UNIVERSITY OF HELSINKI

https://helda.helsinki.fi

Islamic Familly Law(s) in Finland : Reflections on Freedom of Religion from the Wellbeing Perspective

Al-Sharmani, Mulki; Mustasaari, Sanna

2022-12-22

Abo Akademi University

http://hdl.handle.net/10138/352378

Al-Sharmani, M & Mustasaari, S 2022, 'Islamic Familly Law(s) in Finland : Reflections on Freedom of Religion from the Wellbeing Perspective', Temenos : Nordic journal of comparative religion, vol. 58, no. 2, pp. 217-238. https://doi.org/10.33356/temenos.113886, https://doi.org/10.33356/temenos.113886

Downloaded from Helda, University of Helsinki institutional repository. https://helda.helsinki.fi

This is an electronic reprint of the original article.

This reprint may differ from the original in pagination and typographic detail.

Please cite the original version.

TEMENOS
NORDIC JOURNAL OF COMPARATIVE RELIGION
Temenos Vol. 58 No. 2 (2022), 217–38
DOI: 10.33356/temenos.113886

Islamic Family Law(s) in Finland: Reflections on Freedom of Religion from the Wellbeing Perspective

MULKI AL-SHARMANI
University of Helsinki

SANNA MUSTASAARI
University of Eastern Finland

Abstract

A central premise of the concept of freedom of religion is that the state has the obligation and authority to regulate and protect the religious rights of individuals and religious communities. However, this entails the state's navigation of the rights of citizens vis-à-vis the norms of their religious communities, which in some cases may be in tension. The state must also maintain the country's central legal principles. These premises are interconnected in vexing ways. This article studies how the concept of freedom of religion, with these underlying premises, applies to the practice of Islamic law in Finland. This question is reflected through an analysis of Finnish Muslims' marriage practices. We argue for a nuanced understanding of the relationship between Islamic family law and freedom of religion. Towards this goal we employ the concept of wellbeing (building on Sarah White 2010) to locate the practice of Islamic family law in Finnish Muslims' daily lives, whereby they pursue material, relational, and ethical needs and aspirations. We analyse how individuals conclude their marriages and the diverse motivations and meanings underlying these practices. Our aim is to capture the familial, economic, racial, political, and ethical processes through which Finnish Muslims continually and dynamically organize marriage (and divorce) and the implications for their freedom of religion on the one hand and for the Finnish state on the other. Our analysis draws on interview data collected in an ethnographic study of Muslim marriage and divorce practices in Finland in the period between 2013 and 2018.

Keywords*: Islamic family law, wellbeing, Finland, freedom of religion, legal pluralism*

This work is licensed under a Creative Commons Attribution 4.0 International License.

The Freedom of Religion Act was first enacted in Finland in 1922. Historically, this law was premised on the notion of the separation of state and church and the protection of the individual right to belief (or non-belief) and religious practices (Kääriäinen 2011). The understanding of religious freedom has gradually evolved into one that ensures the right of individuals and communities to maintain and nurture their cultural identities (see e.g. Eisenberg 2016). For example, both the amended constitution of Finland of 2000 and the new Freedom of Religion Act of 2003 reflect these shifting meanings (Kääriäinen 2011, 157). One direct implication of this legislation pertaining to freedom of religion has been the right of religious minorities to establish religious communities as legal entities with rights to their places of worship, state funding based on the size of their membership, and to practise and maintain their religious norms and practices. Studies in various national contexts of Muslim, Catholic, Jewish, and customary and tribal family laws and religious adjudication or arbitration demonstrate that religious-based family laws are an important and often contested area directly relevant to the rights of minority communities in the country (see e.g. Rautenbach 2010; Eekelaar and Maclean 2013; Solanki 2011; Bano ed. 2017).

Regarding family life, the Marriage Act of 1929 recognizes marriages officiated by licensed members of legally registered religious communities. The officiating religious actor/community also takes on the responsibility for the necessary paperwork to record the concluded marriage in the relevant notary office. In other words, these Finnish laws and their underlying principles create the space for multiple legal systems to be at play in the ordering of lives of members of religious communities.

As Finland has increasingly become a country of immigration and home to diverse religious minorities, especially Muslims, freedom of religion has become a pertinent but also contested issue. The country is now home to a growing population of Muslims, primarily as a result of refugee-based immigration since the late 1980s. The legal governance of the religious and cultural rights of these communities has become the focus of scholarly and political debate (Martikainen 2007; Sakaranaho & Martikainen 2015). Common issues that have been at the centre of these discussions include Islamic religious education, the establishment of officially registered Islamic religious communities, the training of imams, and Muslim youth and their identity constructions. Recently, Islamic family law has also become a focus of these debates (Al-Sharmani 2019; Al-Sharmani & Mustasaari 2020).

In the literature, the term 'Islamic family law' is used to refer to the body of rulings on marriage, divorce, parenting, and inheritance premod-

ern Muslim jurists formulated between the second and fourth centuries of the Islamic calendar, and which eventually developed into four Sunni and three Shia legal schools (Kamali 2010).[1] This legal tradition was developed through a methodology that depended on two textual sources, the Qur'an and the Sunnah (prophetic) tradition and two derivative sources, namely legal analogy (*qiyās*) and the consensus of community of jurists (*ijmʿā*). The codification of Muslim family laws began in most Muslim majority countries in the early twentieth century and has continued until the current century (Welchman 2007; Al-Sharmani 2017).[2] These codes are drawn through the process of selection and patching from Sunni and/or Shia legal schools and implemented through the centralized court systems of modern states.

The encounters of Muslims in Finland with Islamic family law, depending on their migratory trajectories and transnational ties, may therefore be with codified family laws in a particular Muslim majority country or with uncodified juristic rulings adopted in the conclusion of Islamic marriages and/or divorces. In other words, no singular Islamic family law is at play in the lives of Finnish Muslims.

In many European contexts, including Finland, public debate concerning the family practices of nationals and residents with a Muslim background has often been framed as an issue of two competing goals (see e.g. Berger 2013; Bano 2007; Al-Sharmani et al. 2017; Mustasaari & Al-Sharmani 2018; Al-Sharmani 2019; Al-Sharmani and Mustasaari 2020). These goals can be framed as follows: the regulation and protection of the freedom of religion of these Muslim minorities in accordance with national laws, human rights convention and European law; and confronting certain practices and norms associated with Islamic family law perceived as contravening human rights, public order and European values of individual autonomy and gender equality, such as

1 The four Sunni schools are Hanafi, Maliki, Shafi, and Hanbali; the Shia legal schools are Jafari (twelver), Zaydi, and Ismaili.

2 Turkey and Albania opted for secular family codes, whilst Saudi Arabia legislated its first family code in March 2022. In 1975 Somalia legislated its first family code. However, since the 1990 civil war the country has not had one. The northern part of Somalia, now known as Somaliland, seceded in 1991 and likewise lacks a family code. There has recently been an initiative to advocate for family law legislation. The latter point was communicated to the first author by members of the Somaliland non-governmental organization *Nagaad* during an online workshop on Islamic family law with members of civil society in Somaliland in Puntland in Somalia on 26 September 2021. The workshop was co-organized by *Nagaad* and *Musawah*, a global movement of scholars and activists who work on re-engaging with Islamic textual tradition and the reform of modern Muslim family laws. The first author is a member of this movement. <https://www.musawah.org/>, accessed 11 November 2021.

child marriage, forced marriage, and polygamy. In the Finnish context there has been little debate, but when such utterances have been made, they have usually followed a similar binary logic (Al-Sharmani 2019; Al-Sharmani & Mustasaari 2020). Such an understanding relies on binaries that are problematic because they foreground and essentialize religion as a guiding framework for Finnish Muslim marriage and divorce practices. Simultaneously, religious law comes to be understood as singular, monolithic, and fixed.

Instead of approaching Islamic law and the Finnish state as opposing and mutually exclusive legal orders, we adopt an alternative methodology that locates Finnish Muslim marriage and divorce practices within family members' daily pursuits and struggles to meet their needs and aspirations and to navigate tensions arising from conflicting goals and pursuits within the family. We contend that such an approach can help us expand the concept of freedom of religion and apply it in a more nuanced way that yields new insights. Our approach is grounded in a three-dimensional understanding of the concept of wellbeing explained later in the paper, and it is connected with a capability approach to social justice and human rights.[3] It is also informed by a nuanced understanding of legal pluralism, as argued by the anthropologist Sally Merry (1988). It is thus a perspective that questions legal centrism and highlights the dynamic and layered bases for legal orderings and their mutually constitutive relations.

The first section of this paper reviews selected scholarship that reveals the gaps of binary-centred and essentializing approaches to Islamic family laws in Europe. We also show that this paper builds on this scholarship and proposes a new analytical lens. The second section focuses on Finnish Muslims' practices of marriage conclusion. We examine how individuals make choices about which legal order, when, and how to use it. We shed light on their diverse motivations, and how they are shaped by their differentiated life circumstances, social positionings, and resources. We also note that the practices of marriage conclusion and the politics of Muslim minorities in the Finnish context result in changing and contested Muslim perceptions of what constitutes 'valid' and 'proper' Islamic marriage. We show the need for a contextualized understanding of the question of freedom of religion in relation to Finnish Muslims' marriage conclusion practices.

We draw on interview data from the *Transnational Muslim Marriages in Finland*: *Wellbeing, Law, and Gender* research project (Academy of Finland

3 The capability approach, made famous by the philosophers Amartya Sen and Martha Nussbaum, is 'a broad normative framework for the evaluation and assessment of individual well-being and social arrangements, the design of policies, and proposals about social change in society' (Robeyns 2005, 94).

2013–2018). This project undertook the first multidimensional research on Islamic family law in Finland. This was both bottom-up and top-down research, focusing on 1) how Finnish Muslims organize and navigate marriage, divorce, and parenting, and what normative and legal orders are at play in these processes, and 2) how relevant institutional actors (state, religious) understand and address their needs and play a role in the governance of these family practices. The research data for this project were collected primarily through ethnographic research comprising participant observation, focus group discussions, semi-structured and life history interviews, and content analysis of relevant materials. Data were collected from women and men with different marital statuses (primarily of Somali background but also some non-Somalis towards the end of the project); mosque imams and members of family dispute resolution committees; and staff in Finnish notary offices.[4]

Two key concepts in this research project were wellbeing and transnationalism. Building on the work of the anthropologist Sarah White (2008), the research team used the first concept as a lens through which to understand the workings of Islamic family law(s) within the daily realities of our interlocutors' needs, aspirations, and challenges. We used the second concept as an analytical tool to understand the transnational social field in which the lives of the studied Muslim individuals, families, and mosques are located, and in which multiple normative orders are negotiated and navigated in relation to family practices (Levitt and Schiller 2004; Tiilikainen 2015; Tiilikainen 2017; Al-Sharmani et al. 2019).

Islamic family laws in Europe: Selected critiques

A body of studies on Islamic family law in Europe highlights several key points pertinent to this paper. For example, this scholarship problematizes the oppositional binary of European secular codes versus ahistorical Islamic

4 Thirty-seven interviews (19 women, 18 men) were conducted with Finnish Muslims of Somali background about their marriage and divorce practices, as well as their transnational family ties and relations in the period between 2013 and 2017. This paper's first author conducted the interviews with the women, and postdoctoral researcher Abdirashid Ismail conducted the interviews with the men. The first author and postdoctoral researcher Ismail also conducted five focus group discussions (6–7 individuals in each group) with Finnish Muslim women and men of Somali background. Two of the focus group discussions were with women, and two with men, and one was mixed gender. Both the first author and Ismail also conducted interviews with the imams of five mosques about their family dispute resolution work. In 2018 this article's authors jointly conducted interviews with eight mosque imams, focusing on the question of marriage conclusion. The two authors also conducted interviews with five women from different ethnic backgrounds.

family law, deconstructing especially the notion of European family laws that are free of the influence of religion and culture (Ballard 2013). It also shows the internal fragmentation and multiplicity of the legal orders in various European contexts, and the historicity, diversity, and complexity of Islamic family laws, especially in its modern iterations as state codes in many Muslim majority contexts (e.g. Rohe 2009; Büchler 2011; Yassari 2011; Berger 2013; Möller 2014; Shah, Foblets & Rohe 2016). The anthropologist Annelies Moors argues for de-exceptionalizing the discourses on Islamic family law in Europe and investigating the connections and differences between these discourses and those in Muslim majority contexts (Moors 2013).

There is also rich research that adopts a bottom-up approach to Islamic family law and shifts the focus to individuals and families themselves (Nyhagen 2004; Bano 2017; Al-Sharmani & Ismail 2017; Ismail 2018; Sportel et al. 2019; Al-Sharmani & Mustasaari 2020; Liversage 2021). This scholarship has examined processes through which Muslims in different European contexts organize marriage, divorce, and other family practices: the choices they make and their motivations, as well as the factors that enable and constrain these choices; how power differentials between family members and unequal access to resources shape marriage and divorce practices; how different norms and laws are navigated and made sense of throughout these processes; and generational and gender changes in family practices. Similarly, our paper adopts this nuanced bottom-up approach, paying close attention to connections between the different domains of the lifeworld of our research participants, such as family, economy, race, and membership in wider society.

The literature of interest to us has also critiqued a narrow linear understanding of legal pluralism, especially in relation to Islamic family law (Büchler 2011). However, this is not the version of legal pluralism grounded in the classics of the field. The concept of legal pluralism emerged in the theoretical anthropological scholarship in the 1970s (Moore 1978; Griffiths, J. 1984; Merry 1988; Nader 1997; Griffiths, A. 2002). It is used to refer to contexts in which multiple legal systems are at play in the ordering of relations, rights, and obligations within communities. Merry's influential article is especially informative. She proposed a five-pronged approach to legal pluralism. First, this approach jettisons the ideology of legal centralism, in which all relevant law is state law. In this understanding law is viewed as comprising multiple complex and sometimes competing legal systems that coexist in a social field in interaction. These systems influence one another, and their relationship is often mutually constitutive. Second, to avoid es-

sentialist and abstract notions of law, it must be examined contextually and with an awareness of its historical development. Third, contextuality also means the cultural and other normative legal bases are important. Fourth, this entails a shift from the focus on the application of law in situations of dispute to studying what law and the coexistence of different legalities means in people's lives. Fifth, this approach highlights the need to investigate the dialectic interplay between different legal/normative orders, which enables us to analyse power relations and domination through law.

Legal pluralism, understood as such, has been analytically helpful in problematizing the notion of a singular conception of law as state law. It has also drawn attention to the plurality of norms that can shape different legal orders and their cultural/religious foundations. Yet a conception of legal pluralism in which legal orders are viewed as static and closed entities that encounter one another to compete for dominance often prevails in public debates about Islamic family law. In state law, especially cross-border legal contexts, technical questions arise such as which legal order should govern the family practices of Muslims in European countries, or which laws should apply to their legal disputes. These are relevant questions to consider in this domain of law. However, sometimes this positivist approach is transferred to and misappropriated in public debates in which the encounter between the two legal systems becomes part of larger contestations of the (in)compatibility of certain aspects of Islamic family laws with assumed 'national' and 'European' values of individual freedom, gender equality, and secular ways of being and living. A good example is how Danish public debates about the regulation of transnational Muslim marriages become debates about child and forced marriages, resulting in discriminatory family reunification laws (Razack 2004). Another is how transnational marriages in British Muslim families with a Southeast Asian background become the object of public debate about Muslim forced marriages and the oppression of Muslim women in general (Grillo 2008).

In this paper we similarly problematize a narrow binary-oriented understanding of legal pluralism and seek a more nuanced historically and contextually informed understanding that goes beyond legal positivism. In this respect we are also informed by the legal literature on freedom of religion that underscores the politics of law. This scholarship questions the neutrality and taken-for-granted nature of law (including international human rights). It problematizes secularism as an impartial and ideology-free system of ordering different life domains; and it sheds light on the shifting meanings of religion and the politics of evaluating and hierarchizing different religious

systems (Jamal 2017; Laborde 2017; Slotte 2020). Similarly, capability theory, especially as developed by Nussbaum (2000), problematizes liberal theories' inherent prioritizing of the Western secular lifestyle over other ways of life. Building on this literature, we contend that a richer understanding of the workings of Islamic family law in Finland can be achieved by adopting an analytical approach inspired by the capability approach, in which freedom of religion is viewed through the lens of wellbeing.

Islamic family law and daily pursuits and challenges of wellbeing

The capability approach has been employed by a vast number of studies tackling various forms of injustice, and we perceive it as a flexible framework rather than a coherent or rigid theory. Two normative claims are pertinent to the capability approach: first, wellbeing is given primary moral importance as a freedom; second, wellbeing is understood in terms of people's capabilities and functioning (Robeyns and Byskov 2021; Ismail 2019b). In our use of the concept of the wellbeing we build on the work undertaken by the anthropologist Sarah White (2008; 2010), who studies poor communities in developing countries. Wellbeing, she notes, has often been understood as a fuzzy term that is associated with new age literature and ideas about self-reform. However, she contends that wellbeing can also function as a useful analytical concept to investigate the daily pursuits of vulnerable groups and communities. This is because it can help researchers investigate not only needs and lacks but also the aspirations and strategies of individuals, and how they are all continually and dynamically shaped and navigated in daily life.

White conceptualizes wellbeing in relation to individuals, families, and communities as encompassing three dimensions: material; relational; and subjective. The first dimension denotes different kinds of tangible aspects of needs and aspirations such as housing, employment, and legal residence. The relational dimension refers to the social relations within which these needs and aspirations are shaped and navigated, while the subjective dimension refers to values, perceptions, and experiences. White has developed the concept further in a series of publications. What remains central in her argument is that wellbeing is multidimensional, it is located within daily individual and collective pursuits, and it is not an outcome that either has achieved but a process that is continually navigated. In this process individuals, as well as families and communities, are differentially positioned and have different access to resources and thus also differ in their agency.

We draw on White's conceptualization of wellbeing with some modifications (Al-Sharmani et al. 2019). Like White, we conceptualize wellbeing as processual, located in daily pursuits to navigate needs, aspirations, and challenges. We understand it to have three dimensions: material; relational; and ethical. We understand the first two dimensions similarly to White. However, we conceptualize the third dimension as referring to the systems of norms and meanings, including religious, cultural, and state laws, that enable and/or constrain but also give meaning to people's needs, aspirations, and practices. We contend that Muslims' daily pursuits and struggles in different European contexts towards multidimensional wellbeing are the relevant and encompassing context within which we can better understand what individuals and families do – or do not do – with laws (religious or otherwise) when they marry, divorce, or parent. We argue that this bottom-up approach, which focuses on the individual and the family, enables us to avoid blinkered understandings of either the role of Islamic family law or other laws in the lives of these individuals and their families. It reveals power differentials, unequal access to resources, tensions regarding divergent needs and aspirations within families, shifting understandings of marriage and divorce norms, and internal debates within communities about the established authority of certain religious and cultural norms. Importantly, categories such as 'religious' and 'secular' are no longer fixed and hegemonic. Rather, they are layered, dynamic, and interconnected, while distinct and integral to larger complex lived realities.

Our empirical study's findings show that the role of Islamic family law and Finnish codes in the lives of Finnish Muslims cannot be adequately understood through a framework that focuses primarily on the encounter between two bounded (oppositional) legal systems. Rather, Finnish Muslim marriage and divorce practices need to be understood in the context of daily lives entailing multidimensional pursuits of needs, aspirations, and strategies of dealing with various challenges shaped by Finnish Muslims' lives as racialized minorities, whose family lives are often situated in the transnational social field (source). Our research results show that Finnish Muslims follow for the most part a two-tier system in their marriage and divorce practices. However, how they do so varies and is shaped by multiple factors such as their differentiated access to resources (material and immaterial), life circumstances, and competing family needs and aspirations (Al-Sharmani et al. 2019).

When it comes to marriage conclusion and its registration, as mentioned previously, religious communities with licensed individuals can conclude

legally valid marriages that are then registered at the notary office. Such marriages are just as valid as civil marriages concluded at a notary office. However, unregistered religious marriages are not recognized, depriving parties in such unions of the rights ensuing from such marriages. At the same time there are no legal sanctions for concluding unregistered religious marriage, unlike in the Netherlands, for example, where there is a penalty for concluding a religious marriage before a civil one (Moors & Vroon Najem 2019).

The conclusion of Islamic marriage was a common practice among the interlocutors in our study and was perceived as religiously and ethically required. The registration of marriage was also seen as desirable and beneficial *in theory* so that the couple's union would be recognized in the eyes of the Finnish state and thus ensure them the rights and protection due to legally married spouses. However, *in reality* people made diverse and pragmatic choices regarding when to marry and which legal order to enter into, depending on their various needs, life circumstances, family obligations, and challenges. Registration of marriage was desirable and possible for some couples. It was done either by concluding Islamic marriage in a mosque that then undertook the registration paperwork or registering their marriage in the notary office themselves after the religious marriage contract was officiated by the licensed religious scholar in the given mosque. For others entering into only an unregistered Islamic marriage was preferrable for various reasons. For some such marriage functioned as a transitional phase in a relationship that would later evolve into a permanent (financial and legal) commitment. Soad[5], one of our interlocutors, entered into an unregistered Islamic marriage with her high school sweetheart. The marriage was concluded by a religious scholar when they were both seventeen. Years later, after the couple finished their studies, they entered into a registered marriage at the notary office. For Soad and her husband this choice was also about seeking an ethical Muslim life in which they could live together and enjoy an intimate relationship in accordance with their religious beliefs and their families' social norms. For others the decision to conclude only an unregistered Islamic marriage was connected with their financial situation at the time. Zeinab and her first husband were of legal age when they concluded an unregistered Islamic marriage. They were then still students, with very meagre financial means and living in different towns. Entering into a registered marriage and its resulting legal entanglements vis-à-vis the state was not a good financial choice for them. However, in her second marriage Zeinab and her husband were clear about the desirability of registering their marriage because this was a transnational relationship, and the registration was a necessary legal step to pursue family unification.

5 The names of all interviewees have been changed.

For Sadiyya, a divorced mother of four, unregistered Islamic marriage was the only option she would contemplate to minimize any risks (financial and emotional) she and/or her children might encounter should she enter into a registered marriage that might eventually end. For other couples unregistered Islamic marriage was somehow seen as enabling spouses to have more financial autonomy from one another, thus enabling them to remit more of their income to their extended families. This was the case with Ahmed's wife in his second marriage. His first marriage, which had ended in divorce, was registered. He entered into a second unregistered Islamic marriage according to the wishes of his second wife. Ahmed himself was not keen about this decision and thought his wife did not want to register the marriage because she did not want a relationship that would bind them legally and financially in the eyes of the Finnish state. Eventually, the marriage broke down because of disagreements about the remittances his wife was sending to her family.

Notably, this does not mean that individuals like Sadiyya, Zeinab, or Soad were free of their own communities' norms in such unions. Indeed, part of the desirability of an unregistered Islamic marriage lay in its perception as both religiously permissible and acceptable to their families because it fulfilled all the elements of an Islamic marriage contract. Many individuals who entered into unregistered religious marriage therefore did so with their families' knowledge. The marriage contract was concluded according to the requirements of Islamic jurisprudence (e.g. two witnesses, a dower agreement, and the role of the marriage guardian).

If we focus more directly on the question of freedom of religion in relation to Finnish Muslims' practice of unregistered Islamic marriage, we can argue that this practice can facilitate underage marriage and polygamous unions. Underage and polygamous marriages may place women and underage girls in vulnerable positions and contravene the Finnish legal system's commitment to gender equality. This further brings to the fore the differences between the Finnish civil code on the one hand and the elements of a valid marriage in the Sunni and Shi'i schools of Islamic jurisprudence. In the latter polygamy is permissible, and legal capacity is achieved at puberty (i.e. when girls menstruate, and boys can ejaculate). According to the classical Islamic legal tradition underage marriage is therefore allowed.[6]

So does this make registration of marriage one of the focal points for the question of freedom of religion and its underlying tensions? The answer

6 According to the UN Convention on the Rights of the Child (CRC) childhood extends to the age of eighteen.

is far from straightforward, and in the following section we argue that the question of registration of marriage among Finnish Muslims in relation to freedom of religion cannot be understood in isolation and without a consideration of the nuances and dynamic processes of daily pursuits of wellbeing in which this practice is located. It therefore also makes sense to perceive freedom of religion from a capability perspective.

Capability approach to freedom of religion in the context of marriage conclusion

We noted above that the issue of marriage practices in a legally and religiously plural context easily becomes framed by an opposition between the rights of women and freedom of religion. However, our data revealed that much of what is relevant to people's experiences of equality, freedom, and access to rights is lost in such a narrow view, and that if we are to understand these experiences, we need to examine their situated and daily pursuits for achieving wellbeing. To elucidate, we note four points of analysis.

First, it is noteworthy that the practice of unregistered Islamic marriage interplays in complex and mixed ways with gender, understanding the latter as differentiated social positionings and experiences of both women and men. This practice enabled some women like the previously mentioned female interviewees to enter into relationships of their choosing in which they felt they had the leverage to opt out of the marriage more easily should they wish to. This applied to some of the women who wished to marry at seventeen, as well as to divorced older women who did not want to register their second marriages. Furthermore, women's vulnerability in such marriages in terms of access to religious divorce was less hindered by the unequal divorce rights in the Islamic legal tradition (Ali 2010). What was more relevant and determinant of women's leverage and access to Islamic divorce was their possession of important material and immaterial resources (e.g. a supportive and influential network of family members and friends, financial means, religious knowledge, the ability to function in Finnish society, etc. (Al-Sharmani 2018)). This does not preclude some women being legally vulnerable in unregistered Islamic marriages, which was manifested in their arduous struggles to get religious divorce from belligerent husbands and mosques whose adjudication authority in such cases was rejected by these husbands (Al-Sharmani & Ismail 2017).

Second, for the interviewees marriage conclusion was not about a stark straightforward choice between a secular or a religious law, but rather a

process of negotiation that was very much embedded in and influenced by their life situations and needs, aspirations, challenges, and family relations and obligations. Decision making regarding engaging with the two legal orders was processual and dynamic. Thus, at one stage in life couples may enter into unregistered marriage and later conclude a registered marriage, or the choice not to register can be viewed as more suitable for one marriage relationship but not another in the same individual's lifespan. It is also noteworthy that the multiple functions of unregistered Islamic religious marriage are partly enabled by the fact that the interviewees live in a context of legal pluralism: it is the availability of both Finnish civil codified and uncodified Islamic family law that creates these options for these interlocutors.

Third, it is also noteworthy that the meaning and nature of Islamic marriage itself are becoming layered and dynamic through concluding of an unregistered marriage contract. For some interlocutors an important feature of such a union is its flexibility, and that it can be more easily severed than a state-registered marriage. The assumption that this union may not last, or that in its present unregistered state it is less permanent than a state marriage, is therefore implicit in this perception. For others it becomes a pathway to a form of 'halal' dating, a term that has been used by some interviewees and is becoming more familiar among Muslim communities in both Finland and elsewhere (Moors & Vroon 2019). While Islamic marriage is changing through these practices, what constitutes its validity and authority is also debated among Finnish Muslims. For example, mosques registered as religious communities and engaged in various community development projects promote the desirability of registration of Finnish Muslims' marriages from an Islamic theological and ethical perspective (Al-Sharmani 2018). This discourse is partly shaped within a larger transnational project to build strong, successful, and well-integrated pious European Muslims (Al-Sharmani et al. 2019). It is also and notably shaped by the Nordic welfare state vision of a society in which civil society and the third sector, including the religious community, play an important role in the subject formation of citizens (Al-Sharmani et al. 2019; Martikainen 2016).

Fourth, what further complicates our understanding of the workings of Islamic family in Finland is the differentiated engagements of Finnish Muslims with both Islamic and Finnish legal orders. Let us take the example of Leila, whose Islamic marriage was concluded in a Muslim majority context in which only registered Islamic marriage was valid. Leila, a young university graduate, moved to Finland from her parents' home country

in the Middle East at the age of two. At the time of the interview she had been divorced from her husband for a few years. They had been married for eight years and had no children. Leila considered herself a Muslim but not, in her own words, a 'hardcore practising Muslim'. She was critical of the practice of marriage conclusion, whether civil or Islamic.

The civil marriage registration practice, Leila thought, mostly served as a way for state officials to regulate and thus control individuals and their family lives. Concerning Islamic marriage conclusion, she argued that the practice was often taken over by demanding cultural norms and customs of different Muslim communities, which often cost families time and money. However, Leila also believed in maintaining and nurturing her close ties and relationships with her parents and community. She understood and appreciated that it was important for her parents and especially her father, who was religious and attached to his culture that required her to conclude an Islamic marriage in their country of origin. She and her brother grew up quite close to their parents, who raised them to talk and debate with them. In other words Leila's agency and ability to be critical of some of the cultural norms of her community were also enabled by her close relationship with her parents. Leila and her husband therefore concluded an Islamic marriage in her country of origin, which was also registered according to the state family code of that country.

At first, the couple did not attempt to register the marriage according to the Finnish civil code. A couple of years later they decided to register the marriage for several reasons. Leila had noted that being legally recognized as a married couple made it easier and more beneficial for them to manage their financial affairs. However there was another reason, which was related to Leila's experiences as a member of a racialized religious minority that faced various forms of marginalization. Leila spoke of the economic and racial marginalization Muslim communities with a migrant background encountered in different Finnish neighbourhoods. She realized that the more visible Muslims were as families and communities, the more difficult it would become for policymakers and legislators to ignore their needs and challenges. She concluded that this meant that Muslims needed to be visible in various state registers, including the marriage register. She therefore decided to register her marriage as a form of resistance and activism.

Leila's marriage conclusion practices problematize the straightforward binary contrast between registered and unregistered marriages and point to the changing nature of Islamic marriage in today's Muslim minority and majority contexts. It also questions the focus on pious and religiously or-

ganized Muslims that often prevails in public and scholarly debates. At the same time it shows that for Muslims like her, who might simplistically be characterized as cultural non-observant Muslims, the Islamic legal system's meaning in life is complex and multidimensional. Leila was quite clear about not believing in marriage as a legal institution to be regulated by either civil or religious laws. However, it would be simplistic and misleading to characterize Leila as a typical 'postmodern' secular non-religious young person questioning traditional family structures and norms. Leila's sense of self also derived ethical meaning from her belonging to a Muslim family and community. Her ties and relations with her family were important; they were not taken for granted but were dynamically and continually sustained, navigated, and reproduced afresh. We therefore argue that her choice to conclude an Islamic marriage in her parents' country of origin was related to the relational dimension of her wellbeing.

Moreover, her decision to register the marriage in Finland later was also motivated by multiple factors related to both the material and ethical dimensions of her wellbeing. Pragmatic reasons and financial benefits made the registration of the marriage desirable; the registration of the marriage interestingly became part of her resistance to the economic marginalization and racialization of Finnish Muslims with a migrant background like herself. Leila's marriage conclusion practices therefore show that a singular notion of freedom of religion would be an inadequate framework for an understanding of her choices and the meanings she gave them.

Leila's marriage conclusion choices and the meanings she gave to these choices problematizes a simplistic oppositional binary of Islamic versus civil marriage. It illustrates the diversity of Finnish Muslim perspectives on the normativity of the different legal systems at play in their lives. It also highlights how the experiences of being the economically and racialized 'other' affect Finnish Muslims like Leila and influence her marriage conclusion practices.

Yet it is important to point out that unregistered Islamic marriage is the only possibility for some women and men because they or their spouses lack the legal documents required for registration. This is the case if one of them does not have residence or is based in another country and/or has difficulty providing the required documents such as proof of the end of a previous marriage relationship.

It is beyond the scope of this article to provide a detailed discussion of the capability approach (for this see e.g. Chiaperro Martinetti et al. 2020; Robeyns & Byskov 2021) – or its critique (e.g. Skerker 2004). For our purposes it is sufficient to open a view of freedom of religion from the perspective of

wellbeing that is based on our data, and to note that this marks a shift in the understanding of freedom of religion. Instead of understanding freedom of religion as a sphere of being free from state intervention or as a possibility to require certain rights or exemptions merely based on religious identity or group membership, we argue that issues related to freedom of religion should be approached by examining different workings of religious and state legal apparatuses and the kind of capabilities that are formed in these dynamics.

Conclusion

To conclude, we contest an understanding of the workings of Islamic family laws in Finland that is based on a binary notion of legal pluralism and freedom of religion. This framework, we contend, is premised on the notion of the freedom of Muslim minorities to organize their own marriages and divorces according to their religion-based laws, as well as on the need to regulate these practices to ensure their compatibility with the relevant state laws. Intertwined with this premise is another – namely, that this is an encounter between two bounded fixed legal orders, with the assumed higher authority of the Finnish legal system. We have argued that the main limitation of this conceptual framework is that it conceals important social, economic, political, racial, and familial processes through which family members negotiate Islamic family laws and Finnish state codes.

We propose instead the concept of wellbeing as an analytical tool for understanding how Finnish Muslims' encounters with the legal systems in their lives take place within daily processes of navigating their needs, aspirations, and challenges as members of transnational families and as racialized and marginalized members of the wider society. Our approach resembles that of the capability approach, which attaches moral priority to wellbeing and defines freedom in relation it. We argue that when we focus on these daily processes, we can go beyond singular and limited understandings of both religion and law. We can highlight the multidimensional, dynamic, and shifting roles and meanings that religion and law assume in the lifeworld of Finnish Muslims. We pay attention to the diversity and dynamism of Finnish Muslims' views and relationship with their religious tradition.

The implication of this understanding is that policies concerned with either protecting the rights of religious minorities or regulating family laws need to be based on a broad perspective that locates these issues within the larger questions of citizenship, social justice, and equal member-

ship in Finnish society. This also has conceptual implications for how we understand freedom of religion, especially in a legally pluralistic context. Viewed through the lens of wellbeing, freedom of religion becomes an issue of capability and how the state and its public sector may support it, rather than of a particular sphere of freedom being in collision with other freedoms or rights.

***

MULKI AL-SHARMANI is Associate Professor of Islamic and Middle Eastern Studies, Faculty of Arts, University of Helsinki. Email: Mulki.al-sharmani@helsinki.fi

SANNA MUSTASAARI is a postdoctoral researcher at UEF Law School, University of Eastern Finland. Email: sanna.mustasaari@uef.fi

Bibliography

Al-Sharmani, Mulki
2018 Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical – *Journal of Islamic Ethics* 1 (1–2), 76–96.
2017 *Gender Justice and Legal Reform in Egypt: Negotiating Muslim Family Law*. Cairo: The American University in Cairo.
2019 A Mosque Programme for the Wellbeing of Muslim Families. – Marja Tiilikainen, Mulki Al-Sharmani & Sanna Mustasaari (eds), *Wellbeing of Transnational Muslim Families: Marriage, Law, and Gender*, 59–77. London: Routledge.

Al-Sharmani, Mulki & Abdirashid Ismail
2017 Marriage and Transnational Family Life among Somali Migrants in Finland. – *Migration letters* 14 (1), 38–49.

Al-Sharmani, Mulki, Marja Tiilikainen & Sanna Mustasaari.
2019 Wellbeing, Family Life, and Transnational Muslims in the West. – Marja Tiilikainen, Mulki Al-Sharmani & Sanna Mustasaari (eds), *Wellbeing of Transnational Muslim Families: Marriage, Law, and Gender*, 1–21. London: Routledge.

Al-Sharmani, Mulki & Sanna Mustasaari
2020 Governing Divorce Practices of Finnish Somali Muslims: Does Religious Literacy Matter? – Tuula Sakaranaho, Timo Aarrevaara & Johanna Konttori (eds), *The Challenges of Religious Literacy: The Case of Finland*, 55–66. Cham: Springer.

Al-Sharmani, Mulki, Sanna Mustasaari & Abdirashid Ismail
2017 Faith-based Family Dispute Resolution in Finnish Mosques: Unfolding Roles and Evolving Practices. – Samia Bano (ed.), *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, 270–91. Waltham, MA: Brandeis University.

Bano, Samia
2007 Muslim Family Justice and Human Rights: The Experience of British Muslim Women. – *Journal of Comparative Law* 38(2), 45–52.
2017 Agency, Autonomy and Rights: Muslim Women and ADR in Britain. – Samia Bano (ed.), *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, 46–76. Waltham, MA: Brandeis University.

Bano, Samia (ed.)
2017 *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*. Waltham, MA: Brandeis University Press.

Ballard, Roger
2013 Changing Interpretations of Shari'a, 'Urf and Qanun. An Anthropologically Grounded Overview of Islamic Encounters with the

Postenlightenment Premises of European Family Law – *Electronic Journal of Islamic and Middle Eastern Law* (EJIMEL) 1 (6), 115–59.

Berger, Maurice (ed.)
12013 *Applying Shari'a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West.* Leiden: Leiden University Press.

Büchler, Andrea
2011 *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws.* London: Routledge.

Chiappero-Martinetti, Enrica, Siddiqur Osmani & Mozaffar Qizilbash (eds)
2020 *The Cambridge Handbook of the Capability Approach*. Cambridge: Cambridge University Press.

Eekelaar, John & Mavis Maclean (eds)
2013 *Managing Family Justice in Diverse Societies*. Oxford: Hart Publishing.

Eisenberg, Avigail
2016 Religion as Identity – *Law and Ethics of Human Rights* 10 (2), 295–397.

Griffiths, Anne
2002 Legal Pluralism. – Reza Banakar and Max Travers (eds), *An Introduction to Law and Social Theory*, 289–311. Oxford and Portland Oregon: Hart Publishing.,

Griffiths, John
1984 The Division of Labor in Social Control. – Donald Black (ed.), *Toward a General Theory of Social Control*, 37–70. New York: Academic Press.

Grillo, Ralph
2008 *The Family in Question: Immigrant and Ethnic Minorities in Multicultural Europe* . Amsterdam: Amsterdam University Press.

Kamali, Muhammad
2010 *Shari'a Law: An Introduction*. London: OneWorld.

Kääriäinen, Kimmo
2011 Religion and State in Finland. – *Nordic Journal of Religion and Society*, 24 (2), 155–71.

Ismail, Abdirashid
2019a Transnational Finnish-Somali Families and Children's Wellbeing. – Marja Tiilikainen, Mulki Al-Sharmani & Sanna Mustasaari (eds), *Wellbeing of Transnational Muslim Families: Marriage, Law, and Gender*, 129–46. London: Routledge.
2019b Immigrant Children, Educational Performance & Public Policy: A Capability Approach. – *Journal of International Migration and Integration* 20 (3), 717–34.

2018 They All Encouraged Me to Do It, But After All, the Decision is Mine: Marriage Practices among Diaspora Somalis in Finland. – *Nordic Journal of Migration Research* 8:2, 124–31.

Jamal, Arif A.
2017 Considering Freedom of Religion in a Post-Secular Context: Hapless or Hopeful? – *Oxford Journal of Law and Religion* 6 (3), 433–50.

Laborde, Cécile
2017 *Liberalism's Religion*. Cambridge: Harvard University Press.

Levitt, Peggy & Nina Glick Schiller
2004 Conceptualizing Simultaneity: Transnational Social Field Perspective on Society – *International Migration Review,* 38 (2), 1002–39

Liversage, Anika
2021 Experiencing 'nikah captivity' in the West: Gendered Conflicts over ending Muslim Marriages – *Journal of Muslims in Europe* 11, 1–25.

Martikainen, Tuomas
2007 The Governance of Islam in Finland. – *Temenos* 43 (2), 243–65.

Merry, Sally
1988 Legal pluralism. – *Law & Society Review* 22 (5), 869–96.

Mohamed, Iman Abdulkadir
2015 Somali Women and the Socialist State – *Journal of Georgetown University-Qatar Middle Eastern Studies Student Association.* http://dx.doi.org/10.5339/messa.2015.4, 1–10.

Moore, Sally Falk
1978 *Law as Process: An Anthropological Approach*. London: Routledge & Kegan Paul.

Moors, Annelies
2013 Unregistered Islamic Marriages: Anxieties about Sexuality and Islam in the Netherlands. – Maurice Berger (ed), *Applying Shari'a in the West: facts, fears and the future of Islamic rules on Family Relations in the West,* 141–64. Leiden: Leiden University Press.

Mustasaari, Sanna & Mulki Al-Sharmani
2018 Between 'Official' and 'Unofficial': Discourses and Practices of Muslim Marriage Conclusion in Finland. – *Oxford Journal of Law and Religion* 7 (3), 455–78.

Möller, Lena-Maria
2014 No Fear of ṬalĀQ: A Reconsideration of Muslim Divorce Laws in Light of the Rome iii Regulation. – *Journal of Private International Law* 10 (3), 461–87.

Nader, Laura (ed.)
1997 *Law in Culture and Society*. Berkeley: University of California Press.

Nussbaum, Martha
2000 *Women and Human Development. The Capabilities Approach*. Cambridge: Cambridge University Press.

Robeyns, Ingrid & Morten Fibieger Byskov
2021 The Capability Approach. – Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition). <https://plato.stanford.edu/archives/win2021/entries/capability-approach/>

Nyhagen, Lene
2004 Interpreting Gender in Islam: A Case Study of Immigrant Muslim Women in Oslo, Norway. – *Gender & Society* 18 (4), 473–93.

Rautenbach, Christa
2010 Deep Legal Pluralism in South Africa: Judicial Accommodation of Non-State Law. – *The Journal of Legal Pluralism and Unofficial Law* 42 (60), 143–77.

Razack, Sherene
2004 Imperilled Muslim Women, Dangerous Muslim Men and Civilized Europeans: Legal and Social Responses to Forced Marriages. – *Feminist Legal Studies* 12 (2) 129–74.

Reda, Nevin
2020 Tafsir, Tradition, and Methodological Contestations: The Case of Polygamy. – Nevin Reda & Yasmin Amin (eds), *Islamic Interpretive Tradition and Gender Justice: Processes of Canonization, Subversion, and Change*, 67–99. McGill: McGill-Queen's University Press.

Rohe, Mathias
2009 Shari'a in a European Context. – Ralph Grillo (ed.), *Legal Practice and Cultural Diversity*, 93–114. London: Routledge.

Sakaranaho, Tuula & Tuomas Martikainen
2015 The Governance of Islam in Finland and Ireland. – *Journal of Religion in Europe* 8 (1), 7–30.

Shah, Prakash, Foblets, Marie-Claire & Rohe, Mathias (eds)
2016 *Family, Religion, and Law: Cultural Encounters in Europe*. London: Routledge.

Skerker, Michael
2004 Nussbaum's Capabilities Approach and Religion. – *The Journal of Religion* 84 (3), 379–409.

Slotte, Pamela
2020 Religion and Human Rights: Ambiguities and Ambivalences of Freedom. – Hedvig Bernitz & Victoria Enkvist (eds), *Freedom of Religion: An Ambiguous Right in the Contemporary European Legal Order*, 3–16. Oxford: Hart Publishing.

Solanki, Gopika
2011 *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. New York: Cambridge University Press.

Sportel, Iris, Betty de Hart & Friso Kulk
2019 Transnational Families Navigating the Law. Marriage, Divorce and Wellbeing. – Marja Tiilikainen, Mulki Al-Sharmani & Sanna Mustasaari (eds), *Wellbeing of Transnational Muslim Families: Marriage, Law, and Gender*, 94–111. London: Routledge.

Tiilikainen, Marja
2017 'Whenever Mom Hands over the Phone, then We talk': Transnational Ties to the country of descent among Canadian Somali youth. – *Migration Letters* 14 (1), 63–74.
2015 Looking for a Safe Place: Security and Transnational Somali Muslim families. – *Journal of Religion in Europe* 8 (1), 51–72.

Tucker, Judith
2008 *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press.

Welchman, Lynn
2007 *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press.

White, Sarah
2008 But what is Wellbeing? A Framework for Analysis in Social and Development Policy and Practice. Paper presented at the conference *'Regeneration and Wellbeing: Research into Practice', University of Bradford, 24-25 April 2008*. University of Bradford. <http://staff.bath.ac.uk/ecsscw/But_what_is_Wellbeing.pdf>, accessed 20 July 2015.
2010 Analysing Wellbeing: A Framework for Development Practice – *Development in Practice* 20 (2), 158–72.

Yassari, Nadjma
2011 The Islamic Mahr in German Courts – Ruba Mehdi & Jørgen S. Nielsen (eds), *Embedding Mahr (Islamic dower) in the European Legal System*, 193–217. Copenhagen: Djøf Publishing.