three decades of scholarship on this issue, there is no resolution to the dilemma, and false consciousness discourse continues to permeate thinking about whether and how religious women make decisions. *Mahr*, notes Fournier, is positioned at an interesting juncture of individual contract, social and religious convention, and a broader symbol of fairness. As something that is individually negotiated as a contractual obligation, *mahr* satisfies the liberal notion of the freely acting agent who is imagined as autonomously existing. This model of human life that permeates law does not understand human beings as relational beings who make their decisions in the context of those relations. The question becomes, then, how do we imagine agency in a relational context and its possibility among religious women?

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### **Kenichi Matsui**

*Native Peoples and Water Rights: Irrigation, Dams and the Law in Western Canada*. Montreal & Kingston: McGill–Queen's University Press, 2009, 243 p.

Legal historian Kenichi Matsui's *Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada*, encompasses stories of Native–newcomer relations during the seminal era of making water laws within a period of heightened colonial progression in Canada and the United States.