

BOOK REVIEW

Women and Shari'a Law: The Impact of Legal Pluralism in the UK. By Elham Manea. London: I. B. Tauris, 2016. Pp. 256. \$25.00 (paper). ISBN: 978-1784537357.

In *Women and Shari'a Law*, political scientist Elham Manea quotes the position of Christian Giordano:

Given Europe's massive waves of migration, it stands at a turning point: it has the choice of insisting on the uniqueness and irrevocability of the existing legal system, which is based exclusively on the positive law; or to try to pluralise this legal system and with this [step] officially recognise the existence of different claims to rights and diverse legal cultures. . . . Obviously, a *strong* legal pluralism remains unacceptable in the Western world. The point is rather to integrate *other* legal mechanisms, in certain areas of the positive law, with the help of its cultural and social structures, and accounting for this diversity. (3)

Manea describes here two contrary positions and checks whether of them is feasible: She analyses the Islamic shari'a councils and Muslim arbitration tribunals in various British cities. She meets not only leading sheikhs, but also affected women, experts on extremism, and lawyers and activists in civil society and women's rights groups. She is of dual nationalities, Yemeni and Swiss, and is an associate professor at the University of Zurich—all of which positions her well to compare Britain with Switzerland, where the issue has another context entirely. In fact, the book is a direct result of a media controversy in Switzerland. There, a Sunday newspaper, *NZZ am Sonntag*, discussed the implications of Swiss professor of social anthropology Christian Giordano's recent argument regarding shari'a in Switzerland, under the headline "Shari'a Courts for Switzerland: Freiburg Professor Demands Special Laws for Muslims and Other Groups" (1). Manea tackles Giordano's suggestion to introduce soft legal pluralism, and with it Islamic law, in Switzerland to regulate the affairs of the Muslim minority (231). Giordano is, for Manea, an example of an anthropological essentialist (9–10). By Manea's account, Giordano divides "people along cultural, religious and ethnic lines, setting them apart, and placing them in parallel legal enclaves," in a framework that perceives rights from a group perspective—"the group has the rights, not the individual within it" (35). Because the cultural distance is too huge, Giordano does not expect Muslims to abide by Swiss legal tradition. "On the other hand, he insists that universal human rights should not be violated when Islamic law is applied in civil matters. This double demand is hard to fulfil" (23).

Is this possible in practice? This is the question that Manea takes up in her book: She examines whether legal pluralism with human rights is feasible, showing the consequences of this academic legal discourse in the daily lives of women and children. Her thesis is that women and children pay a heavy and painful price for such well-intentioned suggestions. An educated Muslim woman will be in a position to fight for her rights, for if she does not want Islamic arbitration, she can simply turn to the civil court system. But imagine a young woman brought from her village to marry a cousin in a Western country. This woman will not be in a position to negotiate or to use her agency to gain her rights.

A system is not fair if it allows the most privileged to exercise their rights while perpetuating the discrimination of the least privileged. As such, it will not guarantee respect for human rights. In Manea's view, that is the core problem with the suggestion of introducing soft legal pluralism in

the Western context. Even so, according to Manea, legal pluralism and human rights are not so easily reconcilable. She responds to Giordano's suggestion on several different levels. Giordano argues that Muslims cannot integrate because they are accustomed to legal systems that are culturally alien to the Swiss system (5). This contradicts the facts. The majority of Muslim immigrants in Switzerland come from Turkey and the countries of former Yugoslavia. Turkey is secular, and shari'a is not part of its legal system. In fact, Turkish family law is based on Swiss family law. Moreover, Bosnia has not had a shari'a court since 1946, when it was abolished by law. And Albania applies a mix of civil and common law that leaves no room for Islamic law. In countries such as Syria, Lebanon, and Egypt, each community uses its own religious laws in family affairs. "In fact, the Arab Human Development Report (AHDR), 'Towards the Rise of the Arab Woman,' described the consequences of applying these religious laws as a form of 'legally sanctioned discrimination'" (6).

Those who suggest introducing Islamic law in the Western legal context often ignore this critical discourse and consider Islamic law and shari'a as something given, just as Islamists do. However, Muslims are not homogenous. Some Islamic organizations have members who espouse the ideology of political Islam and some do not. Often they work together and support each other's religious demands. Together they often claim to be the sole representative and voice of "Muslim communities" and their experts on their "needs." Until the terrorist attack of July 7, 2005, British policies of plural monoculturalism facilitated and reinforced this claim. As Manea argues, "It is no coincidence that Islamic and Islamist organisations in Britain make the same argument: 'Give us Islamic law in family affairs to curb extremism'" (49).

The romantic perception of other cultures seems to Manea dominant in the essentialists' paradigm; it leads them to fear they might offend those noble others and impose their own laws and values on them. The argument seems to be that we cannot force our own values on immigrants from distant cultures. How are we supposed to fully maintain human rights—which entail the equality of men and women and freedom from discrimination regardless of religion and gender—in a shari'a court? Essentialists argue that Islamic law should be introduced into the Western legal systems in the name of multiculturalism. In response to this demand, Manea offers both a critique of the essentialists' argumentation and a defense of the universality of human rights.

Manea emphasizes one crucial point: Swiss law is exemplary in its respect for human and women's rights and gender justice. It has a law that guarantees the rights of women in family affairs, and it is based on universal human rights and the application of core United Nations human rights conventions. It took the Swiss a while to get to this point: women got the right to vote in 1971 and the family law was changed in 1988. This human rights universalism is not the case with Islamic law. Islamic law does not conform to international standards of human rights, and too often its jurisprudential application (*fiqh* rulings) violates these rights. Manea is therefore talking about two very different types of law: one that guarantees and protects human rights and one that does not. Proponents of legal pluralism are calling on Switzerland to introduce a parallel legal system that in fact violates women's rights, and then to use it to legitimize systematic discrimination against women and children of different faiths. Overall, the British case has all the ingredients of the essentialists' paradigm—a multicultural context, cultural relativism, and group rights—all intertwined with the use of the "white man's burden" to justify policies that treat citizens of different national roots as ethnic groups.

A key consequence of introducing soft legal pluralism and with it Islamic law in Western legal systems will be a stratified citizenry, including two types of women: Western or Westernized women who can enjoy their rights based on the state's laws and migrant women who cannot. The system in the United Kingdom has, in effect, created these two types of citizens: one group enjoys equality

before the law and the other does not because of its religious identity. Those in the latter group suffer from the double discrimination. Indeed, this stratification will only further reinforce the walls around the closed parallel societies. In addition, the system is, de facto, legitimizing polygamous marriages and facilitating child marriage and forced marriage. Most significantly for the cohesion and unity of society and the fight against extremism, it has continued to separate minority groups from their wider society and has given Islamists a free hand in reinforcing their social control over closed communities.

Manea argues that special treatments for specific groups and the introduction of religious laws will only undermine this very universality and the protection granted by the international standards of human rights. Deliberating about whether human rights are universal or culturally determined, the author uses a consequence-based approach, invoking the human face of the suffering that results when human rights are violated individually or across society. A consequence-based approach to human rights and dignity (228) reflects the idea that, from a moral point of view, what is most important is to consider how one's actions are likely to affect others. It is the consequences of one's actions, not the intentions behind them, that form the most relevant benchmark for measuring the moral worth of an action. Such an approach can illuminate the grave consequences of violating human rights.

On the individual level, what harm is being done to the girl or woman through the application of a parallel legal system of shari'a law? And on the societal level, what are the general negative consequences for society of segregating groups and creating what Amartya Sen called the "plural monoculturalism" (cited in Manea, 139) of closed communities?

Manea closes with six policy recommendations to the British government: (1) mandatory civil marriage before any religious marriage, (2) registry of all Islamic marriages to uncover polygamous marriages, (3) punishment of polygamous marriages, (4) establishment of a unit in the British court system to automatically issue an Islamic divorce after the civil divorce, (5) a nationwide information campaign to reach women within closed communities to inform them of their rights, and (6) abolition of parallel religious legal systems in the United Kingdom and equal treatment of citizens and migrants before the law (238–39).

Manea explains the state practice in many Islamic countries by which the religious authorities recognize a civil divorce. This practice can be accepted in a secular country like the United Kingdom only when the religious community agrees to it. It cannot be forced on them by the secular state because it would harm the fundamental right of religious freedom. To European and North American governments, Manea recommends a range of policies regarding migrants from Islamic countries. These include not reducing minorities to their religious identities; treating them as equal individuals before the law instead of by group identity; paying attention to the political and social context of migrant communities; looking closely at those demands that are presented specifically as *religious* demands; confronting political messages in schools, mosques, and madrasas; and extending respect on an individual level so that human rights apply to everyone (239).

In their accounts of Islamic law in Western legal systems, essentialists such as Giordano "play into the hands of Islamists and their political agenda" (240). They construct a Muslim minority, in which they legitimize systematic discrimination against women, children, and lesbian, gay, bisexual, and transgender people. "Such discrimination will certainly not help people in Islamic migrant communities to integrate successfully. In fact it will only cement the social control of Islamists over the closed communities" (240).

Manea offers a different answer to the fundamental question of modern Western societies regarding the integration of Muslim persons. In doing so, she argues for women's rights in Islam through a theoretically clear argument with a strong narrative element. *Women and Shari'a Law*

is recommended not only for political scientists but also for a broader readership on issues of Islam, religious rights, human rights, and the status of women and children in migrant and religious minority communities, as religious and legal pluralism will be one of the biggest challenges for Western societies in the next decades.

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