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This paper's main findings were presented in the framework of an international symposium gathered at Aix en Provence in June 2018 to consider "Secularized Societies in the face of Religious Fondamentalisms".[1] The purpose was to study a religious norm within its historical context with two outcomes: conveying its embedding in Muslim-ruled societies, while conversely signalling the existence of a similar principle in Christian-ruled societies. And outlining the way this norm is being challenged, highlighting the fact that the public nature of this questioning comes more easily in a Muslim dominated society than in a society where Muslims are a demographic minority.

In 2008, Rami Imām (b. 1974) released a film titled *Hassan and Murcus.[2]* In a variation on role reversal between two heads of household – one a shaykh, the other a Coptic priest – each threatened by extremists of his own faith, the young Egyptian director alighted on the taboo concerning the prohibition for a Muslim woman to marry an outsider to her faith community, and, thereby, on a legal discrimination, since the reverse option is legally accepted. Ironically, fiction and reality had gotten even, since the role of Hassan, who pretends to be a Christian, was taken by Omar Sharif, born Michel Chalhoub (1932-2015) who converted to Islam in order to be able to marry the actress Faten Hamama (1931-2015)[3] in 1955.

In Muslim dominated societies, state law has, in contravention to international law,[4] adopted one religious prohibition deep-rooted in the collective mindscape. It rests upon a patriarchal perception of women, which, anterior to the framing of Islamic rules, was incorporated into them.[5] Women are a subject-object, a family asset, as per the classical definition restituted by Muḥammad Qutb (1919-2014): "the guardian has no right to invite people to steal chattels that he does not own. Therefore the girl who is the mere guardian of her honour has no right to use it or to invite people to rape her. For this is not a matter of her honour alone but also the honour of her parents, her family, society and humanity as a whole."[6]

Such problematics have not been the preserve of societies legally bound to Islam[7] but in the latter, they take on distinctive features. The dominant anthropologic conception has reduced women to two conditions: *'um al-awlād* ["mother of the children"][8] on the one hand and on the other *aḥābīl al-Shaytan* ["snare of the devil"] – the root cause of the turmoil threatening the relation between man and the God of his faith.[9] Before like after the advent of national independence, women, defiant but enticed by the European powers who had colonized most Muslim dominated societies, broke two bonds that linked them to men: household and knowledge.[10] At the turn of the 21st

century the endgame is control over their own sentimental and sexual behaviour, which, although already partly passed into practice, has come up against the Muslim religious authorities' refusal to admit it.

Alongside the changes in social practice, notably the rise of legal age at the first marriage, several inherited religious norms have been circumvented either by selective sexual practices or surgical procedures aimed at the official preservation of the woman's virginity up to marriage, or by juridical innovations such as the Shi'a practice of *nikāḥ al-mut'a* ["Fixed-Term or Pleasure Marriage"], the *zawaj al-misyar* ["traveller's marriage"] whereby a husband unable to afford the costs of a household may "visit" (zāra) his wife without an agreed fixed term, which is admitted by some Sunni scholars, and the *zawāj al-aṣdiqa'* [friends' marriage] validated by two witnesses and taking hold in student circles. Yet, whatever the formula – be it primary or secondary – the union of a Muslim woman with a non-Muslim man continues to come under widespread proscription.

From prohibition to legalisation: Tunisia, forerunner and butt

During the 13 August 2017 celebration of Tunisian Women's Day, which marks the adoption of the 1956 Code of Personal Status,[11] President Beji Caid Essebsi (b. 1926) announced a twin commitment towards equality between women and men, according to the principle adopted in the January 2014 Constitution: [12] the modification of inheritance related rules and the lifting of the ban on the marriage of Tunisian women with "foreigners". He justified his position by upholding the autonomy of the realm of social affairs and everyday life, grounding it in Hadith. In mid-September, the Minister of Justice Ghazi Jeribi (b. 1955) annulled the 5 November 1973 Circular number 216, internal to the Justice ministry, which denied Tunisian women the possibility to marry a *ajnabī* ["foreigner" (non-Arab)] – meaning "non Muslim",[13] specifying that that document ran counter to Articles 21 and 41 of the Tunisian Constitution, and to international agreements signed by the State.

The Grand Mufti of Tunisia, Othman Battikh (b. 1941) publicly approved this initiative on the strength of two arguments: *al-maṣlaḥa* ["the interest"] of the persons involved rather than that of the "community" as a whole; and Al-Maqasid ["the finalities"] of Sharia law. The Preachers union followed suite specifying that prohibitions concerning the marriage of Muslim women with non-Muslim men were nowhere to be found in the Quranic text. This position was countered by the vice-chancellor of Ez-Zitouna University stating that no one except the Senior Council of Ulama had the authority to change an order given the *Umma,*. Professor Abd al-Latif al-Bouazizi, from the same institution, added that the members of Tunisia's Dār Al-Ifta ("Fatwā Coucil") had

followed an inappropriate rationale and went against a legality founded in prescriptions he considered clear. On 17 August, Ez-Zitouna scholars and Sharia law academics signed a declaration the purpose of which was to assert that the twin proposal ran counter to the *Thawabit* ["immutable fundamentals/principles"] of Islam whereas, they concluded, taking a stand in a debate that divided Tunisian jurists around Article one of the Constitution, "the State's religion is Islam":

> As regards the marriage of a Muslim Woman to a non-Muslim Man, it is prohibited by the Book, the Sunnah and consensus. The contracting of such a bond is considered an invalid marriage. It behoves to separate the parties according to the word of Almighty God: "And give not (your daughters) in marriage to Al-Mushrikun ["associators"] till they believe" (Al Baqarah, 2: 221). And the Very Most High says that (the liaison) of Muslim women with unbelievers was under no circumstances possible: "they are not lawful [wives] for them, nor are they lawful [husbands] for them." (Al-Mumtahanah,10). Maliki Imam Al Qurtubi wrote in his book *al-Jāmi'* (17-4): "The Umma has come together on the fact that the (male) associator cannot in any way or means take a (female believer), contravening this is tantamount to humiliating Islam". Islam's Fiqh has recorded the ruling according to which if a Muslim woman binds herself to a male unbeliever, she must establish a new contract if he converts to Islam as the first contract is not valid.[14]

The parties leagued against the reform enrolled the support of the International Union of Muslim Scholars whose statement echoed the above, in places word for word. In their conclusions Shaykhs Yūsuf al-Qaradhāwī (b. 1922) and 'Alī al-Qarh Dāghī made a threefold plea: one to the "Tunisian people" to "express their refusal and opposition", the second to the "Tunisian President" to "row back on this decision" and a third to the "Members of Parliament" with a view to "preserve the people's principles and the things it holds sacred," to "reject this project, thus upholding their commitment" referring them to verse 65 of the Surah Al-Nisa: "But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission."[15] Preacher Wajdi Ghunaym, exiled in Turkey since the fall of the Muslim Brother's administration in Egypt in the early summer of 2013 and who, supported by Ennahda, had enjoyed en enthusiastic welcome all around Tunisia the year before, launched an anathema against the Tunisian president whom he called an unbeliever.[16]

These al-Banna-inspired (or Ikhwani) dissenters to the Tunisian government's initiative, found support on the principle from Al-Azhar University, its campaign against the Muslim Brothers not withstanding. However the Egyptian religious authority's *wakil* ["agent"] called on a different rationale, as its scholars have recently grown shy of identifying Jews and Christians as *mushrikun*. Shaykh 'Abbās Shūmān thus declared that the position of the Tunisian authorities on these two points ran

“counter to Sharia law” and contravened Islamic law [*al-shar‘ al-islāmī*], Quranic verses and Hadith, specifying that matters of inheritance were not amenable to *ijtihād* [“effort to comprehend”] on the basis of change of time, place or person. As to marriage between a Muslim woman and a non-Muslim man, he followed an argumentation that included both the individualised and the collective conceptions of marriage: “some hold that the fact that this happens is a good thing advantageous to women but it must be held an absolute certainty that this is not true; the object of marriage is love [*mawada*] and mercy [*raḥma*], the non-Muslim man does not believe in the Muslim woman’s religion and as a result forbids her from following religious rites so she leaves him and hates him, so where is mercy between them?”[17] Unlike, he went on, what takes place between a Muslim man marrying a “woman of the book” [*kitābiyya*] (barring Zoroastrians [*kitābiyya*]) for he recognised her religion and her prophets.

Such standpoints bear the hallmark of integralism, which holds as one of its founding tenets that in the event of a confrontation between the political and the religious authorities, the latter must prevail. Now the Tunisian State was devised in formal opposition to this principle.[18] In the months that followed Independence, Habib Bourguiba (1903-2000) suppressed Rabbinical and Sharia courts, he dismantled the Zaytuna Mosque-University and abolished the *habous* [“mortmain property”]. He brought into law a code of personal status[19] banning polygamy, put paid to the institution of matrimonial guardianship and replaced the *talaq* [“repudiation”] reserved to men with a legal divorce procedure. The year 1973 proved to be a watershed, with the legalisation of abortion – but also the adoption of Circular 216, which put a stop to the emancipation process.[20] Nevertheless the State backed the civil and political rights granted Tunisian women in the Convention on the Elimination of All Forms of Discrimination Against Women, notably in matters related to marriage and family relations.[21] For these reforms’ cheerleaders, those decisions positioned Tunisia in the vanguard towards a modernity open to the Muslim dominated Arab world. Their opponents on the contrary described this course as a deviancy, destroying “the faith” and social foundations, not least the family. And yet, the Tunisian state was never secular as in a formal separation between the political and religious spheres: Islam has constitutionally been declared Tunisia’s religion and the State has co-opted its religious personnel, bringing it under its dependence within a Direction of Religious Affairs created in 1967 and answering to the Interior Ministry since 1986.

In the other Maghreb countries, whether explicitly or by default, fiqh-inspired norms were integrated into the *Moudawana*, [“Code”] concerning women or family. In Morocco the first code was adopted in August 1957. No article addressed the marriage of Muslim women with non-Muslim men but the drafters took good care to specify at

the end of Books 2, 4, 5 and 6 that "anything left out of this law [was] aligned on Imam Malik's doctrine", which inferred that the matter was settled by Maliki legal theory, understand the proscription of such marriages. The same went for the 1993 reform, which however established the principles of the primacy of the mother over the father when ranking the parents towards child custody. The sponsors of the 2004 reform brought in more substantial changes, among which the recognition of the civil marriages contracted by Moroccan nationals in their country of residence. Whereas the status of Algerian women was more advantageous than that of their Moroccan counterparts in the late fifties or even after the adoption of the 1984 Code, the situation was reversed after the adoption of the 2005 Code wherein Algerian women remained perceived as minors, placed under the legal guardianship of a husband or a male relative without whose authority a marriage cannot be contracted. The Maghreb countries have the peculiarity of having a population deemed Muslim in its almost totality with an officially acknowledged remnant of a few thousands citizens of Jewish faith. As a result, the issue of interfaith marriages has been linked to that of nationality. Meanwhile, according to the Interior Ministry, the number of marriages between Moroccan women and European men has seen a significant increase since the end of the millennium: close on 2000 in 1997, 2400 in 2000 and over 2500 in 2001, signalling a change in mind-sets. Algeria adopted its own Family Code in 1984, whereby a Muslim woman could not marry a non-Muslim man, and introduced regulatory provisions for the marriage of Algerian men and women to foreigners of either sex.[22]

In the Mashreq, the demographic landscape is atypical to the extent that all societies include non-Muslim communities; two of them offer a singular profile: Egypt, who, in absolute value, counts the largest Christian population (2 out of 3 Christians in the Arab world mid 2010) and Lebanon, who counts the largest number of Christians (30 to 35%) in relative value. This alters to a degree the terms in which the question of marriage between Muslim women and non-Muslim men gets framed there. It is ruled out and illegal a priori in these States where the religious marriage alone is valid; it no less exists in fact. This is how, in the early eighties in Egypt, a draft bill penalising "apostasy" (which in the event came to nothing) had included, alongside the declared atheists, converts from Islam to Christianity and Communists it targeted, the category of Muslim women married to non-Muslim men – which confirmed *ipso facto* their existence. In Lebanon the proscription of civil marriage has been debated[23] and circumvented in that a non-religious marriage contracted abroad may thereafter be validated according to a law going back to the Mandate period (1936). Following a campaign launched by civil society, a facultative civil personal status law was passed by the council of ministers on 18 March 1998 but it was never submitted to Parliament.[24] The mobilisation held good in the early 2000s but the democratic

representatives could not shake off the pressure from religious clerics. The number of civil marriages contracted abroad has kept growing accordingly.

North of the Mediterranean, the stranglehold of the fundamentalist trend became palpable around this very issue starting in the 70s and it originally affected men and women alike. By accepting to live on legally equal terms with the "woman", "infidel" to boot, male citizens of Muslim faith, Maghrebin for the most part, undermined two founding principles of the classical legal conception of the Umma: the distinction between the "believer" and the "impious" and that between man and woman. In 1989 still, the former president of Algeria's Superior Islamic Council – Shaikh Ahmed Hamani (1915-1998),[25] declared in Algeria's most important Arabic daily that "the marriage of an Algerian woman with a Beur or a culturally French Algerian would be nil and void for contravening Quranic law, which forbids a woman believer to marry an infidel man. This, according to Sharia law, is logically and legally punishable by death. (*El-Chaâb* 18 December 1989)."[26] And yet, on the ground, the marriages of French women and men – who may or may not have adhered to the Muslim faith – with Algerian, Moroccan or Tunisian nationals went on multiplying until the mid 2000s (5.700 in 1987, 12.900 in 1991, 20.900 in 2003) before decreasing then stabilising.[27] The Algerian and Moroccan governments fairly quickly had the measure of the phenomenon and decided to regulate the husbands' conversion procedures with the support of their consulates. In order to restrict the cases of false conversions, the Algerian religious affairs ministry decided to admit only the certificates delivered by the Grand Mosque of Paris or its Lyon counterpart. It tasked the Religious Affairs under-secretariat with the transmission of the bride's documents to her birth *wilaya* ["governorate"] for checks before sending them to the office for foreigners in Algiers' Commissariat Central [central police station].[28] The procedure adopted by the Kingdom of Morocco was different. There the conversion certificates delivered by any mosque was accepted and *aduls* [religious notaries] were appointed to recognize the conversion within the very consulates upon proclamation of the *Shahada* ["statement of faith"] and a brief outline of the "five pillars of Islam".[29] The rare imams who ventured, in France, to recognise religiously the civil marriage of a Muslim woman with a non-Muslim man were ostracised, nay censured by their peers. Early in the autumn of 2017, in *Le baiser du Ramadan. Le jour où je me suis mariée avec un chrétien* [Ramadan kiss, the day I married a Christian], journalist Myriam Blal told of the impossibility to find, in 2010s France, an imam willing to celebrate alongside a priest her marriage to a Catholic man. Her autobiographic account opened on the girl's parents' twin reaction:

THE FATHER

- Monsieur, if you plan to marry my daughter, you will have to convert to Islam. I have consulted three imams. They each told me the same thing. There is no other way.

THE MOTHER

- If you marry him, it is *haram*. It is a great sin. I fulfilled my Muslim's duty by forewarning you. It will be so complicated when you have children… they will be confused, lost between your cultures.[30]

The mother attended the wedding but the father did not. The book was reviewed in both the secular and the Catholic media but the author was met with the icy silence of the French speaking Muslim faith networks.

The jurisdictional legacy of religious endogamic strategies for women

The *fuqaha* constructed the law after the fall of the Umayyads (750), against a background troubled by their rivalries, their relations to political and military authorities and regional warfare. They established the name of God as the unifying and organising principle where that of *civitas* or *polis* had been upheld in the Roman Empire after its Christianisation. They enshrined the status of the *fatwa* ["legal opinion"] and narrowed the polysemy of the term *sharia,* which carries the notions of "font" or of "path leading to the font", to the strictly juridical sense of "law". Their treatises were not built on the basis of broad principles followed by cases in point but around items they brought together without immediately apparent logical connection, and allowing for the option to return to the matter at a later date.[31] This yielded trends that consolidated into schools of thought out of which four only stood the test of time. Abū Ḥanīfa (699-767) left no treatise, it fell to his pupils to compile his writings, among them Abu Yusuf (720 - 798) author of the *Kitab al-Kharaj* ["book on taxation"] and Muḥammad al-Shaybani (748-805). The latter, author of *al-Jami al-Kabir* ["the great volume"], *Kitab al-Siyar al-Kabir* ["book of the great conquests"], and *Kitab Al-Asl,* ["book of the foundation"], exemplified the shift from narration to normativisation of praxis necessary to the good running of an empire maintaining relations with non-Muslim authorities.[32] Connected to the previous dynasty, Abd al-Rahman ibn Amr al-Awzai (707–774) failed to have his school recognised, his *Kitab al-Siyar* having been refuted by the two former authors.[33] Mālik ibn Anas (711–795) drafted in Medina the first Islamic law compendium, Al-Muwatta, [The Approved"],[34] in which he had harsh words for those he deemed Muslim deviants, a line pursued by Abd ar-Rahman ibn al-Qasim al-'Utaqi (c.745-c.813), author of the Mudawwana ["Code"]. A pupil of Al Shaybani and the systematiser of the *Uṣūl al-fiqh* ["principles of Islamic jurisprudence"], Abū ʿAbdullāh al-Shāfiʿī (c.765–c.820) turned his *Risala* into a hallowed legal-theological framework. His partisans imposed the Hadith as second *asl* ["foundation"] after the Quran. They also used instruments enabling them

to rank their decisions, for instance *masadir* ["sources"], *akham* ["mandatory"] or *maslaha* ["interest"].

Islamic jurisprudence and philosophy that justified an asymmetrical relation between men and women met with converging conceptions in Rabbinic law, Sassanid law, tribal customary law, Roman law in its pagan then Christian-influenced forms. As regards the latter, a 339 Edict restricted sexual relations and marriages between Christians and non-Christians.[35] As from the 10th century, the Church declared a ban on all sexual intercourse between Christians and "infidels" barring the Jews. This Canonical doctrine[36] had a lasting influence on Castilian, municipal and land law, notably on the basis of Canon 68 of the fourth Council of the Lateran (1215), which was subsumed in the Kingdom's municipal and royal legislation. The drafters of the *Fueros* did not consider the possibility of mixed marriages but referred to illegal carnal relations between Christian men and a "moor" slaves or between Christian women and Muslim or Jewish men. They termed these acts criminal fornication but set a lighter punishment for men than for women. They held that apostasy by one or the other member of the couple annulled the marriage in view of its sacramental nature. Within the diverse religious traditions, regardless of regular affirmations of equality in the faith and effective access to some responsible positions, women have been associated with enduring discriminatory features: menstrual impurity; inferior reasoning ability; the root cause of men's sin and conflicts notably caused by their power of seduction over them. Muslim jurists embedded their positions within this frame of reference and went on to justify accordingly the inequality in their religious roles, witness, inheritance, *diya* ["blood money"] and sexuality. Most of the terminology they used present the man as the actor facing a woman whose status is that of a passive object: *binā* ["to found"], *dukhūl* ["to enter"], *waṭiʻa* ["to mount, to strike down"], *wāqaʻa* ["to charge"], *bāshara* ["to engage"], *ʻaṣaba* ["to strike"] [37], *ḍaraba* ["to hit"]. The highly significant exception was the term nikah ["sex, marriage"] used to define marriage as a religious contract that legitimated the bond while at the same time fixing some rights and duties. Yet, in the terms of this contract, they established a dual tutelage exercised by men: on the person of the woman and on her property.

The possibility of union between a Muslim woman and a non-Muslim man was thought within two contexts: that of the adhesion of a woman to the Prophet of Islam before her husband and that of the marriage of a female "believer" to an "unbeliever". In the first instance jurists asserted the primacy of the religious tie over the conjugal one in the *ḥukm biqā' al-marā'* ["decision on the upkeep of women"] making use of the *ʻadm rujūʻ* ["no-return"] category. They backed their position by referring to the Surah Al Mumtahina "O you who have believed, when the believing women [*mū'mināt*-s] come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know them to be believers [*mū'mināt*-s], then do not return

them to the disbelievers [*kufar*]; they are not lawful [wives] for them, nor are they lawful [husbands] for them."[38] A principle confirmed by a saying quoted by the traditionalist Muhammad al-Bukhari (810–870) according to whom when a Christian woman became a Muslim before her husband, this woman became *ipso facto* unreachable to him. This principle is, however challenged by other accounts: the first drawn from the *Sira* told of polytheist Abu al-As ibn al-Rabi who remained married to Zaynab one of Muhammad's daughters while having refused to submit forthwith to the *ansar*'s ["helpers"] demand;[39] the second recorded by Mālik ibn Anas, according to which Muhammad allowed Walid ibn al-Mughirah's daughter to go back to her husband Safwan who had fled Mecca and did not submit. The *fuqaha* opted for the former position and ordered the judges to part all Muslim women from husbands refusing Islam and they encouraged the *Dār al harb* ["house of war"] Muslim converts to rejoin the *Dār al Islam* ["house of Islam"]. In the second instance, that of a Muslim woman wishing to marry a non-Muslim man, they sought to uphold the *ḥukm biqā' al-marā'* ["decision on the upkeep of women"] but stumbled on the difficulty to reduce a Quranic proscription valid for men and women alike according to a verse of the Surah al Baqarah:

> And do not marry polytheistic women [*mushrikāt*] until they believe. And a believing slave woman [*mū'mināt*] is better than a polytheist [*mushrikāt*], even though she might please you. And do not marry polytheistic men [*mushrikīn* to your women] until they believe. And a believing slave [*mū'min*] is better than a polytheist [*mushrik*], even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.[40]

The founders of the Hanafi, Maliki and Shafi'i schools advised that interfaith marriage was at the very least reprehensible for Muslim men and women alike. The Hanbali also adopted this opinion. However to legalise it for men with certain non-Muslim women some exegetes contended that that verse was – at least partly – rescinded by an extract from another verse found in the Surah Al-Ma'idah "And [lawful in marriage are] chaste women from among the believers [*mū'mināt*-s] and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers."[41]

By the second half of the 9th century, asymmetry had prevailed in this domain. Thus the provision whereby Muslim women were forbidden the right to marry non-Muslim

men was enshrined in the "Conditions of Umar" presented as an answer to Bilad al-Sham Christians.[42] This rule, bolstered by customary tribal practice, became more and more inviolable, it allowed for the regular demographic growth of the Muslim population as compared to Non-Muslims, *viz* Egypt, and this without any other constraint than its enforcement. It was however, temporarily, relativized as regards Christians in the days of the Latin settlement in the Levant. The Hanbali scholar Ibn Qudāmah (1147 - 1223) dedicated a long disquisition to the issue in his treatise *al-Mughnī*. He did not advocate such marriages but did not either unequivocally proscribe them. "The conditions for a woman who intends to marry a non-Muslim man are different from marrying a Muslim man, notably with regards to the guardian and the witnesses who must be of the Muslim faith, and to the way in which mutual consent is exchanged. According to the [Maliki] scholar Ibn Abd al-Barr [978 – 1071] the Prophet had nothing to say about many women married to non-Muslim men, never alluding to the aforementioned conditions or to redoing the marriage."[43] In the following century, in the context of the Mongol conquest, the Hanbali jurist Ibn Taymiyya (1263-1328) and his disciple Qayyim al-Jawziyya (1292-1349) allowed women convert to Islam to wait for their husband to follow in their footsteps. Their conversion to Islam notwithstanding, the Mongol rulers were long perceived as pseudo-Muslims, which, for jurists like Badr al-Dīn ibn Jamaʿah (1241–1333)[44] had major bearings on the way to think sovereignty within the *Dār al-Islām*. The framework governing relationships under their rule as from the 13th century was the Yassa or "great Law Code" but no source has come to ascertain the actual existence of a written and logically conceived code.[45] Over two generations of strife, (1260-1323), the rival Mamluk and Ilkhan powers quarrelled notably over the Yassa which Muslim jurists interpreted as a code contrary to Sharia law, but which Ghazan professed, even after his conversion to Islam in 1295 while invoking Muslim religious justifications to confront enemies he alleged perverted Islam. In response Ibn Taymiyya strove to convince his coreligionists to undertake jihad against the "associators" and their unIslamic rules.

In the vast, pluri-religious empire they ruled, the Sunni Ottomans gave precedence to the Hanafi rite while tolerating the Malaki, Shafi'i and Hanbali. They upheld the rule prohibiting the marriage of Muslim women with non-Muslim men, restated by Imam Muḥammad ibn 'Alī al-Shawkānī (1759-1839), when his elder, Shaykh 'Abd Allāh al-Sharqāwī (1737 -1812) fumed against the French conquerors of Egypt with whom he had collaborated and whom he accused of having "raped women in Cairo and in other cities".[46] Researchers do however lack sources to measure the gap between the statute and the facts on the ground. It is from indirect evidence that can for instance be inferred breaches of proscriptions of equal if not more significant consequence such as adultery[47] or the christening of a Muslim father's children.[48] With the loss in the 19th century of the might that had, over three centuries secured their forebears'

expansion capability, the Sultans had to call on the support of European powers, first among them the United Kingdom, and settle for *tanzîmât* ["réorganisations"]. The *hatti-i sherif of the Gul-Khane* (3 November 1839), establishing in principle the equality of all the Empire's citizens, had no impact on conjugal matters since Islamic law prevailed and legal existence as a subject remained conditional on membership of a faith community. The same went for the *Majallat al-Ahkam al-Adliyyah* ["A review of justice rules"], the first Ottoman civil code promulgated between 1869 and 1876[49] and parallel to a specifically Tunisian *Majallat*. In neither case did the drafters address the issue of marriage which, although it pertained to *mu' āmalāt* ["social practice"] was also associated by scholars to the realm of *wahy* ["revelation"] and, as such, could not be integrated in a code the status of which was acknowledged as man-made. In the territories colonised by France, the United Kingdom and Italy, the law was modified. After the conquest of Algiers and its hinterlands, and the organisation of Algeria into French administrative *départements*, an almost entirely Muslim population found itself facing men of the Christian faith or none at all. Captain François-Edouard de Neveu (1809-1871) lead a campaign in favour of mixed marriage and such unions did occur;[50] but they have been concealed, especially after 1871, even though they are discernable in the period's literary production and amidst specialists' papers.[51] Religious weddings took place before the *qadi* or the rabbi, more rarely before the local civil registrar. Until 1910, an officer wishing to marry a Jewish or Muslim woman had to obtain an authorisation from the War Office.[52] Whether the man had converted or not was not always specified.[53] Neither were those conversions necessarily final, *viz* that of the Saint-Simonian, interpreter and Councilor Ismaÿl Urbain (1812-1884) who married Djeyhmouna known as Nounah.[54] Following the revolt of Mohamed El- Mokrani (d. 1871), Algeria's Governor General implemented a Native Code, passed into law in 1881 and renewable every seven years.[55] Through this act, the French Republic imposed the prerogatives of a minority of European incomers who enjoyed a most liberal naturalisation policy,[56] to the detriment of the so-called native "subjects". This rule warranted the latters' freedom of conscience and freedom of religion but it denied them the right to vote and to electability, restricted their freedom of movement, of assembly, of association and imposed, individual or collective criminal sanctions for any infraction or offense (fines, internment, confiscation, corporal punishment) even as they suffered a policy of massive expropriation. The acquisition of French citizenship focussed on the very surrendering of personal status rules thereby allowing mixed marriage for women. As a result the ban on sexual relations between women of the Umma and non-Muslim men became a hallmark of the resistance to French colonisation. The modifications brought to this right were but minor and only envisaged belatedly.[57]

However, the representation of Muslim women and the conception of their rights did not arise only out of the conflictual relationship between colonised and coloniser, they

went through a home-grown development carried by intellectuals, both men and women, and indeed clerics, in rarer cases, even if some of them advocated girls' education. Quasim Amin (1863-1908) studied at Montpellier University. A regular attender at Princess Nazli Fazil's salon, he was moved to criticise patriarchy and wrote *Tahrir al-mara* ["The Liberation of Woman"] (1899), continuing in the footsteps of Shaykh Rifā'a al-Tahtāwī (1801–1873) with a view to justify women's emancipation with the support of material drawn from the Sunni tradition. One year later, his *al-Mara al-jadida* [" The New Woman"] (1900), robustly countered his detractors shunning traditional religious references. He posited women's freedom as the key criterion of civic freedom, setting forth a history of humanity broken into progressive phases wherein Middle-Eastern countries stagnated at the third phase while Western countries had reached the forth and ultimate stage.[58] Whereupon he claimed the liberty "not to believe in God or his Prophet", "to question one's contemporaries' laws and customs" and "to choose one's own dogma as found in the mirror of one's mind and conscience".[59] In his wake, Levantine May Ziadeh (B. Nazareth 1886-1941) opened a salon that soon became the most renowned in Cairo and Mansur Fahmi (1886-1959) defended in 1913 at the Sorbonne a thesis treating of *The Status of Women in Islam*, which aimed to assess the "social elements" that had, in Muslim-ruled societies contributed to the "degradation of woman":

> History provides us with any number of facts that tell of the superiority and activity of Arab women of old: here one wages war, there one is busy trading, yet another feels entirely free to embrace the religion she deems right with no mind passively to follow her husband in matters of conscience. […] Soon Islam with its diverse institutions, its theocratic laws and the consequences this entailed, changed lifestyles and women's activity was frozen. Thus it contributed to their degradation, even though Muhammad had meant to protect them.[60]

The *ulama* vigorously challenged this doctoral work, which was never translated into Arabic. In Tunisia Tahar Haddad (1899-1935), author of *Muslim Women In Law And Society*, bemoaned the marginalisation he suffered after being attacked by Zaytuna scholars: "The campaign against unbelief and atheism has become a well-honed weapon aimed at those they deem their enemies – and at reinforcing their standing among the people. They have thus set up in the country a regime of terror such that one fears to say in Tunisia: 'educate women', or openly criticize your failings', or 'seek to know your own history instead of worshiping it in your ignorance'."[61]

Far from waning, this tension flared up in the period of mobilisation towards independence. The Association of Algerian Muslim Ulama never considered any alternative to a wholly Muslim Algerian nation regardless of a nominal distinction between *jinsiyya qawmiyya* ["ethnic nationality"] and *jinsiyya siyāsiyya* ["political identity"],[62] which meant – but left unsaid – the removal of the whole population of European descent. In Tunisia, Shaykh Muḥammad al-Ṭāhir Ibn ʿĀshūr (1879-1973), professor and Vice-Chancellor of the Zaytuna, author of a *Tafsīr al-taḥrīr wa-al-tanwīr* ["Interpretation of verification and enlightenment"], the publication of which spanned over half a century, upheld the proscription of marriage of Muslim women to non-Muslim men and the requirement of separation in the event of the conversion to Islam of a woman whose husband would not follow in her footsteps or apostatised. In May 1950, in its Fatwa 926-2, the Zaytuna's religious authority refused to accredit the marriage of a Muslim woman wedded to a no-Muslim man whereby she would have been entitled to a part of the property left by her deceased parents:

> this marriage is absolutely and wholly invalid under Islamic Sharia. It must under no circumstances be granted the name of marriage; it is, on the contrary, fornication (*sifāḥ*). From the time of the Companions to this day, Muslim imams have agreed on the principle according to which one of the conditions of marriage validity is that the husband be a Muslim."[63]

Six years on, the drafters of the Code of Personal Status did not, in consequence, conceive of recognising such a right. In Egypt, where the situation was different in view of the significant presence of a population both non-Muslim and non-European, 1920s marriage jurisprudence (dowry, expenses, minimum age etc.) has nothing to say about interfaith unions. The preservation of a sense of Islamic order was upheld through the use of the notion of *Ḥisba* [the function of the *muḥtasib* who originally supervised trade then went on to handle the application of Islamic norms], notably in personal status issues. Ahmad Muhammad Shakir (1892-1958), an Azhari scholar and vice-president of Cairo's Sharia Supreme Court up until 1951 even advised Muslim men not to marry Christian or Jewish women, for their virginity was questionable: they could not be admitted to the category of "virtuous" women according to Quranic criteria.[64]

Contemporary debates: universal rights **vs** ***religious rights***

Over the last third of the 20th century, marked by the *Sahwa* ["awakening"] trend that connotes both the return to an Islamic integrity cleansed of all exogenous influence and the rejection of the ideas, principles, values, rules, norms, originally conceived in a West-European space, the position of Muslim scholars and jurists, be they Sunni or Shia has not budged. Ayatollah Morteza Motahhari (1919-1979), laureate of a UNESCO award in 1965 wrote as follows:

> The Western world is today obsessed with the 'equality' of men and women's rights in the belief that the key to the problem of gender relations is that magic word, and in the ignorance of the fact that this problem was resolved by Islam 14 centuries ago. When it comes to the family structure there is surely something more sublime than equality. For civil society, nature has issued only the law of equality but for familial society, it has also issued other laws. Family relations cannot be organised on the basis of equality alone. All the other laws of nature that govern those relations also need be taken into consideration.[65]

A charismatic figure in Egyptian Shaykhs circles, and noted for his television programme, Shaykh Muhammad Mutawalli al-Sha'rawi (1911-1998), author of *Fiqh al-Mar'ā al-Muslima* [66] and *Al-Fatāwā. Kullu mā yahmī al-Mar'ā al-Muslima,* [67] defended a fixed conception of inherited norms. The question took a tangible turn in the Naṣr Ḥāmid Abū Zayd (1943–2010) case: when branded *khurūj 'an al-Milla* ["abandoning/outside the faith"] in 1994 in view of his research on the Quranic text, he and his wife had to migrate to the Netherlands in order to avert a divorce and be safe from death threats. The whole assembly observed the inherited legal tradition stressing that marriage was the affair of the community before it was that of the spouses. Addressing this question the Grand Mufti of Egypt, Shaki Allam (b.1961), a PhD in Jurisprudence and Sharia law accordingly asserted that if a woman converted to Islam the judge – and he alone – could separate the couple only after her *Iddah* ["prescribed waiting period after divorce] was completed. The only discordant voice in this chorus came from Hasan Al-Turabi, (1932- 2016), a scholar and the longstanding shadowy mentor of Sudan's Muslim Brothers. The fatwa in which he asserted that there was no objection whatsoever to the marriage of a Muslim woman with a Christian or a Jew disconcerted his followers:

> the prohibition of marriage of a Muslim woman with a non-Muslim man does not fall under Sharia law, Islam did not forbid it. I have not found a

> text or a single word in the Quran or the Prophetic Sunnah, that prevents or denies the marriage of a Muslim woman with a man of the Biblical tradition (Jew, Christian) […] the rejection of interfaith marriage was imposed by men, by a war-fuelled environment […] the provocations and falsehoods that prevent the union of Muslim women to men of the Book have no religious foundation and do not rest on part of the Sharia […] those decisions ignore the fiqh.[68]

Among the outraged reactions, that of Abd al-Sabūr Shahīn (1928-2010)[69], professor of Islamic Studies at Cairo university consisted in dismissing the statement out of hand: "What Turabi said connotes obvious mental instability. I had thought him better than that. These things place him on the side of Islam's enemies."[70] Fundamentalist scholars no less had to adjust their precepts to some aspects of life as experienced by the male and female citizens of Muslim faith in democratic societies. With in mind the development of a "Minority Fiqh" in a non-Muslim context,[71] Yussuf al-Qaradawi, and the members of the European Council for Fatwa and Research developed an exegesis towards justifying the endorsement of marital bonds in spite of the difficulties it would cause if the wife converted to Islam while her husband did not. As against that they did not allow the marriage of Muslim women to non-Muslim men. In Turkey, where civil marriage was instituted after the proclamation of the Republic but where Turkish identity was linked to Islamity by Ataturk himself, the law-maker Yaşar Nuri Öztürk (1945–2016), theologian, jurist, and professor of Islamic theology at The Faculty of Theology, History of Religions at Istanbul University has set as inviolable the rule according to which "the marriage of Muslim women with followers of these religions cannot be effected religiously."[72]

In the late 70s-early 80s, a leftist critique itemised three forms of domination inflicted on women hailing from Muslim dominated societies and living in societies to which their parents did not belong: "a treble exploitation befalls them, as women [by their family circle], as workers [by their employer], as immigrant [by the majority population]."[73] Over the following decades, universalist, socialist or liberal- inspired feminism was superseded by a culturally driven feminism focussing on one single form of domination coming from the "westerner", the "white person", the "non-Muslim" seeking to impose their norms and its most remarkable expression has been "Islamic feminism". Thus the act of veiling that denoted the woman's submission to the father, the brother, the uncle was partly reframed in some circles to declare the rejection of values deemed exogenous, implying, consciously or not, the demarcation of a community that men could only access subject to conversion. The fundamentalist discourse, as articulated, say by Nadia Yassine (b.1958), considered the torchbearer of the Moroccan movement Al-ʿAdl wa l-Iḥsān ["Justice and Spirituality"] formed by

her father was thus established on the following paradigm: 1- the Quran and Muhammad's practical lessons have allowed for the development of "a new perception of women, considering them equal to men in the eyes of God and his Messenger (peace be upon him). The specificity of their status only differentiates them in so far as their social and familial roles impose upon them duties differing from those of men; which implies no difference whatsoever in essence or dignity"; 2- "Women's destiny as intended by the prophet (peace be upon him) was sadly ended with the advent of Muawiyah whom we will fee free to censure regardless of the respect owed the Companions."; 3- "We have in our tradition scholars like Al Ghazali who considers women's status with fairly sympathetic eyes. For the present, we have al-Qaradawi in Egypt and al-Kubaisi in Iraq."[74] This discourse has been taken up by the champions of cultural differentialism at work in the English-speaking academic world. Their position has consisted in asserting that insisting on the use of the same standard to approach identical subjects in different religious traditions attested to the deliberate intent to perpetuate a colonization of the mind and to reject Islam, as advanced by Talal Asad (b. 1932) and Saba Mahmood (1961-2018) among others. To a gender equality "deemed illusory since, according to them, Western women have only gained to be sexually oppressed and exploited at work, Muslim women oppose an equality in complementarity according to the Quranic values that direct the masculine and feminine roles."[75] This thematics is echoed by sociologists that inveigh against the "French normative framework" [76] and "sexist and racist forms of oppression".[77]

In this thought system, the marriage of a Muslim woman with a non-Muslim man is taboo. Against these "Islamist feminists", [78] Iranian-French Chahdortt Djavann, (b.1967) objected to the necessity to accept "that our body is only a sex object, an object the fate of which belongs to others. I live the humiliation of being a woman. I swallow my rage but I feel the veil around my face circling, circumscribing my existence"[79] and Iranian-American Reza Aslan (b. 1973) explained this proscription as "The fact is that for fifteen centuries, the science of Quranic commentary has been the exclusive domain of Muslim men. And because each one of these exegetes inevitably brings to the Quran his own ideology and his own preconceived notions, it should not be surprising to learn that certain verses have most often been read in their most misogynist interpretation." [80] In line with her refusal of head on confrontation Moroccan Fatima Mernissi (1940-2015), author of numerous books, instigator of the "citizens caravans" and the block "Women, Family, Children", sidesteps the issue.[81] Her fellow countrywoman Asma Lamrabet (b. 1961), who lost her position as director of the Centre for Studies and Research on Women's Issues in Islam (CERFI) within the *Rabita almuhammadya* des Oulémas (Mohammadia League of Scholars) after she voiced her opinion on matters of inheritance,[82] expressed no views on the marriage of Muslim women with non-Muslim men either. It is in Tunisia

that the demand was explicitly framed, starting in the early 2000s against the background of demonstrations organised by the AFTD (Tunisian Association of Democratic Women and AFTURD (Tunisian Women's Association for Research and Development).[83] Sociologist Nilüfer Göle (b. 1953), leading a vast collective research across several countries,[84] only lightly touched on the subject. Accepting the risk to be found guilty of neo-colonial aggravated sexism for their effort to approach constantly elusive bodies, the anthropologist Jacques Huynen, sociologist Emmanuel Todd and philosopher Philippe Gaudin[85] have analysed, through different lenses the so-called "Islamic" veiling as the expression of an endogamous practice, that is the rejection, whether conscious or otherwise, of interfaith marriage by women of Muslim faith or their family. Available statistical surveys have borne out these analyses as shown by Nadia Geerts: 3% mixed marriages in the Netherlands as against 13 to 26% (after marriages abroad are taken into account or not) in France[86] where two laws restricting the display of religious symbols have been passed, one explicitly in the framework of state education,[87] the other indirectly by banning face covering in public spaces.[88]

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At the end of the Millenium's second decade, the world population counts one billion and six hundred millions people with a link to the Muslim faith spread all over the planet. Observance of the inherited religious proscription means that eight hundred million women do not have the right to marry any of two and a half billion men unless those convert to Islam. This state of affairs causes tensions notably in India and in China where populations are broken down into religious or national-religious categories, leading each group to watch its numbers in order to carry more weight. In Myanmar, before launching its mass persecution of the Muslim Rohingyas,[89] the government had passed a law obliging Buddhist women to seek an administrative authorisation if they proposed to marry a non-Buddhist man.[90] In sub-Saharan Africa communal relations are tense and liable to degenerate locally in several States such as Nigeria, Cameroon, Burkina Faso and the Central African Republic.[91]

This problematics is symptomatic of the power games played out between the liberal and fundamentalist ways to understand religion. The magisterium of the Catholic Church went through the process, accepting civil marriage legislation, after many decades, and modifying its position regarding "dispar" marriages[92] (between a Catholic and a non-Christian) both in its legislation and in its pastoral: the Congregation for the Doctrine of the Faith's teachings on mixed marriages[93] then the 1983 Code of Canon Law[94] enshrined the modifications to the 1917 Code of Canon Law[95] and now priests bless mixed unions whether for men or women of the Catholic faith. Barring certain Shia clerics,[96] the Muslim religious authorities generally decline to do so, including in West European or North American democratic societies. They seek, with the tacit approbation of some governments, to transfer distinctly unequal

norms *viz*. the action undertaken by London's Islamic Sharia Council: "this may well, writes Islamologist Baudoin Dupret, yield some thorny questions, particularly as regards the equality and the protection of women"[97]

All this explains why the initiative of Tunisia's president, supported by part of civil society did not go unnoticed within the country and way beyond its borders. It has been furthered by the setting up of a Individual Freedoms and Equality Committee (COLIBE), made up with nine members representing a range of political and religious trends and chaired by law-maker Bochra Belhaj Hmida.[98] She has handed over a final report founded in the principle of seeking the promotion of fundamental liberties and the enshrining in law of total equality between men and women.[99] Made available to the public this report has invited some support as well as a new wave of protest abroad, notably from religious authorities. As a measure of the matter's sensitivity and of the actors' nervousness, al-Azhar's *mashyakhat* has had to publish a denial to a rumour spreading on social networks that claimed that the revered Sunni institution had demanded Tunisia's withdrawal from the "list of Islamic states".[100]

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