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7 The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?

Azizah Y. al-Hibri

The nature of the Islamic marriage contract (*kitab*) has been largely misunderstood by Muslims and non-Muslims alike. On the Muslim side, the problem has been one of over-secularization of the law of contract, a trend that led to a trivialization of the marriage contract, and hence of the commitment of some marriage partners to it. On the non-Muslim side, the problem has been one of trying to explain the Islamic marriage contract from world perspectives that are at times incongruent with it. This has led to unintended distortions in characterizing its nature.

For example, Muslims and non-Muslims often assert the purely contractual nature of the Muslim marriage contract in order to draw a distinction between it and the nature of marriage in other traditions. Unlike Catholic marriages, for example, it is pointed out that a Muslim man can dissolve the marriage bond at will and pay his wife a set amount (called the *mahr* or *sadaq*) agreed upon in advance in the marriage contract. The marriage ceremony may take place at home, and thus, it is argued, is not "before God" as in a church, but rather "temporal."

I was one of those propagating this point of view until I started researching Islamic law, especially in the areas of marriage and divorce, more seriously. As it turns out, Islamic law is a seamless web, and it is quite difficult to understand

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one part of it without having some knowledge of the other parts. I can safely assert now that almost every claim in the preceding paragraph is false.¹

In this chapter, I shall remove some of the confusion and misunderstanding about the Islamic marriage contract by taking the reader with me on a brief tour of the fundamentals of Islamic law as they pertain to our subject. I shall start with an introductory discussion of the Islamic worldview in general, and the Islamic view of gender relations in particular. It will be followed by a discussion of the nature of contract in Islam. I shall then turn to the Islamic marriage contract and its special status in Islamic law and religion, and, finally, examine the nature of marriage among Muslims in the United States.

The Islamic Worldview

The Islamic worldview is based on the fundamental concept of *tawhid* (the unicity of God).² There is only one Creator and one Supreme Will. Any view which associates partners with this Supreme Will, whether directly or indirectly, results in *shirk* (the opposite of *tawhid*), which is a sin that God tells us in the Qur'an he will not forgive (4:48). Iblis (Satan) missed this important point and disobeyed God when God ordered him to bow to Adam (15:31). By refusing to obey a divine command, Iblis made his own will supersede that of God. For that unforgivable sin he was cursed (15:35). But the critical question in this Qur'anic story is this: What prompted Iblis to disobey God? The answer is his vanity. The Qur'an tells us that in justifying his disobedience, Iblis told God, "I am better than he [Adam] is" (7:12). This Iblisi worldview, which is based on vanity intertwined with hierarchy, is directly opposed to divine logic, which celebrates diversity and the fundamental equality of all human beings as signs of God's miracles on earth.

The Qur'an tells us,

1. The full extent of this error will be made clear in my forthcoming book on marriage contracts.

2. This is most clearly stated in Chapter 112 of the Qur'an itself. It states in its entirety, "Say: He is God the One and Only. God the Eternal, Absolute; He begetteth not, Nor is He begotten; And there is none Like unto Him."

In this chapter, I use *The Meaning of the Holy Qur'an*, trans. A. Yusuf Ali, 11th ed. (Maryland: Amana Corp., 2004). However, where critical for our discussion, I have revised some of the translations that are inaccurate linguistically or legally, or are unjustifiably patriarchal. I have also consistently replaced the word "Allah" with "God" since that is the proper translation of the word into English. Leaving it in its Arabic form will cause confusion as to the identity of the God in which Muslims believe. He is the same God of the other Abrahamic religions. All the translations of the Arabic sources, other than the Qur'an, are mine.