Family Law, State Recognition and Intersecting Spheres/Spaces: Jewish and Muslim Women Divorcing in the UK

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We are at a moment ... when our experience of the world is less that of a long life developing through time than of a network that connects points and intersects with its own skein. One could perhaps say that certain ideological conflicts animating present-day polemics oppose the pious descendants of time and the determined inhabitants of space.

Michel Foucault and Jay Miskowiec, “Of Other Spaces” (1986) 16:1 Diacritics, 22.

Introduction

When Jews and Muslims marry in Western countries, the ceremonies often include both a religious and civil element, thereby occupying cultural and legal spaces simultaneously. Under religious law, husbands and wives have distinct rights and responsibilities within the marriage. When a marriage breaks down, access to religious divorce is drawn sharply along gender lines. Indeed, observations about the vulnerability of women within traditional and religious family law are not new. Scholars have noted that women from religious communities “face greater restrictions on their rights to marry, their rights to pass on their nationality or membership to their children, their options and access to divorce, their financial circumstances and their opportunities to be awarded custody.”

According to classical Islamic family law, women have the agency to use the khul or faskh divorce, but may not use the talak divorce. The khul divorce is introduced judicially by the woman with the understanding that such route will dissolve the husband’s duty to pay the deferred mahr, the dower due to the woman upon divorce. The faskh divorce is a fault-based divorce initiated by the

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1 Naomi Mezey, “Law as Culture” in Austin Sarat and Jonathan Simon ed., Cultural Analysis, Cultural Studies, and the Law: Moving beyond legal realism (Durham, NC: Duke University Press, 2003), 43: For the analytical purposes of this paper, culture refers to a porous array of intersecting practices and processes that emerge from within and beyond its borders.


wife before an Islamic tribunal, and it is by nature limited to narrow grounds. Finally, the talaq divorce (repudiation) is a unilateral act which dissolves the marriage contract through a declaration of the husband only. Jewish women also experience gendered disadvantages under Jewish law. In order to be “halachically” correct, a Jewish marriage may only end in the death of a spouse or the voluntary granting of a divorce (get) by the husband and its simultaneous acceptance by the wife. The husband thus has the exclusive power to deliver the get. If a Jewish woman is entitled to a get and has not received one due to her husband’s refusal, she is referred to as an agunah (pl. agunot). Literally, a “chained” or “anchored” woman. If an agunah marries a man civilly, the relationship is considered adulterous under Jewish law. Therefore, she is never permitted to marry that man religiously. Moreover, any child born to a woman who has not received a get is labeled mamzer (pl. Laws in Egypt during the Ottoman Period” in Amira El Azhary Sonbol ed., Women, the Family, and Divorce Laws in Islamic History (Syracuse: Syracuse University Press, 1996), 105 [Abdal-Rahim, “The Family and Gender Laws”].

7. See Abdal-Rahim, “The Family and Gender Laws”, supra note 6, at 105 (indicating that women can initiate divorce and explain their husbands’ fault before the court). See David Pearl and Werner Menski, Muslim Family Law, 3rd ed (London: Sweet & Maxwell Limited, 1998), 285: Grounds for a fath divorce differ according to classical school of Muslim law. For example, in Hanafi law, the only ground a woman is permitted to obtain judicial termination of her marital status is if she can prove her husband is incapable of consummating the marriage. In addition to this ground, other schools provide further grounds. The Ithna Ashari school enables judicial decree if the husband suffers from insanity, leprosy, or venereal disease. In addition to these grounds, the Shafi school considers willful refusal to maintain the wife as sufficient reason. The Hanbali school recognises various physical and mental disabilities in addition to the failure to maintain, desertion without just cause for more than six months, and failure to comply with the nikahnama terms and conditions. The Maliki school permits divorce on the basis of cruelty and ill-treatment.

8. El Alami & Hinchcliffe, Islamic Marriage, supra note 6, at 22.


10. See Irwin H. Haut, Divorce in Jewish Law and Life (Studies in Jewish Jurisprudence Volume 5) (New York: Sepher-Hermon Press, 1983), 18: (“It is a fundamental principle in Jewish law that only a husband can give a get.”).


12. The biblical foundation for this prerogative is found in Deuteronomy 24:1: “When a man has taken a wife and explained her to himself and then let him write her a bill of divorce and give it in her hand and send her out of his house.” This passage was interpreted as bestowing upon the husband the exclusive power to initiate divorce. Yehiel S. Kaplan, “Enforcement of Divorce Judgments by Imprisonment: Principles of Jewish Law” 2004 15 Jewish L. Annual 57, 61 [Kaplan, “Enforcement of Divorce Judgments”]. The situation of the agunah is mentioned but once in the Bible, at Ruth 1:13. However, the Mishnah and Talmud both refer to it frequently, as does the subsequent literature in response. See Aviad Hacohen, Tears of the Oppressed: An Examination of the Agunah Problem: Background and Halakhic Sources, Blu Greenberg ed. (Jersey City, NJ: KTAV Publishing House, 2004), passim. Originally, this term was reserved for women whose husbands had disappeared. Unless a woman had proof of her husband’s death, she could not remarry religiously. Michelle Greenberg-Kobrin, “Civil Enforceability of Religious Prenuptial Agreements” (1998-1999) 32 COLUM. J. L. & Soc. Prosbs. 359, 359. However, the modern agunah problem has more to do with recalcitrant rather than missing husbands. Michael J. Broyle, Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America (Hoboken, NJ: KTAV Publishing House, 2001) 3, 8.

13. Although a wife can in theory refuse a get issued by her husband, in practice the consequences for the man are neither as serious nor as far-reaching as they are for an agunah. As put by Nichols, “A man who marries without a Jewish divorce has not committed adultery, but has only violated a rabbinical decree mandating monogamy; he is nonetheless considered married to his second wife, and his children are legitimate.” Joel A. Nichols, “Multi-Tiered Marriage: Ideas and Influences from New York and Louisiana to the International Community” 2007 40 Vand. J. of Transnat’l L. 135, 155 [Nichols, Multi-Tiered Marriage].

14. Ibid.

15. Ibid.

manzerin). Such children are “effectively excluded from organized Judaism,” as they are illegitimate and may never marry anyone but another manzer.

Recently, there has been a flurry of literature addressing the issue of the gendered impact of religious family law in Western states. But beyond the words, what is the reality of women’s experiences of a religious and/or civil divorce? To work towards a fuller and more truthful picture, I present portraits of women moving through civil and religious divorce as social agents and outline that law and culture are contested social spaces, which can, and indeed sometimes are, used by women to their advantage. Based on fieldwork and interviews done among Jewish and Muslim women in the United Kingdom, I present an account of legal pluralism in which culture and law are mutually constitutive and fashion the economic welfare and bargaining positions of parties. I outline how a legalization of religious law, whereby culture is rendered more contestable, flexible and legalistic, sometimes occurs. The study of Jewish and Muslim women in the UK provided a means to test the hypothesis that the legalization of religious norms is enhanced when religion and civil law interact, through state recognition and inter-normative legal dialogue. In the UK, Jewish family law is to a large extent recognized by the state through the Marriage Act 1949-96, whereas Muslim family law is not. Consequently, Muslims must ‘marry twice’ in order to benefit from state recognition: civilly according to the ‘secular’ registration ceremony, and religiously and/or customarily by adhering to the rites of their communities. This asymmetry gives a rich occasion to ascertain what the effects of legal recognition of culture might be on Jewish and Muslim women.

However, our perception of this problem is considerably obscured by the intellectual impetus to conceive of the (religious) family and the market as two distinct spheres that do not overlap. I will refer to this as the family/market dichotomy, whereby the family is constructed as the opposite of the contractual market and as emotional, identity-based, coerced, and/or driven by status, not contract. While the concept of the “relational contract” developed within literature on family law bridges the gap between strictly status or contract-based conceptions of marriage, it often remains

17. Ibid.
the case that religious family law is portrayed as derived from static notions of revealed religious doctrine infused with identity concerns. In other words, religious family law, the historical focal point of the family/market dichotomy, continues to be conceptualized as status and not contract. Women then are typically characterized as lacking the agency associated with contract and relegated to a subordinate or ‘dependent’ status with respect to marriage. This misleading picture is shared both by secular feminists, who present religious law as irrevocably oppressive to women, and by tenants of identity politics, who seek to shore up minority identities in the face of majority oppression by recognizing religious family law. This paper attempts to move past static hierarchical binaries and examines the interaction and intersection between these two phenomena.

In Section I, I situate the paper within the theoretical literature on legal pluralism. Throughout, I adopt the “critical legal pluralist” methodology of decentering the concept of law to account for its impact on subject-constitution and its constant openness to transformation at the hands of legal subjects. In addition, I infuse this research with a concern for the distributive role of law and culture and conceptualize both state law and cultural norms as background rules of socio-economic bargaining. In Section II, I present the findings from the fieldwork and elaborate the hypothesis that state recognition of Jewish marriage (and likewise the non-recognition of Muslim marriage) has consequences both on religious women’s subjectivity and on the distributive impact of law. The fieldwork allows me to explore the hypothesis that state recognition of religious law accentuates the legal dimension of religion. This translates in a view of religion/culture as receptive to strategies, recourses and individualist bargaining of the sort normally associated with civil law. Inversely, non-recognition and confinement of religious norms to a private, non-legal sphere seem to reinforce the (misleading) idea of religion as status, submission and fixed identity, a phenomenon fraught with unfavourable distributive consequences for women. I consider the repercussions of this phenomenon on subjective perceptions of religion, on the concrete strategies adopted by women, both with regards to substantive legal arguments and interpersonal relationships among religious communities, on the decisions of religious authorities, e.g. whether they consider civil outcomes and


enforce religious financial provisions, and finally on the economic outcomes produced by the interplay of culture and law.

I. A New Approach to the Study of Law and Culture

This article uses critical legal pluralism as a methodological and theoretical framework to emphasize the subjective construction of law by legal subjects. To grasp religious women’s complex interactions with “culture”, the insights of legal pluralism are most useful. In recent decades, a deepened legal pluralism was developed, one which goes beyond pluralizing normativity and directly questions the very notion of positivity. Roderick A. Macdonald, the flag-bearer of critical legal pluralism, has headed the Canadian manifestation of this movement. Critical legal pluralism understands the law as encompassing “how legal subjects understand themselves and the law.” For critical legal pluralists, “law arises from, belongs to, and responds to everyone,” and one cannot only understand law through the ontological tools of “legal evangelicalism,” which “breeds a reliance on the rituals, catechism, and creed of official institutions that focus on the word (especially on the definitive pronouncements of the curia that sits at the top of an institutional hierarchy).” In this view, legal subjects shape and produce law as much as Parliament does, through their constructive creativity and normative interpersonal interactions. As put by Kleinhans and MacDonald:

Legal subjects are not wholly determined; they possess a transformative capacity that enables them to produce legal knowledge and to fashion the very structures of law that contribute to constituting their legal subjectivity. This transformative capacity is directly connected to their substantive particularity. It endows legal subjects with a responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity.

This outlook led me to analyze religious law through the eyes of women of differing subject positionalities, ranging from autonomous individuality to those who refer to themselves through the continued relevance of kinship networks. Indeed, our encounters underline “the relevance of first-

33 This article borrows from the theory of agency developed by Deniz Kandiyoti in ‘Bargaining with patriarchy’, (1988) Gender and Society, 2(3): 274-90, where she examines the coping strategies and lifestyle choices that women make under patriarchal constraints: “these patriarchal bargains exert a powerful influence on the shaping of women’s gendered
person accounts . . . to the development of a fuller sense of the law.” My own perspective, however, departs from the critical legal pluralism ethos and methodology on the view it holds of “culture”/non-state law. In the work of several influential legal pluralists, the objective has been to demonstrate that contrary to positivist dogma, law is not separate from culture and is in fact part of the cultural fabric of society. Hence, law is susceptible to the constant semiotic redefinition identified by anthropologist Clifford Geertz in his landmark interpretive theory of culture. In other words, law is culture. I aim, if not to contradict this approach, at least to emphasize another aspect of the law/culture intersection: the fact that cultural mechanisms, including the decentralized normative processes embraced by legal pluralists, also act as authoritative norms and socio-economic bargaining endowments, much in the way state law does. In the case of women facing religious family norms, this means that religious customs and meaning attribution processes also carry distributive implications in the legal structure of religious communities. In other words, if law is culture, it is also the case that culture is law. Thus, this article’s approach places the emphasis on what agents do with culture and how the latter influences their subjectivity and bargaining possibilities. In this, I am inspired by scholarship in the vein of left law and economics. The present work also draws much inspiration from the traditional law and economics analyses of family life to picture the micro-level power relations that religious women must face. So, although this article shifts the focus from state law to sovereign legal subjects, thereby borrowing from critical legal pluralism, the analysis remains on how law (and culture) structure contextual, micro power relations.

The emphasis on culture’s influence on the bargaining positions of legal agents should not be seen as a step back into the “social-scientific” positivity denounced by leading critical legal pluralists. Rather, I argue it brings contextualization of legal subjects’ agency and proper assessment of their concrete possibilities, however unstable and shifting they may be. The analysis

subjectivity and determine the nature of gender ideology in different contexts [and that they] influence both the potential for and specific forms of women's active or passive resistance » (1988, p. 275).


41 As put by Duncan Kennedy: [W]e do not assume that the legal system as a whole deliberately decrees one thing or another . . . . Rather, we conceptualize the network as providing background rules that constitute the actors, by granting them all kinds of powers under all kinds of limitations, and then regulating interaction between actors by banning and permitting, encouraging and discouraging particular tactics of particular actors in particular circumstances.
allows us to discuss the effects of both civil and religious laws on legal subjects. Moreover, it should be noted that the empirical work is not intended to bear sufficient objective representativeness and exhaustiveness to be labelled legal anthropology or ethnography. My goal is to better illustrate and emphasize how religious women and their husbands play out the secular/religious divide, through a qualitative “story-telling” approach to socio-legal studies. Our encounters with religious women can shed some light on the agency and resistance deployed by religious women navigating law and culture in diverse contexts.

II. Law and Culture as Intersecting Spaces: Legalizing Religion

This section presents the results of fieldwork research among Jewish and Muslim women in the United Kingdom (UK). The bulk of this fieldwork occurred in the Greater London Area and comprised interviews with eight women who were in process or had already undergone religious and/or civil divorce in the UK. The women were contacted through religious officials, barristers, researchers, non-governmental organizations, and connections among religious communities. The interviews lasted about an hour and a half each and focused on repudiation: the Jewish get and the Islamic talaq, religious divorces that can only be granted by the man according to Jewish and Islamic family law. They also incorporated questions on religious beliefs and practices, the religious and civil marriage and divorce, their impact on women’s welfare, the intervention of the religious community, and the strategies adopted by women to influence religious and civil outcomes. The participants were educated and employed, both British-born and migrants, from the ages of 29 to 72, with a diverse range of personal socio-economic and family circumstances. Cultural diversity and identity varied greatly, encompassing a number of cultural and religious observance practices: Jewish participants belonged or used to belong to the Orthodox sect and were from the Ashkenazi and Sephardic communities. Muslim participants belonged to the Sunni sect and were of Bangladeshi, Austrian and Pakistani descent and/or origin.

Our fieldwork indicates that the socio-economic impact of religious and civil laws cannot be easily determined. No a priori evaluation seems to hold true in all circumstances. For some religious women, the civil sphere is not the liberating entity it is often made out to be by secularists. Fieldwork research in Europe, Canada and the United Kingdom reaches similar conclusions. In fact, some

43 Given the size of our sample, we do not claim to have reached conclusions relevant from a quantitative point of view. As we discuss in this paper, our interviews reveal many phenomena unaccounted for in the mainstream discourse that should be further explored.
44 This method was approved by the University of Ottawa’s Office of Research Ethics and Integrity.
participants perceived the civil law as adversarial and costly, which translated itself into socio-economic disadvantage:

Participant 2

I wasn’t in charge. I wasn’t in command. I didn’t really know what was going on. [...] And I really don’t think that the [secular] lawyer did very well. I think he made too much of it. [...] What a ridiculous waste of money and time. And making more antagonism than there needed to be. I blame the [secular] lawyers very much for that.

Participant 4

Yeah, I didn’t like the whole petition, and who is going to pay whose costs. [...] The whole court process takes forever. Every hearing, every this and that.

These complaints about the deficiencies of the civil law echo the literature, which also attests to the lack of access to justice of women from religious and ethnic minorities in Europe.49 Unsurprisingly, while it seems that women can sometimes be disadvantaged by civil law, religious law can also be a major source of disempowerment for women:

Participant 6

I was never very engaged with my religious community. I hated it. I hated – all my life I was battling with the male-dominated environment. [...] My culture needs to be educated. [...] I tell my friends this all the time. I have friends that went to school with me and now they are stuck in a rut, cooking and cleaning. I tell them to get out of it.


Participant 2

I did feel that I didn’t like the way the secular system was working. I felt exactly the same about the religious system. With the religious law – oh gosh – there are so many changes they need to make […] But with the actual procedure, and what needs to happen, there needs to be a reinterpretation of the law, because it’s all in the hands of the men, it’s only the husband, who can give the *get* and that has just got to be interpreted in another way.

Participant 1

[Pause] You can’t change. That’s it. The only thing that you could change is the way the actual issuing authority dealt with you on a personal basis, which would make enough of a difference…. And that is training for the people at the *beth din*… I wish things could be changed, but I’ve given up hope of that. Because… the rabbis may have changed things many years ago and those changes became what is now accepted but nobody will make any changes now.

Participant 3

The general attitude and treatment of women by the London *Beth Din* is what needs changing. However, this change is not occurring. Members of the *Agunah Campaign* have tried to affect change by forging closer relationships with the London *Beth Din* however, this has proved to be ineffective, as it has made it more difficult to speak against or criticize the *beth din*.

Participant 5

I don’t think it [the *get* ceremony] can be changed. You can’t mess with religion. […] It’s not flexible. It will not change. But I would like it to be less painful. It’s hard enough, so if it could be more efficient, that could be nice.

For some of the participants, religion and civil law can both be disadvantageous. While this finding may serve to qualify simplistic views on the “liberating” effect of either system, it also begs the question: what is it that makes a given civil or religious institution empowering for women? In this article, I posit that the empowering effect of both systems may be a function of their interaction. Specifically, it would seem that religion is much more empowering when it evolves alongside the civil law and is influenced by it.\(^50\) This hypothesis revealed itself through a comparative assessment of the Jewish and Muslim communities, whose legal norms are very differently positioned with regards to British civil law. While Jewish family law is recognized and acknowledged by state law, Muslim law is not, with a resulting estrangement from the civil sphere on the part of Muslim communities.

The *Marriage Act 1949-96*, which governs solemnization of marriages in England, outlines detailed rules concerning where the marriage may take place, who should conduct the ceremony, the time of day it may occur, and the nature of the celebration.\(^51\) According to Section 26(I), marriages *other than* those conducted according to the rites of the Church of England, the usages of the Society

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\(^{50}\) The author is however aware that more empirical studies pertaining to the real and effective practices of religious authorities in both communities, and the justification for said practices, may be necessary to strengthen such assertion. For instance, interviews with rabbis and imams may confirm the reality of such ongoing empowerment.

of Friends (i.e. Quakers), or "a marriage between two persons professing the Jewish religion according the usages of the Jews", must be performed in an office of the superintendent registrar or a registered building, between 8 am and 6 pm, in the presence of either a registrar or an "authorized person", with the couple exchanging vows according to a standard form of words prescribed by statute. Amendments passed in the 1990s attempted to take into account the fact that people wish to marry in different ways. For instance, the Marriage (Registration of Buildings) Act 1990 removed the requirement to have a separate building as a registered place of worship. The Marriage Act 1994 allowed the registration of 'approved premises' other than religious buildings or local authority registries but also stipulated 'No religious service shall be used at a marriage on approved premises'. These amendments appear to accommodate increasingly secularized celebrations of marriage but continue to disregard minority religious marriage practices.

Muslim marriages conducted in England and Wales are consequently regarded as legally valid if the marriage takes place in a mosque that is duly registered as a place of worship and for the solemnization of marriage. The marriage must also be attended and registered by a person authorized by the Marriage Act 1949. Since in Islamic law a marriage can be contracted merely in the presence of witnesses and requires no other formalities, the consequences of this legislation are far-reaching. Various sources estimate that a significant and increasing number of Muslim marriages in the UK go unrecognized by civil law. A prominent Muslim woman barrister reports: "The problem (of unregistered Muslim marriages) is a major trend - it is growing rapidly, especially amongst the under 30s. In my experience of clients, 80% of Muslim marriages are not registered and this percentage is growing." Though Muslims comprised 2.78% of the UK population in 2001, a mere 163 legally recognized marriages took place in registered mosques. These numbers appear very small, especially in comparison to Sikhs who comprised 0.59% of the population and had 1,008 legally registered marriages in the same time period.

English family law regards Muslim women who do not have legally recognized marriages as if they are in a cohabiting relationship. They are therefore unable to benefit from the civil divorce

52 Marriage Act 1949, s 26(1) a-e.
53 Ibid.
54 In the Guidelines issued by the Registrar General under the Marriage Act 1994, paragraph 7 stipulates: 'Marriages on approved premises may be followed by a celebration, commemoration or blessing of the couple’s choice, provided that it is not a religious marriage ceremony and is separate from the civil ceremony. However, if a religious blessing were to regularly follow marriage ceremonies on particular premises, or be considered part of the service being offered on the premises, there may well be a religious connection which would break the requirements and lead to the local authority having to consider revoking the approval'.
55 Khola Hasan is the spokesperson for the Islamic Sharia Council. The interview was conducted on 23 January 2012, ISC, East London [Hasan, Interview]: The East London mosque affiliated with the Islamic Sharia Council reported two marriages were performed in the five years the mosque has been a registered building that can perform solemnized marriages; Ministry of Justice, Muslim Marriage: Report of Working Group – Submission (Ministry of Justice, 11 October 2012), 1 [Ministry of Justice, Muslim Marriage]; Aina Khan, “The way forward for Islam and English law” (13 December 2011) Russell Jones & Walker, London, UK. See also Bano, “Muslim Family Justice” supra note 47; Shah-Kazemi, “Cross-Cultural Mediation”, supra note 47.
57 Office for National Statistics (ONS), Focus on Religion (October 2004) [ONS, Focus on Religion]; ONS, “Table 3.4: Marriages (numbers and percentages): type of ceremony, denomination and day of occurrence”, Marriages Series FM2 no. 29, England and Wales (2001).
58 ONS, Focus on Religion, supra note 56.
procedure and many other legal protections and economic advantages of the civil law. The situation is aggravated by recent changes to legal aid that no longer cover family law, including divorce and child residence. The number of Muslim women approaching Islamic sharia councils for dissolution of their marriages may consequently increase without comparable levels of protections available under civil law. However, legal status has not been given to any religious tribunal in the UK and therefore the authority of sharia councils extend only to those who choose to submit to them. It is worth mentioning that legal recognition of marriage practices amongst minority religious communities such as Jews and Muslims have developed alongside the UK’s Christian-based ethos and increasingly secularized society. At the current time, social tensions are exacerbated by discrimination and disenfranchisement of Muslims from wider British society, the sustained relevance of transnational migration, connections to countries of origin and kinship networks, as well as practices commonly associated with Muslims, such as arranged marriage, forced marriage and polygamy, which fly in the face of British sensibilities.

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“Family law including divorce and child residence cases would no longer be eligible for legal aid other than where domestic violence, forced marriage or international child abduction is proven.” See also Emily Dugan, “Courts becoming clogged as legal aid cuts affect separating couples seeking mediation” (13 January 2014) The Independent online: <http://www.independent.co.uk/news/uk/politics/courts-becoming-clogged-as-legal-aid-cuts-affect-separating-couples-seeking-mediation-9057133.html accessed 4 February 2014>:


62 Gillian Douglas et al, “Social Cohesion and Civil Law: Marriage, divorce and religious courts” Report of a research study funded by the AHRC (Cardiff: Cardiff University, 2011), 29 [Douglas et al, “Social Cohesion and Civil Law”]: Shariah councils serve as alternative forums for dispute resolution which apply Muslim legal and ethical principles as well as the cultural norms of local communities. Shariah Councils have three main functions: reconciliation and mediation; issuing Muslim divorce certificates; and producing expert opinion reports on Muslim family law and practice.” See also Ministry of Justice, Muslim Marriage, supra note 54, at 2.


As far as divorce goes, no recognition is granted to religious divorce of any faith. Civil divorce is solely granted through a decree or order granted by an English court of civil jurisdiction on the grounds that the marriage has irretrievably broken down.\(^{68}\) However, the Jewish community does have an element of “recognition”, which is perhaps more aptly described as “consideration” of religious law on the part of civil courts: *The Divorce (Religious Marriages) Act 2002* (hereinafter *2002 Act*).\(^{69}\) This law enables the civil courts to “order that a decree of divorce is not to be made absolute until a declaration made by both parties that they have taken such steps as are required to dissolve the marriage in accordance with “(i) the usages of the Jews, or (ii) any other prescribed religious usages” is produced to the court.”\(^{70}\) The *Act* specifically refers here to religious divorce and was meant to counter the *agunah* problem by providing civil courts with means to pressure the husband to give the *get* by suspending the civil divorce procedure.\(^{71}\) Though the *2002 Act* is open to other religions seeking inclusions within the terms of the provision, Jews have been the exclusive users so far.\(^{72}\) Muslim abstention from the use of the *2002 Act* may also be explained by the fact that the *Act* addresses divorce refusal, a problem which seems less widespread in Muslim communities. Indeed, while a husband may refuse the *talāq* divorce, Muslim women may have recourse to the *khul* or fault-based *fashk* divorce, not to mention the fact that imams in Western Europe have been known to tend towards reforming divorce laws in the direction of granting women the right to obtain divorce unilaterally.\(^{73}\) In any case, this asymmetrical relationship to the civil law seems to have an impact on religious women’s subjectivity and constitutes the religious sphere in quite distinct ways for Jews and Muslims. In fact, in the case of Muslim women, a recurrent theme was that religion was a “cultural” sphere based on status and submission to revealed, sacred rules:

**Participant 8**

My understanding of both the religious marriage and divorce was nil. I knew that a *nikāb* happened and there were witnesses to a *nikāb*. But nobody talked about it – I was coming from a culture that is fairly conservative – and these things were not discussed

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\(^{71}\) Matrimonial Causes Act 1973, Section 10A.

\(^{72}\) Ibid. at 14.

with girls before they got married. [...] At the time of my marriage, I didn’t know anything about it. I don’t think I even saw my nikahnama [marriage contract].

**Participant 6**

For the marriage, we went to the mosque. I was dressed up, my family came, his family came. It was a really nice ceremony. There were 30 of us, I think. I didn’t sign anything. I don’t even remember saying yes. But I think I must have said ‘kabul’ maybe. That was followed by the exchange of rings, we shared sweets, and that was it. [...] I have never seen my contract. I don’t know what my contract looks like. I don’t know what was in it. I don’t even know my actual mahr. I left it up to my family because I thought this is where the culture kicked in. I thought that’s the way to do it. You shouldn’t question these things.

There thus seems to be some evidence that the non-recognition of Muslim marriage and the resulting estrangement of Muslim communities from the civil sphere reinforce the idea that religion is perceived as based on status and not contract. This constitutive effect is made all the more interesting by the fact that Jewish women who deal with the civil law in addition to religious law had quite a different view of religion. Our participants depicted religious norms as contestable, legalized and open to recourses. They used the words “business contract” and “legalistic” to describe the same types of rules that Muslim women portrayed as “god-derived” and “cultural”. Indeed, Muslims are asked to believe in what is “fated, decreed, destined, preordained”, i.e. the written or Maktub, leaving little, if none, space to negotiation and bargaining and leading to some extent to intrinsic submission to God; versus the belief in a personal negotiation with God of the Jewish community, a belief whereby religious space becomes contractual and agency operates at full capacity. Women also described religious law as riven by legal “loopholes” which allowed for strategizing and litigating of the get:

**Participant 1**

The ketubah is a contract. It’s about how the bride will bring to the marriage various household goods. [...] It is a business contract!

**Participant 2**

Judaism has quite a strong legalistic side to it, this thing called Halakha, the Jewish law.

**Participant 3**

The discussions with the London beth din (United Synagogue) through the Agunot Campaign left me with the strongest impression. There was quite a lot of interaction between the London beth din and me and my husband when we were trying to resolve my agunah status. We explored various loopholes in rabbinical law and tried to accommodate each suggestion put forward by the beth din. Ultimately, each loophole was discounted, and I was disillusioned by the whole process. One example of a proposed loophole was whether my ex-husband actually bought the ring he gave me. If he hadn’t, there was a chance the marriage could be annulled as rabbinical law states a man must buy the ring himself and not delegate this responsibility. I was in touch with my ex-

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74 Moshe Piamenta, *Islam in Everyday Arabic Speech*, (Brill Academic Pub, August 1, 1997), 192
75 The Agunot Campaign is an organization dedicated to ‘remedy the injustice suffered by Jewish women whose husbands deny them a religious divorce (called a ‘get’) after their marriages have irretrievably broken down.’ See: <www.agunot-campaign.org.uk>.
father-in-law, and he was willing to support me by providing in writing or in person his testimony that he gave my ex-husband the money to buy the ring so we could pursue this loophole. However, the rabbis changed their minds at the last moment and said this loophole option was not sufficient.

For these participants, religion cannot be reduced to status, but is instead ripe with contractual recourses and avenues for private ordering and negotiation. Consequently, they sometimes employed the strategy of giving religious norms the form of a civil contract binding the husband to perform certain religious duties such as the giving of the Jewish get. Other strategies included the use of The Divorce (Religious Marriages) Act 2002\(^\text{76}\) to pressure the husband into granting the get. Our participants confirmed that this is an efficient bargaining tool for women.\(^\text{77}\) Participant 1 explains:

I don’t know if you are aware of the great publicity there was in the UK because of the agunah. … one became far more aware. In fact, I drew up a ten-point thing, an agreement, which made it absolutely categorically clear: I wanted the get. […] When we had the hearing at the High Court, the judge asked him why he hadn’t granted me the get. The judge made it a condition of the Decree Absolute. […] The judge told him he’d better address that agreement quickly, and in fact, he did.

Another strategy was that of changing religious denomination (strategy eased by the belief in a continuous personal negotiation with God) for instance from Orthodox to Reform Judaism, in order to mitigate the consequences of the agunah status. Participant 3 confesses: “I left the Orthodox sect to become a Reform Jew, and this meant I would no longer be an agunah and I could have my son without him being considered ‘illegitimate’.” In fact, traditional halakha is considered binding authority for Orthodox Jews and therefore a civil divorce is not recognized as equivalent to granting the get. Moreover, amongst the different branches of Judaism, the Orthodox Rabbinate does not recognize the validity of the measures introduced by any other denomination.\(^\text{78}\) The Conservative branch of Judaism similarly adheres to traditional halakhab in matters of family law and is thus bound by the formality of the get; however, modern resolutions developed by the Conservative Rabbinate attempt to address the plight of the agunah. First, if a husband fails to give a wife the get within six months of a civil divorce, the marriage shall be considered void ab initio. Second, the beit din has the power to annul the original marriage of a woman whose husband has rescinded a get prior to its delivery.\(^\text{79}\) As for the Reform branch of Judaism, the requirement of a get for the dissolution of

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\(^{76}\) Matrimonial Causes Act 1973 (c. 18) S. 10.A.

\(^{77}\) A note of caution is necessary, however. As mentioned by Douglas et al, “Social Cohesion and Civil Law”, supra note 60, at 48: “This remedy is ineffective if the husband does not himself wish to be able to remarry under civil law since he is indifferent to whether a civil divorce is granted or not. The London Beth Din considers, however, that the legislation has reduced the number of agunot.”


\(^{79}\) Wegner, “The Status of Women”, supra note 74, 31-32: "The most interesting Conservative innovation in the divorce laws is based on the single talmudic reference to a bet din’s power to annul the original marriage of a woman whose husband has exercised his power to rescind a get prior to its delivery. This court action was motivated by the fear that the woman, having accepted the get, might remarry, not knowing that her husband had rescinded it. Recent Conservative practice has been to allow the bet din to grant baisa’ at qiddushin (annulment of marriage) to a woman whose husband unconscionably withholds a get after the parties have been civilly divorced”; Levy, “The Agunah and the Missing Husband”, supra note 74, at 64-65; David Cobin, “Jewish Divorce and the Recalcitrant Husband: Refusal to Give a ‘Get’ as Intentional Infliction of Emotional Distress” (1986) 4:2 J. L. & Relig., 405, 418-419.
marriage was abolished after a resolution was adopted at the Philadelphia Conference in 1869.\textsuperscript{80} However, the Reform Rabbinate may urge congregants to secure a *get* in order for their divorce to be recognized by other branches of Judaism.\textsuperscript{81}

In these scenarios, we see women treating culture and religion as permitting strategies and assertiveness. These women were willing to find innovative ways to resolve their religious disputes and challenge the religious outcomes in order to attain a better future for themselves and their children. This form of agency also translates into a willingness to use the support of religious authorities and the wider community as a bargaining chip. Such view contrasts with the following depiction by Muslim participants:

**Participant 6**

I just wanted out. […] I didn’t even have a contract, I didn’t even know where this guy is that conducted my *nikah*. The institutional Islam – the mosque – that exists, I don’t agree with it and I just didn’t know where to begin. I couldn’t go to my family because to be honest, they weren’t very supportive. […] They would just push me back to my in-laws. I was on my own.

**Participant 8**

Ninety percent of the time, it is considered to be the woman’s fault. Even when people know the details, there is an expectation that the woman should have given in, done more, conformed, changed herself. I find that to be very cruel to women. […] There is no acceptance of divorced women. They are perceived as pariahs, outcasts, or social deviants.

**Khola Hasan**\textsuperscript{82}

I think the biggest barrier always is the cultural thing – “How dare you think about it [divorce]! Stay in an unhappy marriage; if he beats you fine, never mind.” […] And sometimes it’s their own families, their own parents saying “don’t bring shame on us.” […] So there is this perception that Islam does not approve of divorce […].

Meanwhile, the Jewish participants depicted religious law as very often dependent on the actions of third parties. In their accounts, culture is constantly mediated by intricate family loyalties, community and kinship networks, ties of friendship, and what Michel Foucault called the “little tactics of the habitat.”\textsuperscript{83} In terms of outcomes, case-specific stakeholder strategizing has the potential to greatly alter the course of religious adjudication:

**Participant 4**

My aunty who lives here got very upset because of the way the community took up my divorce. People were calling her asking how I could cheat on him. I couldn’t even walk down the streets.  

[…]

\textsuperscript{82} Hasan, Interview, supra note 54.  
The reason why I was quite fortunate was because my aunty knew the rabbi and the rabbi indirectly put it down to him and said: “Look if she really cheated on you, like you claim she did, you have to divorce her.” So in a way, he put it the other way around and managed to get me out of it.

Participant 5

If you go to the beth din, give it 6 months. If you know someone you can escalate it faster. It took me two weeks. […] I was lucky I had some connections, but it could have taken longer.

The relevance of interpersonal networks for successful legal strategizing echoes the findings from my fieldwork in Israel, France, Canada and Germany. However, what is new in the case of the United Kingdom is that the disentanglement of religious and civil law (in the case of Muslim participants) seems to diminish the importance of this stakeholder strategizing. Inversely, the interplay between the civil and religious spheres seemed to produce among Jewish women a will to exploit these networks in order to influence the religious outcomes.

The respective spheres of influence of religious and civil law represent another point of strategizing and contestation. Some participants mentioned that religious authorities consider the religious impact of – or even require – the civil divorce to carry out religious adjudication. This can be analogized to a decision of private international law, whereby authorities in one legal system recognize and uphold the decisions of another system though a procedure called exequatur. Participants also noted that religious authorities had an inconsistent practice when it came to the religious relevance of civil marriage, echoing the academic literature. For instance, some participants indicated that religious authorities required a civil divorce before overseeing a religious one, while others simply had to explain to the authorities that civil procedures were underway. Interestingly, others indicated that there was no requirement, and that the authorities simply mentioned the need for civil procedures before going on with the religious procedure. This inconsistency is no doubt due in part to the diversity of the religious sources on which adjudicators rely to justify their decisions. This leaves many fertile bargaining avenues for women who wish to obtain a religious divorce more easily:

Participant 3

When I began divorce proceedings, I became aware that I needed a get. I made a call to the London beth din to inquire about the procedure in obtaining a get and was quite bluntly told I needed a civil divorce before I approached the beth din for any assistance.

Participant 2

The beth din knows and understands obviously - that you have to have a civil divorce. If you live in the UK and want to re-marry, you can’t re-marry simply on the strength of

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87 Fournier & McDougall, “False Jurisdictions?”, supra note 70.
the religious divorce. […] I think we did say things to the effect that the civil matter was progressing, and there might be a civil divorce in ‘x’ amount of time – that sort of thing.

Participant 4

The *beth din* doesn’t care, in all honesty, about [the civil divorce]. The rabbi kind of mentioned that we need to start the procedure on the civil side as well. But, their main concern is that you actually get the *get*, so they were very helpful.

In addition to granting the religious divorce or supervising the process, religious courts often adjudicate financial religious entitlements. In fact, Muslim and Jewish family law provide for many financial obligations between spouses. For instance, *mabr*, meaning “reward” (*ajr*) or “nuptial gift” (*sadaqa*), is the expression used in Islamic family law to describe the “payment that the wife is entitled to receive from the husband in consideration of the marriage.”90 Another important issue is the enforcement of the financial provisions of the *ketubah*, the Jewish marriage contract so central to the marriage celebration.91 The *ketubah* is often presented as a protection for the wife, as it proclaims that the husband will pay his wife a sum of money if he divorces her for no good reason or if he dies.92 According to the literature, the rabbinical court may enforce the amount stated in the *ketubah*, while the civil court usually does not.93 Here again, the shadow of the civil law influences how religious law is applied and conceptualized. It would seem that non-recognition and estrangement from the civil sphere leads the financial religious rules to be unenforced. This can either be because they are not conceived as enforceable, or because women do not feel empowered to claim their enforcement before religious authorities:

Khola Hasan

For example, the *mabr*, a woman’s right […]. We cannot enforce it, we cannot police it, we cannot say to the police they should enforce it. […] So we can only rely on the good will of the people.

Participant 6

All these things finally contributed to me saying to myself: “So what difference does it make if we get a divorce? He didn’t accept the *nikah*, we didn’t have a civil registration, so under the eyes of the law, I am single and cohabiting. Everything was separate. He made sure of that. Even when he bought the house, he used my money to put a deposit down but my name was never in the contract. I was so naïve. I let it be because I thought: “I need to trust him.” I even gave him the gold I was getting as my *mahr* because he needed it. I cared for him so much.

Interestingly, some Jewish participants indicated that *beth din* will enforce the *ketubah* and (more surprisingly) adjudicate financial claims ancillary to the divorce. Whether or not these participants were right about what the *beth din* would do and whether its orders are adequately enforced may be less important than the very existence of such perceptions among religious women, for whom the realm of culture is pervasively legal and open to bargaining:

**Participant 2**

Q: So the *ketubah*, is it enforceable under Jewish Law?

A: Well yes, because it is a proper document.

**Participant 4**

You can go to the rabbi and instead of sorting your case civilly, say for example, I want £20,000 out of the settlement, they will sit in front of the rabbi and they will agree to the terms and conditions and everything.

Such a difference in attitudes may lead to divergent outcomes. Predictably, the Muslim participants who expressed a less contractual view of the religious sphere obtained significantly less favourable outcomes than the Jewish participants, who described the religious sphere as a legal entity. In addition to being completely excluded from the civil law benefits, religious Muslim women often have very little bargaining power in the religious sphere, prompting them to incur significant economic cost:

**Participant 8**

On my part, nobody negotiated, not even my parents. At one point, I did. I said to him on the phone: “I need some guarantees that you should behave yourself.” “As a guarantee, give me the house.” And he just blew his top. I said: “Okay there are actually no guarantees that you will not misbehave again.” So that was it. That was the only negotiation, and it was half-hearted. […] My children have done well, and they have had my full support, my parents’ full support. And he hasn’t contributed anything. Neither financially, emotionally, or otherwise. They have his name and that’s about it.

**Khola Hasan**

I was talking to another woman from Tower Hamlets and she was telling me about her divorce situation. Unfortunately in the end, when they had their religious divorce, there were problems with property, and she was not able to claim anything because she did not have the protection of civil law, and therefore, she couldn’t arbitrate for those things. He was a nice person, and she had no ill will against him, but it came down to an inequality with respect to division of assets. And so unfortunately, she wasn’t able to recoup any of that and had to walk away.

These narratives stand in sharp contrast to those shared by Jewish participants such as the following, who described how she views the economic gains brought to her by the civil law:

**Participant 1**

Well, […] I got 46%, I think it was 46% because it was a long marriage. And I think that it’s absolutely right that somebody who’s been in a long marriage, has made a contribution, an equivalent contribution in raising a family, and all the other duties, even if she’s not going out to work.
While the legalization of religious norms is enhanced in the case of Jewish participants seeking a religious divorce, the non-recognition of Muslim marriage has presented difficulties for divorcing Muslim women, especially if they had not undergone a civil marriage. As a matter of fact, the civil law regards them as if they are in a cohabiting relationship. Therefore, they must rely on a complex process of cultural and religious reformulation via sharia councils to assist them in religiously divorcing their husband in the event that he has not repudiated the marriage. After resolving to leave her husband, oftentimes the woman’s family and/or in-laws are involved as informal mediators where steps are taken to reconcile the couple. The sharia council thus becomes an extension of this reconciliatory effort:

[I]t became apparent that the women had little alternative other than to approach a Sharia Council to obtain divorce when their husbands refused to grant them a unilateral divorce. It also became clear that they often had to struggle against the prevalence of conservative attitudes endemic within such bodies. They talked about the confusion generated by the different interpretations of Islamic divorce adopted by the Councils which led to difficult decisions regarding the validity of the divorce certificate.\(^94\)

At each and every level, power dynamics contour the options available to the woman. Whereas both Jewish and Muslim women seek divorce through all accessible channels, the non-recognition of Muslim marriage combined with growing evidence of unregistered Muslim marriages\(^95\) significantly differentiate Muslim women’s experiences and bargaining capabilities in comparison to Jewish women. Moreover, the ability to contest cultural interpretations of religious law is directly affected by the amount of family and/or kinship support and the civil and religious bargaining power available. As demonstrated in this section, whether or not the woman has legal recognition contributes to afford or deny her a degree of strategizing in order to obtain the dissolution she seeks.

**Conclusion**

*Simin*: So, what happens to me?

*Judge*: Nothing. Go back to your life.

*Simin*: If I could, I wouldn’t file for a divorce.


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\(^94\) Bano, “Muslim Family Justice”, *supra* note 47, at 16.

\(^95\) See Douglas, “Religious Divorce in the Secular-State”, *supra* note 47, at 14; Werner Menski “Angrezi Shariat: Glocalised plural arrangements by migrants in Britain” (2008) 10 Law Vision, 10-12; Prakash Shah, “Unregistered Marriages in the English Courts” presented at RELIGARE Expert Conference: Unregistered Marriages and Alternative Dispute Resolution in European Legal Systems, London: Queen Mary University of London, September 5, 2012; Maleiha Malik Minority Legal Orders in the UK: Minorities, Pluralism and the Law (London: The British Academy, 2012). Similar findings have been acknowledged by the Ministry of Justice: “Evidence from community groups shows that such cases [of unregistered marriages] form a high proportion of their workload, and that the numbers are increasing.” Ministry of Justice, *Muslim Marriage*, *supra* note 54 1. In a 2007 study on British Pakistani Muslim women, it was reported that amongst participants who had a married partner in England, less than half had registered marriages; Bano, “Muslim Family Justice”, *supra* note 47, at 14.
The semiotic redefinition of law as culture is a constant, dynamic process. By no means an exhaustive analysis of this phenomenon, this article is an attempt to demonstrate how acknowledging and further exploring this process can have a beneficial impact on legal and cultural subjects. First, I presented a decentralized conception of law by examining socio-economic bargaining and its distributive aspects through the critical legal pluralist lens. This theoretical framework has allowed me to highlight the pervasive contractual and legal role of cultural and religious norms. This proposition, while of timely relevance, came as no surprise: the regulatory power of non-legal norms extends beyond religion and has in fact been studied in family law by generations of scholars drawing from American legal realism and legal pluralism. The marriage contract can only be concluded through the principles of offer and acceptance by each party. 

Moreover, the religious doctrine surrounding both Islamic marriage and Jewish marriage is finalized according to contractual

Of course, the argument that non-recognition and cultural estrangement leads some Muslim women in the UK to have a more acquiescent relationship to religion than other Jewish women does not imply that there is anything inherently more submissive about Islam itself. Indeed, fieldwork carried out among Muslim communities in France, Canada and Germany suggests that the higher level of civil/religious interaction occurring in those countries has precisely led to the kind of contractual and legal bargaining we have observed among Jewish communities in the UK. Moreover, the religious doctrine surrounding both Islamic marriage and Jewish marriage has a deeply contractual nature; it is, from the outset, structured around negotiation, bargaining, and enforcement mechanisms. Given that both religious doctrines hold great potential for contractual

96 See Fournier, "Calculating Claims", supra note 22. Under Islamic family law, marriage establishes a reciprocity system in which each party is assigned a set of contractual rights and duties towards the other party. See Lama Abu-Odeh, “Modernizing Muslim Family Law: the Case of Egypt” (2004) 37 Vand. J. Transnat’l L. 1043, 1063-64. An Islamic marriage contract can only be concluded through the principles of offer (qabul) and acceptance (gabul) by the two principals or their proxies. Jamal J. Nasir, The Islamic Law of Personal Status, 3rd ed, (New York: Springer, Arab and Islamic Law Series, 2002), 45 [Nasir, The Islamic Law of Personal Status]. Upon marriage, the husband acquires the right to his wife’s obedience and the right to restrict her movements outside the matrimonial home. The wife acquires the right to her mahr and the right to maintenance. Nafaqah is the “husband’s primary obligation” to his wife and “includes food, clothing, and lodging.” Esposito & DeLong-Bas, Women in Muslim Family Law, supra note 86, at 25; Wani, The Islamic Law on Maintenance of Women, supra note 98, at 195. Like Muslim marriage, Jewish marriage is finalized according to contractual


98 Fournier, "Secular Portraits and Religious Shadows", supra note 45, and “Calculating Claims”, supra note 22; Fournier & McDougall, False Jurisdictions?", supra note 70. But again, the author is aware that more empirical studies pertaining to the real and effective practices of religious authorities in both communities, and the justification for said practices, may be necessary to strengthen such assertion.
and legal bargaining, the asymmetry observed between Islam and Judaism in the UK appears as no more than a historical accident. This circumstance could very well become a thing of the past as religious women, activists and lawyers fight conservative interpretations of religious law and reveal the crucial insight that culture is much more legal than many would have us believe. This present fieldwork on the workings of religious norms thus supports Susan Weiss’s view that Jewish law “is not a collection of harsh and uniform rules, but rather embraces various and contradictory voices [and that the] outcome of a given case depends upon the rabbinical authority consulted, the “facts” he deems worthy of emphasis, and the voices he chooses to heed.”\(^{100}\) We have sought to demonstrate that this analysis also applies to Muslim family law, a proposal which strongly supports the plea for its recognition within civil law. In fact, interactions between civil law and religion would only further the legal malleability so accurately depicted by Weiss, as it would enable women to actively treat culture as law. This is, I have argued, a fruitful and promising way to empower women within minority groups that also resonates with the growing mass of feminist scholarship reinterpreting the internal legal doctrines of Jewish law\(^{101}\) and Islamic law\(^{102}\).

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99. See, e.g., Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), 63 (arguing that the voice of Islam can be “stubbornly egalitarian”); Asma Barlas, “Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur’an” (Austin: University of Texas Press, 2002), 3 (arguing that “the Qur’an’s epistemology is inherently antipatriarchal”); Amina Wadud, *Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective* (Oxford: Oxford University Press, 1999), 79-80 (emphasizing that women can benefit from the “broader Qur’anic wisdom which aims at harmonious reconciliation”); Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (Bloomingon, IN: Indiana University Press, 1985), 52 (arguing that the *talq* is an Arabian tradition which the Prophet himself did not live by); see also Barbara Stowasser, “Gender Issues and Contemporary Qur’an

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101. See, e.g., Naomi Graetz, *Unlocking the Garden: A Feminist Jewish Look at the Bible, Midrash, and God* (Piscataway, N.J.: Gorgias Press LLC, 2005), 4 (“Since feminism is inseparable from our religious orientation and is viewed as part of our concepts of spirituality and holiness, its teachings must be integrated. We bring to the texts questions from our time and seek to uncover meanings . . . that relate to these questions.”); Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Lebanon, NH: Brandeis University Press, 2004), xvi–xvii (“If feminism need not be seen as a threat to traditional Judaism . . . ”); Esther Fuchs, “Jewish Feminist Scholarship: A Critical Perspective”, Leonard J. Greenspoon et al. eds, in *14 Studies in Jewish Civilization* 225, 225 (2003) (describing feminist Jewish scholarship as being “a new field of study”); Judith Hauptman, “Feminist Perspectives on Rabbinic Texts”, Lynn Davidson & Shelly Tenenbaum eds., in *Feminist Perspectives on Jewish Studies* (New Haven: Yale University Press, 1994), 40, 43 (“There has been an explosion in the number of recently published popular works on feminism and Judaism.”); Norma Baumel Joseph, *Jewish Law and Gender*, Rosemary Skinner Keller & Rosemary Radford Ruether eds., in 2 *Encyclopedia of Women and Religion* (Bloomington, IN: Indiana University Press, 2005), 576, 588 (“Since the legal system was established as a responsive one, much of Jewish law’s content can be addressed in today’s language and terms, using women’s experience to pry it open.”); see also Laura Levitt, *Jews and Feminism: The Ambivalent Search for Home* (New York: Routledge, 1997), 128 (detailing the author’s experience coming to terms with feminism and its liberation as a Jewish woman); Isaac Sassoon, *The Status of Women in Jewish Tradition* (New York: Cambridge University Press, 2011) (“The presence of feminist research in religion has been intensified because there is more at stake than simple scholarly investigation.”).

102. See, e.g., Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), 63 (arguing that the voice of Islam can be “stubbornly egalitarian”); Asma Barlas, “Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur’an” (Austin: University of Texas Press, 2002), 3 (arguing that “the Qur’an’s epistemology is inherently antipatriarchal”); Amina Wadud, *Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective* (Oxford: Oxford University Press, 1999), 79-80 (emphasizing that women can benefit from the “broader Qur’anic wisdom which aims at harmonious reconciliation”); Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (Blomingon, IN: Indiana University Press, 1985), 52 (arguing that the *talq* is an Arabian tradition which the Prophet himself did not live by); see also Barbara Stowasser, “Gender Issues and Contemporary Qur’an
Beyond academic work, artistic contributions can also serve as useful tools for transforming conservative perceptions of religious negotiation settings. In fact, a recent convincing plea for a more nuanced conception of divorce in religious contexts came from Asghar Farhadi's 2011 critically acclaimed movie “A Separation”. Although set in the singular and distinct context of Iran, its astute account of a middle-class couple's separation under Islamic law undoubtedly shattered some preconceived ideas in Western minds. Its fascinating opening scene in which Simin assertively argues for her right to pursue her daughter's interests despite her husband's pacific and resigned objection foreshadows the complex interaction between individual agency and kinship dynamics the movie goes on to depict. Simin, as she quietly refuses to let a judge tell her that hers «is only a small issue» embodies the film's essential proposition: the failure of all normative systems to arbitrate intersecting legal, religious, socioeconomic and class factors as well as the imperfect human nature. Farhadi incidentally demonstrates that it is both useless and delusive to think of these dimensions as watertight compartments. The idea that a certain sphere of one's life, a certain set of rules, offers more protection to prevail upon the intimate suffering of domestic collapse is, at best, wishful thinking. It seems to be that protection can only rise from enabling individual agency in all possible ways, through all possible channels. Hence, the value of recognizing culture and law as the malleable, empowering tools that they are, and allowing them to support conflicting conclusions.

Hazel Wright, a family law specialist at Hunters Solicitors, said the ruling had "given heart to many who otherwise suffer discrimination." She said it was vital for Akhter that the "English divorce court rule in her favour, that the marriage should be recognised as void and not a non-marriage. Otherwise she would not have any rights to make any financial claims for herself." An independent review of sharia councils recommended this year that Muslim couples should undergo a civil marriage as well as a religious ceremony to give women protection under the law. A survey last November found that nearly all married Muslim women in the UK had had a nikah and almost two-thirds had not had a separate civil ceremony. Divorces in the UK. Civil partnership dissolutions. Users of divorce statistics. The number of divorces in 2013 was highest among men and women aged 40 to 44. For those married in 1968, 20% of marriages had ended in divorce by the 15th wedding anniversary whereas for those married in 1998, almost a third of marriages (32%) had ended by this time. Back to table of contents. 2. Background. Lawyers, solicitors and those involved in family law use divorce data to comment on trends in case law and predict likely future trends in legal business. Academics and researchers use divorce data for research into family change, and assessing the implications on care, housing and finances in later life.