



SECULAR IS NOT ALWAYS BETTER: A CLOSER LOOK AT SOME WOMAN- EMPOWERING FEATURES OF ISLAMIC LAW

Asifa Quraishi-Landes

If you are interested in women's rights and Islamic law, you have plenty to read. Mostly, you will find descriptions of how Islamic law treats women unequally, often with significant criticism of Islamic law as a whole based on this premise. Sometimes you will find suggestions for how it could be reformed to better honor women's rights.¹ But it is much harder to find literature discussing the woman-empowering aspects of classical Islamic law. This omission is unfortunate, because these aspects are the foundation of most Muslim feminist work² and yet they remain in the shadows of global (especially western) feminist discourse. This brief highlights some of Islamic law's woman-affirming aspects, with special comparison to women's rights in American law.

A common presumption of western feminists is that Islamic family law restricts women's rights more than American family law does. This is one reason cited by those who oppose the use of sharia-based provisions of Muslim marriage contracts in American courts.³ Yet some of the rules of Islamic family law can be very empowering for women—in some cases arguably more so than American law.⁴

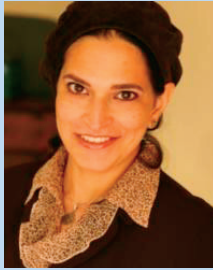
Below are three examples of how the rules of classical Islamic law could leave a woman financially better off than the relevant American law.

1. IT'S NOT A BRIDEPRICE, IT'S AN INSURANCE POLICY

The Qur'an requires the groom present to the bride a mutually agreed upon bridal gift (*mahr*) as part of a valid marriage contract. Unfortunately, it is common in western literature to translate *mahr* as "brideprice," thus giving the impression that the bride is being sold to the groom. (Ironically, this description fits better with the dowry paid by fathers to grooms in Jane Austen's England than it does with the role of the *mahr* in Muslim women's lives.) For many Muslims, the *mahr* is a woman-empowering tool, a sort of insurance policy that facilitates female financial independence upon marriage.

With a substantial *mahr*, a Muslim wife can choose, for example, to be a stay-at-home parent and/or choose not to pursue a financially lucrative career without becoming completely financially dependent on her husband. Using the *mahr* for financial independence can also empower a wife to leave a bad marriage, an option that is often not taken by those without a separate income. Living off of a *mahr* can be a far more financially secure way to begin a new life during and after divorce rather than, for example, waiting for alimony payments or a divorce settlement's division of assets, a procedure that can take

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months or even years in an American family court. No legal system can provide foolproof protection against abusive marriages, of course. But it is important to recognize that, contrary to the image created by the term *brideprice*, the *mahr* is a powerful tool for women’s independence built into classical Islamic law that can be effectively used by women faced with this unfortunate situation.

2. OURS AND HERS: WOMEN AND ISLAMIC PROPERTY LAW

Under established rules of Islamic law, a Muslim man’s property is not wholly his, whereas a woman’s property (of all sorts, whether land, money, personal assets, etc.) is exclusively her own. Classical Islamic law states that women are not obliged to use their assets to financially support her household’s needs, whereas a man is legally obligated to provide food, shelter, and clothing for all of his immediate family members as well as those members of his extended family who have no other support. In light of this, one might plausibly argue that, at least on paper, Islamic property law discriminates against men rather than women.

The above examples present quite a different picture of Islamic property law and women than does the impression created by focusing only on gender-discriminatory Islamic inheritance rules, such as allocating a sister half of her brother’s share. However, this rule takes on a different significance when considered alongside the rule that obligates men to use their income and assets to support their sisters, mothers, and wives (and all close relatives), whereas a Muslim woman’s property is exclusively hers and totally beyond the reach of others, including her husband and male relatives. And, contrary to popular misinformation, Islamic law has always flatly rejected the idea that a woman herself is someone’s property, (in stark contrast to pre-modern European attitudes).

A Muslim woman’s exclusive control over her property under classical Islamic law can be seriously disrupted by American community property laws, which hold that all

Some resources for expertise on Islamic law and women's rights can be found at:

- [Islawmix \(www.islawmix.org\)](http://www.islawmix.org)
- [Karamah: Muslim Women Lawyers for Human Rights \(www.karamah.org\)](http://www.karamah.org)
- [Sisters in Islam \(www.sistersinislam.org\)](http://www.sistersinislam.org)

income acquired during the marriage is owned equally, regardless of who actually earned it. Muslim women living in community property states in the United States are often shocked to discover that, according to state law, their husbands have a legal claim to half of the assets that they had believed were (and under classical rules of Islamic law would be) exclusively theirs.

Pre-modern European laws, especially English common law (upon which the American legal system is based) severely limited women's ability to acquire property, through, for example, restricting their ability to enter contracts in their own names, and by transforming whatever separate property they did have into the property of their husbands if they married. Community property presented a radical departure from the common law scheme because it designated a woman's pre-marriage property as her own separate property (something that Islamic law already gave them), and gave wives ownership interests in the property acquired by their husbands during the marriage.

When compared to classical Islamic law, however, community property is not necessarily a step forward for women. Community property transforms all property acquired by either spouse during marriage into joint property owned equally by both. But this takes away half of a wife's property as given to her under Islamic law. That is, under classical Islamic law, all assets that a woman acquires—even during marriage—are her exclusive property, not to be divided with anyone, including her husband. In other words, if one begins from the Islamic legal presumption that a woman's property

is exclusively hers, then community property actually takes away the exclusive ownership of all the income and assets that she acquires during the marriage. Thus, in a divorce settlement in a community property state, a higher income-earning wife would likely walk away with significantly less than if her divorce were decided according to Islamic property law.

3. COOKING AND CLEANING NOT INCLUDED

Islam does not expect women to be housewives when they get married. Classical Islamic family law specifically states that wives have no marital obligation to perform household cooking or cleaning. Moreover, many Islamic schools of law state that, in some cases, the husband must either pay for these services or do them himself and, moreover, that a wife who performs these services is entitled to financial compensation for her work. This can have a significant impact on the post-divorce allocation of assets, especially if for a marriage of many years. So, while classical Islamic law does not have a specific concept of alimony, it does have a mechanism for a divorced homemaker to receive compensation that equals or exceeds the alimony that might be awarded by an American court.

RECOMMENDATIONS

Don't assume.

When comparing secular and Islamic law, do not assume that the results for women will automatically be worse under Islamic law. With the help of Islamic law experts, take a close nuanced look at the body of all relevant Islamic law before dismissing its potential for Muslim women's empowerment. The fact that gendered Islamic rules of marriage, inheritance, property, charity, and divorce are all interconnected is likely to be missed by those looking at individual rules in a vacuum. Many

Muslims find this constellation of rules acceptable (and even empowering for women), and often rely upon it when making marriage and career plans.

Remember diversity.

Islamic law, being pluralistic in nature, is made up of different schools of law and new rules continue to be created by Islamic legal scholars today. There is not just one “Islamic law” that is good or bad for women. Moreover, individual Muslims are free to choose from the many Islamic legal rules available when deciding how to live as a Muslim. Due to this diversity, not all American Muslim women want these classical Islamic rules applied to them. Some may prefer Islamic legal reform in light of changed social circumstances, while others might very well prefer the secular law. But what the above examples illustrate is that when a Muslim woman requests legal recognition of the rules of classical Islamic law, this does not necessarily mean that she is oppressed or will be financially worse off than if the otherwise applicable secular law were enforced.

ENDNOTES

¹There are far too many to list here. As an example, my own proposal for reforming Islamic marriage contract law can be found in my chapter, “A Meditation on *Mahr*, Modernity, and Muslim Marriage Contract Law,” in *Feminism, Law, and Religion* (Failing, Schlitz & Stabile, eds.) (Ashgate, forthcoming 2013).

²For more detail on how Muslim feminists use classical-era Islamic law, see Asifa Quraishi, “What if Sharia Weren’t the Enemy?” Rethinking International Women’s Rights Advocacy on Islamic Law, 25 *Columbia Journal of Gender and Law* 173 (2011).

³For more details on this, see Asifa Quraishi-Landes, “Sharia and Diversity: Why Some Americans are Missing the Point,” ISPU Report (available at <http://www.ispu.org/GetReports/35/2620Publications.aspx>).

⁴For more elaboration of the examples listed here, see Asifa Quraishi-Landes, “Rumors of the Sharia Threat Are Greatly Exaggerated: What American Judges Really Do with Islamic Family Law in Their Courtrooms,” 57 *N.Y.L. Sch. L. Rev.* 245 (2012–2013).



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