

Legitimising a Muslim Marriage in Malta: Navigating Legal and Normative Structures

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Abstract:

This paper explores the strategies adopted by Muslim and Catholic spouses in celebrating and legitimising unregistered Muslim marriages in Malta. It demonstrates how these couples' decisions to celebrate such marriages and to introduce various "Catholic" practices into their wedding ceremonies reflect the way they construct their identities and seek to socially ground them as an adaptive response to the overarching social context that also expresses their agency. These choices are contextualised in relation to the evolution of Maltese marriage law from colonial Church/State dualism until the present "post-Catholic" scenario. Despite significant recent changes to marriage laws, Canon law rules continue to shape the way marriage is understood. This is important as marriage also serves a critical gate-keeping function in determining access to Maltese citizenship and residence. The paper highlights the way in which the gap between formal (national) and informal (religious) law is managed by spouses and the local Imam so as to facilitate the formation of Muslim marriages.

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Article:

Claire's wedding

Surrounded by the symphony of Mediterranean waves hitting the Maltese Golden bay shores, Claire removed her blindfold to find her fiancé Anwar, on one knee before her with a ring in his hand. ‘Will you marry me?’ he asked. A mere four months later, the bride wore white and the groom wore a suit for the special occasion; their wedding day. Both their extended families and a few friends were invited to join the couple for the ceremony at the Maltese mosque at Paola, where their Islamic marriage was concluded by the local Imam, known as *Shih* Elsadi. For most of the guests, it was the first time they had entered the mosque and the first Islamic wedding that they had attended to. And for almost all of those present, it was the first Islamic marriage celebrated between a Muslim-converttee, Maltese groom and a Roman Catholic, Maltese bride.

The story we have just narrated is painted with a broad brush reflecting Claire’s aspirations for her marriage. Closer inspection reveals just how hard both spouses worked to iron out the wrinkles which threatened to distort the fabric of their narrative. Thus Claire glosses over the couple’s extended 32 months of courtship knowing from Anwar that dating is frowned upon in Islam. During this courtship, it had taken Claire eight months to break the news of her new relationship with a Muslim to her devout Catholic parents.

The wedding space had to be carefully selected to meet the expectations of Claire’s family and friends, who are used to attending lavish Church weddings. Imam Elsadi’s office, the usual venue for Maltese Islamic marriages, is far too small to contain seventy guests; reflecting the relatively simple and informal character of Muslim wedding rituals. Therefore the Imam advised using the assembly hall of the annexed Muslim

school. Somewhat bitterly, Claire recalled her sister's decision not to attend the Islamic wedding ceremony, contrasting it to the normative expectations of Maltese spouses that close family will attend their Church weddings.

Planning the Islamic wedding ceremony involved preliminary negotiations between the spouses, the bride's father and the Imam; requiring all parties to tactfully engage in cross-cultural translation and brokerage. Thus both the Imam and the bride's devoutly Catholic father accepted that the latter would act as a *wali*² to give his consent to his daughter's marriage.³ And while the Imam did not allow the bride's initial request to dispense with the *mahr* - 'At least (have) something symbolic', he pleaded- he accepted Claire's request that whilst the *mahr*⁴ would be written in the marriage contract, it would not be mentioned during the ceremony. 'It was going to be perceived that I am being bought for a thread of gold', Claire observed, showing her concern to manage the perceptions of her guests. As a compromise Imam Elsadi accepted the spouses' request that they would exchange wedding rings; the spouses agreeing that the value of their gold wedding bands would serve as the symbolic *mahr*. 'It is not something in the Islamic rites (of marriage)', explained Claire in regards to the wedding bands, 'but I wanted a ring, and I wished that (Anwar) too would wear a ring'.

The spirit of cultural translation and compromise was also epitomised by the marriage contract being made available in Arabic and English versions and the fact that both versions were signed by the groom, the bride, the bride's father and two Muslim witnesses. The couple and their parents then entered pre-rented luxurious cars and

² The male 'guardian' in Islam (usually the father) who consents and gives the bride away.

³ There are different opinions on the requirement of a *wali* for a valid marriage, as for instance the Hanafi Islamic school of thought argues that the approval of the *wali* is not a condition in marriage. It is however not a common practice in a Muslim marriage that a non-Muslim is allowed to act as *wali*. Lynn Welchmann, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*. (Amsterdam University Press, 2010) 90

⁴ *Mahr* is dower, a mandatory gift given in Muslim marriages by the groom to the bride. Islamic schools of thought hold different opinions on the dower, some consider it as an effect of marriage and others consider it as a condition of its validity. Ibid. 68

together with all their guests they headed to the hall of a five-star hotel where the wedding celebrations continued. The use of hotels as venues for wedding receptions following a wedding ceremony is very common in Malta. Such venues reflect an aspiration towards upward social mobility and modernity as in the case of the middle class Cypriot weddings studied by Vassos Argyrou.⁵ However, unlike spouses who choose a Catholic wedding ceremony and subsequently sign a civil marriage act in church, the couple was greeted by the Marriage Registrar in the hotel and there a civil marriage was concluded. Their Islamic marriage is not recognised as a valid marriage under Maltese law.

In the hotel, the bride and groom read their personally written vows, poetically describing their feelings to one another; which vows had been pre-scanned by the Registrar. However the Registrar fearing that their vows were not legally binding, insisted that they also read out a separate set of official vows, much closer in their wording to those used in Maltese Catholic weddings. The couple and their two witnesses then signed the civil marriage document, and an organised six course, *halal* meal with non-alcoholic beverages ensued. During the reception, Claire was hurt that despite her foresight in offering expensive non-alcoholic cocktails some of her relatives complained to her about the absence of alcoholic drinks.

When it was time for *Isha*, the Islamic night prayer, Claire's husband joined by his Muslim friends went to a small room in the hotel that was pre-organised for prayer. 'He is already leaving you alone', commented Claire's favourite aunt. With hindsight, Claire looks back on her wedding with a certain bitterness about the way part of her extended family reacted, feeling they had thwarted her desire for familial approval; 'If I were to do it again I would keep it even smaller... That is what I tell him (Anwar), it would have

⁵ Vassos Argyrou, *Tradition and Modernity in the Mediterranean: the Wedding as Symbolic Struggle* (CUP, 1996)

been better if we eloped and did not waste money on people, because it is surprising how people show you that they disapprove.'

As a practicing Catholic, Claire views religious to be more significant than civil marriages: 'as a Christian, I like the idea that a relationship is bound in front of God. Although I did not marry in a church, I still believe it is recognised by God.' While she dismisses her civil marriage as only important for the purposes of recognition by the Maltese state - a statement which has been echoed by every spouse interviewed, - she emphasises the identity she sees between God in Christianity and (Allah) in Islam, as the ultimate reason for choosing to celebrate a legally unrecognised Muslim marriage ceremony:

I mean it might be the way I am justifying it to myself, in order not to feel guilty about it, but I think it is the same God. Hence it does not make a difference by which religion one marries. Although the Church does not recognise my marriage, I still feel that I am married before God, and I value that. It was important for me to marry religiously in some way or another. I did not for example wish to marry only civilly.

Aims, questions and methods

Claire's experience of celebrating a Muslim marriage in Malta has much in common with other accounts produced by our interlocutors. They raise various interesting questions both regarding the form of the various marriage ceremonies and the spouses' desire for religious, legal as well as social recognition. Why introduce wedding rings and a big congregation similar to a Maltese Church marriage when celebrating an unregistered Muslim marriage? Why focus on shaping the form of the wedding as part of the process of winning approval from relatives? And, why is the Imam so willing to find compromises which bridge the gaps between the cultures and religions involved and to work with all the parties to find practical solutions?

In this paper, we explore the impact of the discriminatory Maltese legal framework, which primarily recognises Catholic or Civil marriages, on spouses like Claire who conclude an unregistered Muslim Marriage in Malta. We question what it is about the Maltese context which encourages them to be so creative in blending together different ceremonial forms and in culturally re-appropriating elements of each other's tradition. We examine the social and legal context to determine what renders processes of cultural syncretism and reinterpretation legitimate and desirable. In so doing we contribute to the broader global debate about the social impact of unregistered religious marriages.

UK scholars, until recently, have tended to view unregistered Muslim marriages from a jaundiced perspective, which sees them as potentially confining spouses within a 'well-established system of patriarchy and gender imbalance;'⁶ limiting them to the passive reproduction of 'deep rooted cultural traditions.'⁷ Writing in this journal, Patrick Nash claims that unregistered Islamic marriages are an 'actual problem,' to which a solution should be sought via legislative reform⁸ and Pascale Fournier contrasts the experience of Muslim women who contract an unregistered Muslim marriage unfavourably to their Jewish counterparts, observing that the former are led to have: 'a more acquiescent relationship to religion' than the latter.⁹

However other scholars are increasingly critical of the assumption that regularising these marriages is a feasible solution to a 'problem.' Annelies Moors et. al. relate the problematisation of unregistered religious marriage to the rise of the nation-state, and its attempts to stamp it bureaucratic authority on marriage. In Muslim minority settings, the

⁶ Vishal Vora, 'Unregistered Muslim Marriages in England and Wales: The Issue of Discrimination through "Non-Marriage" Declaration', in Yasir Suleiman and Paul Anderson (ed.) *Muslims in the UK and Europe II*, (University of Cambridge, 2016) 138

⁷ Ibid. 139. For more nuanced points of view on unregistered Muslim marriages in Britain see the papers about the UK in this special issue.

⁸ Patrick S Nash, 'Sharia in England: The Marriage Law Solution', *OJLR*, (2017) 6(3) 523

⁹ Pascale Fournier, 'Family Law, State Recognition and Intersecting Spheres/Spaces: Jewish and Muslim Women Divorcing in the United Kingdom', in René Provost (Ed.), *Culture in the Domains of Law* (CUP, 2016) 20

ways in which the nation-state foregrounds majority notions of marriage, may well impact negatively on spouses' ability to contract a Muslim marriage and hence on their ethical well-being.¹⁰ These sentiments are echoed by Adriaan Bedner and Stijn van Huis, who observe in relation to the attempt to forcefully register all Muslim marriages in Indonesia: 'freedom of movement for women could become the main victim of such policies, as the socially acceptable safety net of extramarital relations, that is an uncomplicated unregistered marriage, will disappear.'¹¹ Far from imprisoning couples within traditional cultural structures, the strategic actions of couples in navigating between¹² and creatively combining state and religious forms of marriage may make it possible for them to contract new kinds of religious marriages which are simultaneously considered as valid from the standpoint of state law.¹³

This paper employs a 'thick description'¹⁴ of unregistered interfaith Muslim marriages to demonstrate how these couples strategically shape the ceremonial form and meaning of their marriages in response to the Maltese social and institutional context. While often defying legal/religious orthodoxy, these marriages are not expressly prohibited by Maltese law. We explore the dichotomies and overlaps between 'official and unofficial', 'recognised and unrecognised', and 'legal and illegal' which emerge from these couples' efforts to legitimise formally unrecognised Maltese Muslim marriages. We conclude that however messy unregistered Muslim marriages may appear to the taxonomical legal imagination, they empower Maltese Muslim and interfaith

¹⁰ Annelies Moors, Rajnaara Akhtar and Rebecca Probert, 'Contextualizing Islamic religious-only marriages,' in *Sociology of Islam* (forthcoming)

¹¹ Adriaan Bedner and Stijn Van Huis *Plurality of marriage law and marriage registration for Muslims in Indonesia: A plea for pragmatism*. Utrecht Law Review. (2010) 6(2) 191

¹² Henrik Vigh, *Motion squared. A second look at the concept of social navigation*. *Anthropological Theory* (2009) 9(4) 419-438.

¹³ Federica Sona, Overcoming obstacles through hidden nuptial paths: Foreign Muslim purported spouses marrying in Italy, *The Review of Social Studies* (2015) 2(1) 25–53

¹⁴ Clifford Geertz *The interpretation of cultures: Selected essays*. (New York: Basic Books, 1973) 9

couples. In their efforts to socially legitimise their marriages these couples end up broadening the margins of acceptability in regard to both state and religious laws.

In this paper, we combine various research methods in order to explore these questions. Firstly, drawing upon our legal expertise, we outline the development of Maltese Marriage law within its historical, political and social context. Secondly, we utilise ethnographic research methods; mainly participant observation, numerous informal conversations and ten qualitative semi-structured interviews¹⁵ conducted by the first author between 2012 and 2017.¹⁶ To suit our research focus, our interlocutors had previously concluded a Muslim marriage and one of the spouses identified as Maltese. Often this had also been an interfaith union in which one of the spouses was (at least originally) a Maltese Catholic and another was Muslim. Maltese-Muslims are a relatively recent phenomenon, as the Maltese Muslim community is almost wholly composed of recent migrants, converts from Catholicism and children of such migrants and converts.¹⁷ Consequently, and as reflected in our data, many of the Muslim marriages involving Maltese are not only interfaith but also transnational in nature. Thirdly, we conducted two interviews with Imam Elsadi,¹⁸ the imam who concludes Muslim marriages at Malta's only officially recognised Mosque, and we also interviewed Mr. Bilocca, the former Marriage Registrar, who was the first state official responsible for implementing the Maltese Marriage Act of 1975. By combining the

¹⁵ All interviews were between one and two hours. For the purpose of anonymity, the names used are pseudonyms.

¹⁶ The first few interviews were originally conducted for the purpose of the first author's Doctor in Law thesis, a comparative study between the ecclesiastical tribunals in Malta and the Sharia councils, Muslim Arbitration Tribunal and Beth Din courts in England and Wales.

¹⁷ There is no exact data on the number, and members, of the religions and religious denominations present in Malta. It is estimated that there are around 10,000 Muslims in Malta, who constitute around 2.6% of the population, many of whom are foreign citizens. This is based on the Malta 2016 International Religious Freedom Report referring to the National Statistic Office 2006 report, and a survey conducted in Easter 2016, by MaltaToday a local newspaper. The majority of Muslims in Malta are Sunni. There is also a small Ahmadiyya Muslim community.

¹⁸ Known to Maltese Muslims as Sheih, 'The Elder', similarly pronounced as '*Sheikh*,' he is the son of Palestinian migrants who migrated to Malta in the 70s. He has been officially running the Islamic Centre since it first opened in 1982. He is often considered and referred to in Maltese media as the representative of the Muslim community.

analysis of law in context with interviews and an ethnographic methodology we seek to explore the strategic conduct and perceptions of couples and officials and relate it to the legal and institutional setting within which they move.

The Development of Maltese Marriage Law

Marriages celebrated in Malta according to Islamic religious forms are not usually officially registered. However and despite the contrary opinion of some Muslims in Malta, this does not mean that they are illegal. In theory, article 17(1) of the Marriage Act (1975) permits the registration of these marriages.¹⁹ In practice, couples are asked by the Marriage Registrar to conclude a separate civil marriage. While Maltese legislation apparently caters for all kinds of religious marriages and grants civil effects to the latter equivalent to civil marriages, in practice it is *exclusively Church* religious marriages which are recognised.²⁰ This reflects the privileged status traditionally enjoyed by the Catholic Church vis-à-vis other religions as the state religion of Malta, in the Maltese Constitution²¹ and more widely in the legal system as a whole.

Maltese law did not cater for civil marriage pre-1975. As part of an obligatory religious marriage system, Canon Law governed all marriages celebrated in Malta between Catholic spouses and established the essential components, norms and formalities of a valid marriage.²² Indeed before the Maltese Civil Code of 1874,²³

¹⁹ ACT XXXVII of 1975, Chapter 255, Article 17(1) states ‘a religious marriage shall be contracted according to the rites or usages of a church or religion which is recognised for the purposes of this Act and which either of the persons to be married belongs to or professes...’

²⁰ Chief Justice Joseph Said Pullicino, Freedom of Conscience, Congress of the Conference of European Constitutional Courts (Warsaw, 1999); Mons. Philip Calleja vs Police Inspector Denis Balzan, decided by the Constitutional Court on the 25th June 1976, dealt with the carrying of a poster in public by a priest stating that ‘Catholic Malta is offended by the Marriage Act’.

²¹ The Maltese Constitution provides under Article 2 that ‘the religion of Malta is the Roman Catholic Apostolic Religion’. Furthermore, the Constitution mandates Catholic religious education in state schools, albeit in practice with the authorisation of the parents, students are allowed to opt out of such classes. Maltese law grants no recognition to other religion or denomination.

²² Joseph M Ganado, Maltese Law, Journal of Comparative Legislation and International Law (1947) 29(3/4) 32-39

Canon law not only regulated the capacity to marry and the form, but also the substance and civil effects that the marriage could have.²⁴ In cases where both of the spouses belonged to a non-Catholic religion, it seems the religious marriage was legally recognised as valid, provided it was celebrated according to the rites of the other religion.²⁵

For close to two centuries, between the commencement of British rule in 1800 and 1975, serious difficulties arose in recognising mixed marriages where only one of the parties was Catholic. Such marriages were considered null by Maltese law if not conducted according to the approved canonical form. During this period, mixed marriages between English Protestant and Maltese Roman Catholic spouses were quite common.²⁶ Albeit they were formally embedded within a colonial judicial hierarchy, and although the Privy Council had reported that it would probably decide otherwise if the matter were ever brought before it in its judicial capacity,²⁷ the Maltese courts refused to recognise such mixed marriages as lawful if conducted according to Protestant forms. They claimed that upholding the Privy Council's stance would contravene Maltese law and national Public Policy.²⁸ In the absence of a statutory law of marriage, the courts relied on public policy to link the legal concept of marriage to Catholic moral values.²⁹ The anti-colonial nationalist politics which motivated the defiant attitude of the Maltese courts have been summarised by the Maltese judge and historian Giovanni Bonello:

²³ ORDINANCE VII of 1868, Chapter 16.

²⁴ Giovanni Bonello, 'Mixed marriages in the early British period,' 2012 www.judiciarymalta.gov.mt/file.aspx?f=687 first published in the *Sunday Times of Malta* (Malta, 23rd September 2012); Adrian Dingli, *On the Force and Effects of Custom, According to the Civil (Roman) Law, With reference to the validity of certain marriages contracted in Malta* (E. Laferla, 1893)

²⁵ Joanna Mifsud, *Conditions and clauses restraining the freedom to marry: are they lawful?* (LL.D. thesis, university of Malta 2015)

²⁶ Arthur Bonnici, *Mixed Marriages in Malta (1800-1900)*, *Melita Theologica* (1968) 20(1) 18-25

²⁷ *The Marriage Laws of Malta: A Record*, The Colonial Office, 1897

²⁸ Joseph M. Ganado, 'Malta: a microcosm of international influences', *Studies in Legal Systems: Mixed and Mixing* (Kluwer The Hague 1996) 225-247

²⁹ John Vella Gauci, *Islamic law and Mixed Marriages in Malta*, *The Malta Independent* (Malta, 1991)

Insofar as Catholic marriage interfaced closely with traditional Maltese culture and was deemed to be one of the determining ingredients of Maltese national identity, it had to be upheld and defended at all costs against any form of imperialist encroachment. The national politicians were well aware that their only strength in standing up to the might of colonial dominance lay in their identifying with some powerful non-British cultural force – in the Maltese case, with an ancient, proud Latin, Roman Catholic, European sense of being. Protected by that bastion of home-grown tradition and culture, they felt better able to resist the imposed Anglicisation of Malta.³⁰

This system restricted freedom of religion and discriminated against those who professed other religions, lapsed Catholics, and those who did not profess any religious belief yet married a Catholic spouse.³¹ Until 1975 certain Maltese men used this to their advantage by effectively dissolving their non-Catholic marriages contracted abroad with English Protestant women, by proving that unlike their spouses they had been baptised as Catholics.³² The Maltese courts' stance also reflected strong popular resentment against those couples who contracted mixed marriages. Giovanni Bonello refers to the mixed marriage contracted on the 1st October 1856 between the Englishman Robert Turner and a Maltese native, Maria Carmela Borg, which aroused strong passions for at least three reasons: (1) the bride was marrying an Englishman, (2) she was doing so in a Protestant church and not according to the Catholic form and (3) she was wearing an English bonnet instead of the then mandatory *ghonnella*³³ which used to be worn by all Maltese women. He points out that these were seen as constituting a betrayal by the bride-to-be not only of her Catholic but also of her Maltese identity. Consequently, during her bridal procession from the church, she was surrounded by: 'a mob consisting

³⁰ Bonello (n23) 17

³¹ Andrea Bettetini, Religion and the secular State in Malta, *Religion and the Secular State* (2010) 493-503

³² Bonello (n23)

³³ The *ghonnella*, sometimes referred to as *Faldetta*, was a form of women's headdress and shawl, or hooded cloak, generally made of rich cotton or silk, unique to the Mediterranean islands of Malta and Gozo. The *ghonnella* framed the head, covering the hair but not the face with the upper part starched quite stiffly to give a broad, rounded frame. For daily functions, women normally wore a black *ghonnella*, whilst brides wore a white one. Sandro Debono, 'Ghonnella: a British styled allegory for 20th century Malta', *Peasant Costume Insights into Rural Life and Society, Malta: Heritage Malta* (2012) 67-71.

of two or three hundred people of the lowest rabble, a gang that never stopped insulting the couple'.³⁴

The long era in which nationalist opposition to colonial rule was premised upon a distinct Maltese cultural identity and expressed through judicially connecting the legal validity of marriages to their Catholicity only ended with the Marriage Act in 1975. Dom Mintoff's Socialist Government introduced civil marriage in a move which was part of a broader process of state sponsored de-colonisation and secularism.³⁵ The Marriage Act introduced a new system whereby only civil marriages were recognised by the state and all religious marriages were equally unrecognised. This meant that apart from the religious ceremony, Catholic spouses also needed to celebrate a civil marriage for legal recognition, sparking various protests on the part of the predominantly Catholic, Maltese population.

The situation changed once again with the election of the Christian Democratic Nationalist Government in 1987.³⁶ The Marriage Act was subsequently amended to reflect a new agreement between Malta and the Holy See establishing that canonical marriages would be granted legal effect equivalent to civil marriages, as would decisions of the Ecclesiastical Courts to annul such canonical marriages.³⁷

The resulting system seems dualistic. Yet while Civil marriages are separately regulated from Catholic marriages, the relevant Maltese legislation in both cases continues to be based on Canon law. Until 2011 when divorce was introduced, the two regimes were practically homologous; the requirements for a valid marriage and the

³⁴ Bonello (n23) 14

³⁵ It went hand in hand with a radical foreign policy, through which new ties were developed with non-European states such as Libya and China.

³⁶ Bettetini (n30)

³⁷ In relation to the ecclesiastical tribunal, the agreement established that in cases where annulment proceedings were brought before both the ecclesiastical tribunal and the civil court, the latter is obliged to stay proceedings and grant civil effects to the decision of the tribunal. This changed in 2012, a year after the entry of civil divorce, and today, proceedings before the ecclesiastical tribunal do not stay annulment or divorce proceedings before the civil court, and each decide for canonical or civil marriages respectively.

grounds of annulment being almost identical in the case of both Civil and Catholic marriages. Therefore although in principle distinct, in practice Catholic and Civil marriages remain quite similar to one another in substance and form.³⁸

Thus Maltese legislation encodes a formally dualistic Secular-Religious regulation of marriage rooted in colonial legal pluralism. A Maltese religious marriage celebrated in accordance with Canon Law forms is recognised from the moment of its celebration and has the same legal effects as a civil marriage. Maltese Muslim marriages are ‘unrecognised’, albeit the Marriage Act allows for the registration of religious marriages for civil effects. In practice this process of registering Muslim marriages requires that marriage banns and other canonical formalities are followed, resulting in so many complications that the couples we interviewed were informed by the Civil Registrar to conclude a civil marriage. Consequently most of these couples were completely unaware of the legal possibility of registering Muslim marriages; some even assumed that Muslim marriages contracted in Malta are necessarily illegal.

By providing for divorce in 2011, Maltese civil law has somewhat harmonised with Muslim marriage law. However, since 2011 the civil law has taken further heterodox steps, diverging from both Catholic and Muslim concepts of marriage, namely by introducing civil unions in 2014³⁹ and same-sex marriage in 2017.⁴⁰ Yet civil marriage in Malta remains post-catholic also in the sense that contemporary Maltese marriage law, particularly the provisions on civil marriage and annulment, continue to be mainly grounded in and interpreted from a Catholic standpoint.

³⁸ Rooted in canonical tradition, the requirement of the publication of the banns of matrimony under Article 7 of the Marriage Act is one example whereby civil marriages under Maltese law resonate with canonical marriages. This is the public announcement of an impending marriage at the local councils, which the couple must apply for at the Marriage Registrar between three months and six weeks prior to the date of marriage.

³⁹ ACT No. IX of 2014, Civil Union Act, Chapter 530

⁴⁰ ACT No. XXIII of 2017, Marriage Act and other Laws (Amendment) of 2017.

Pluralising Maltese Marriage Law – the approach of Imam Elsadi

There is only one officially recognised mosque in Malta;⁴¹ located in the compound of the ‘Malta Islamic Centre’ in the Valletta suburb of Corradino. Its construction in 1978 was funded by Gaddafi through the World Islamic Call Society,⁴² marking a rapprochement between Malta and Libya. The Malta Islamic Centre, through Imam Elsadi, is the main institution in Malta which celebrates Muslim marriages.⁴³ As already observed, these marriages are neither recognised by Maltese state law nor are they unlawful. Paradoxically, in certain cases they may be relied upon by Maltese institutions. For instance, when it is impossible for asylum seeker couples to trace certificates or other documentary evidence of their marriage, NGO workers may send these couples to the Imam to conclude an Islamic marriage, thus generating proof of the intimate relationship existing between the spouses. The NGOs use these certificates for family reunification, to justify resettling couples jointly as well as for recognition purposes in paternity cases, where the Public Registrar would rely on the Muslim marriage certificate to register the husband as the father of the child.

Elsadi’s role as the principal spokesperson for Muslims in Malta arises from the agreement between the Maltese Ministry of Foreign Affairs and the World Islamic Call Society by which the latter founded the Malta Islamic Centre. As the only recognised local Imam, his role is multifunctional and he is commissioned by the Islamic Call Society to conduct various tasks, including inter alia concluding Muslim marriages,

⁴¹ Nevertheless, there are many unofficial prayer homes where Muslims group during prayer time. The Muslim community in Malta has requested permission to build a second mosque.

⁴² The World Islamic Call Society is a non-profit entity, comprised of approximately 250 Islamic organisations around the world with the objective of promoting Islam through social, economic, religious and cultural programs.

⁴³ The Malta Islamic Centre is a complex wherein the Mosque is built, consisting also of the Imam’s house, the Islamic cultural centre, and the Malta Islamic cemetery. In 1998, through the World Islamic Call Society, a school was opened within the same complex.

divorces and conversions to Islam, running the mosque, leading prayers, conducting funeral rites, and on rare occasions even drafting wills.⁴⁴

Elsadi partly legitimises his position as Imam by referring to the implicit reliance of the Maltese state on the certificates he issues. He describes these certificates as ‘official documents’, unlike other Islamic certificates that may be ‘unofficially’ concluded outside of the Islamic Centre:

Outside (of the Mosque) there are who does them, but they are not official. Example, one comes to an (other) imam, or not an imam a religious man, and he conducts them. They are not official. After issuing that certificate, they then come to me to document it. (...) Official documents regarding marriage, divorce, converting to Islam. The Islamic centre is considered the institution which is officially recognised to issue such documents.

Moreover Elsadi counters the lack of formal legal recognition of the certificates he issues by observing that the Islamic Centre has a religious duty to cater for all of Malta’s Muslim community’s needs. He insists that from an Islamic standpoint finalising marriage and divorce contracts is his most important role; especially considering there is only one recognised Islamic institution in Malta. Furthermore, he claims that in the process he can protect women’s rights by enabling wives to (religiously) divorce their husbands, in cases where the former could have no other remedy except through his intervention. In such cases the Imam assumes the role of a *qadi* (an Islamic judge):

They do not recognise them (the religious certificates), but I must walk according to Sharia. I cannot walk according to (civil) law because we are an Islamic centre (and) there is no Islamic institution to do this (to conclude Muslim marriages and divorces). Example, some women come to me, whose husbands do not wish to leave them (divorce them)... for a reason or another, or he is absent. I can act like a Judge and for instance divorce them, so that they have another chance to remarry (in Islam) and not stay 20 years hanging, or because he wants to tease her he does not want to leave her. He does not want to leave her just to harm her. This work is made because there is no other alternative. I try to help people so that they have another chance.

⁴⁴ The Imam is also a teacher of religion and head of the board of trustees of the school that falls within the ambit of the Islamic Centre.

This conforms to Elsadi's general motto, which is to accommodate, as far as possible, the needs of the people seeking his assistance by attempting to find solutions on a case-by-case basis, on the consideration that 'Islam considers all the situations to serve'. In so doing, he creatively utilises various religious scholars, sources and schools of thought to develop Islamic solutions to the particular needs of the couples who seek his services. In the process, he brings significant creativity and interpretive flexibility to the practical application of Islamic law itself. This is exemplified by the way he interprets the three basic requirements of an Islamic marriage, being a) two Muslim witnesses, b) *wali* and c) *mahr*:

The requirement of two 'Muslim' witnesses may be flexibly interpreted in the conclusion of marriages involving brides who are either Catholic or Muslim convertees; 'Most of the scholars, they insist (that the witnesses must be Muslim) except we have a scholar, which I apply myself,' explained Imam Elsadi, 'which says in case of mixed marriages, a Christian from the side of the wife, and a Muslim on the side of the husband (is permitted). And I apply this.'

Similarly, Elsadi justifies his decision to allow the Catholic father of a bride to act as *wali* or in certain cases to evade altogether this requirement in 'the interest of the family,' in some cases the Imam himself acts as the *wali*. He justifies this approach by quoting one of Jesus' parables – an approach he often uses in the local media - to relate more to the Catholic Maltese social context;

The law is (intended) to serve people. Like Jesus Christ said, peace be upon him, 'the law for the men, not men for the law'. I like this (quote), because once there were Jews, who are prohibited to work on a Saturday, and he told them, 'if a lamb falls in a well, do I save him or do I not? If it's Saturday, then I should not. And Jesus told them that 'law is for men, not the men for the law'.

As Claire's story shows, Elsadi is also flexible with regards to adapting *mahr* to the Maltese cultural context, aware of the ways that *mahr* is perceived among non-

Muslims, and consequently facing the reality that many Maltese wives generally refuse to have a *mahr*;

Women who are not Arabs or who do not come from Arab societies are not interested a lot in the dowry. Many times they say they do not want one, or they are astonished that there is such a thing as dowry. Usually, it is symbolic, like 100 Euro or something of the like; or example she tells you, 'I do not want money,' because she for example feels she is being bought, 'I would take gold.' And I write gold, to consider the feelings of the people and their culture (...) They do not have the mentality of dowry, and therefore, they say the important thing is love, and I tell them 'of course the most important thing is love, but if with love, you have money, why not?' (The Imam said, chuckling)

It is revealing that while no Maltese translation exists for *mahr* (dower) spouses involved in Maltese Muslim marriages as well as the Imam refer to *mahr* in Maltese as '*dota*'; which literally translates as dowry. The two practices are conceptually distinct as *mahr* is a mandatory gift given by the groom to the bride, while dowry refers to the gifts given by the bride's parents to the bride. The discursive interchangeability of *mahr* and dowry clearly demonstrates how eager the spouses are to stress the similarities between traditional Christian and Muslim marriage ceremonies and to engage in flexible cultural translation in the process.

In the case of Claire, in finding a compromise, the Imam agreed to disguise the existence of *mahr* whereas normally he loudly refers to it during the ceremony and questions the bride if she has truly received the declared amount or whether the *mahr* will be paid in the future. The Imam insists that it is not possible to eliminate all references to *mahr* from the written marriage contract, but he urges spouses like Claire that the *mahr* could be 'something symbolic. Example it could be he (the husband) sends me (the wife) to Mecca, teaches me the Quran, or gives me a copy of the Quran. Not necessarily money. (It could be) money, or gold, or a service. Even, example, he teaches me Arabic could also be *mahr*.'

The Imam also adjusts to cases where the couple also request that their Muslim marriage not be concluded in writing by agreeing that while the marriage would be concluded in writing, the certificate would be held by him for safekeeping. Often these are cases where one of the spouses would already have contracted a previous Civil marriage with a previous partner. Imam Elsadi points out that the subsequent marriage could be perceived as bigamous and therefore as a criminal offense under Maltese law.⁴⁵ However, since Muslim marriages are neither illegal nor formally recognised by Maltese law, this ultimately grants the Imam full leeway to decide which Muslim marriages to conclude. He accurately observes that there are circumstances where revealing a Muslim marriage certificate could have negative legal impacts; particularly if exhibited by the other spouse in court during separation proceedings as evidence of adultery: ‘Example, he is (already) married, or she is (already) married, and they do not have a divorce. They fear that it (the Muslim marriage certificate) will harm them, or it will be used by their previous partner.’⁴⁶

On the one hand the Imam asserts that the acceptance of polygamy under Sharia, unlike Maltese law, is the principal reason why Muslim marriages cannot be officially recognised in Malta. Yet on the other hand, Elsadi realises that non-recognition also has certain advantages in making it possible for him to celebrate polygamous Islamic marriages. Recognition by state law would create undesirable impositions and limitations on his ability to conclude certain Muslim marriages. This can be evidenced by the limitations imposed by Maltese law on the Church in prohibiting the celebration of a canonical marriage between a couple who cannot conclude a civil marriage.⁴⁷

⁴⁵ Article 196 of the Criminal Code, Chapter 9 of the Laws of Malta,

⁴⁶ In such cases, the court may determine that additional maintenance must be paid by the spouse who has concluded the Muslim marriage, to the previous spouse with whom that person is still legally married to.

⁴⁷; Ombudsman, Case Notes, Case 11 (August 2009) *The right of immigrants to marry* (Office of the Ombudsman Malta; no. 28 Case, October 2009)

Referring to spouses who have concluded a subsequent Muslim marriage although one or both had previously married a different partner, the Imam observes:

If the government recognises or not (Muslim marriages), what could I do? It is not my business. Not my job. The people that work with the government, work according to the law. I wish it would be the same, but what could I do? Neither can I impose Islamic law on them (the government), nor can they impose their law (State law) on the mosque. Outside they may, but the mosque is the limit. We do not force anyone to come here to marry. They want to abide by religion. What do I do to them? Tell them no, I do not serve you or go and live in sin, against religion?

Perhaps somewhat responding to the Maltese cultural context, Imam Elsadi specified that he frowns upon polygamous marriages when the circumstances inciting the second marriage lack a 'justification' and that he is aware that in such cases there is also: 'the problem of the law that one would have gone against the law.' Elsadi hints, however at what he would consider as a justifiable reason to remarry, giving the example of a man whose civil divorce case is still pending, although 'his wife does not sleep with him, for long months. He has a reason, poor him!'

The most common trajectory followed by couples who marry at the Malta Islamic Centre is to conclude an unregistered Muslim marriage, quickly followed by a civil marriage. However, there are several exceptions where either the civil marriage is concluded many years later due to a legal impediment or where the civil marriage is concluded first. On couples that marry civilly and then only several years later conclude a Muslim marriage, the Imam remarked that he considers such civil marriages as accepted in Islam; 'There are people who say no, they are adulterous, illegal. I do not consider them to be illegal (in Sharia law). There are shortages in it but legal', argued the Imam. Occasionally interfaith couples also celebrate a Church ceremony apart from the Islamic and Civil ones.

Elsadi has adapted his understanding of Islamic marriage to the Maltese context. Because he is often dealing with interfaith couples where the wife is Catholic, he interprets the requirements for a Muslim marriage and wedding flexibly so as to cater for the expectations of such couples that their marriages be perceived as legitimate in Malta. In the process he selectively allows couples to incorporate aspects of the Catholic ceremony, such as a procession from the Imam's office to the Assembly (wedding) hall, within the Islamic context. Thus he points out: 'sometimes they (the couple) want to make it similar to the Church or the society customs' and observes that the couples generally want to assert equivalence between their weddings and church weddings, so that: 'we don't have anything lacking.' Therefore: 'we will bring the (hired) car, the expensive wedding dress. Instead of the church we will use the mosque. Instead of the priest, we have the Imam.'

Above all, Elsadi claims that Islam, is flexible and does not reject Maltese culture or social norms, just as Muslims from different regions dress differently and have different customs. Perhaps because of Malta's situation of 'one mosque fits all' the Imam attempts to adapt to the various cultural and social norms of his congregation, including the Maltese ones:

Especially if the wife is Maltese or the husband, they like to imitate these norms. They even bring wedding rings. For us, for example, rings do not enter into the wedding. It is not against Islam to bring rings, but it's not a bar for marriage. They bring them. Generally they bring rings and I enjoy it and they ask me to bless them and I bless them (laughs). I too play the priest. (He says laughingly)

Imam Elsadi has thus evolved a stance towards marriage which partly imitates the form of Maltese Catholic marriages and partly compensates for the rigid rules concerning registered marriages in Malta. In the process, he consciously uses the non-recognition of his Muslim marriages to develop a flexible, hybrid conceptual

understanding and ceremony of marriage which accommodates *both* Muslims and Catholics who wish to marry in Islam. This is achieved even at the cost of (a) diverging from the concept of a valid civil marriage in Malta, (b) reinterpreting Sharia norms in a highly flexible manner, and (c) disregarding some of the administrative requirements imposed by the Libyan state law for recognising marriages involving Libyan citizens. He does this although as Imam of the Corradino mosque, he is recognised by the Libyan state as an authorised Libyan marriage official; perhaps due to the role of the Libyan-based World Islamic Call Society in appointing him and forming the Islamic centre.⁴⁸

As he observes in relation to this last point:

Even the Libyan law... it was that for a Libyan to marry here a foreign woman, he had to bring the approval from Libya, from the security agency, and from here and there, and I do not know from where else. And there are Libyans, who could not go there for some reason or another, and they come to me, and I used to tell them 'according to your law I cannot marry you'. And then I realised that I was doing harm, I was going against the (Sharia) law by not marrying them. So I went to the Libyan Consul (in Malta), I told him, 'Listen, I cannot deprive people from marrying, because I do not want them to stay in sin, and so I will marry them, and whether you accept them or whether you don't, is your business.

Marriage: the gate-keeper to Maltese society

After being introduced by a shared Moroccan friend, Samia, a Moroccan woman from a small village close to Rabat, agreed to come to Malta to meet Mario; after he obtained a visa for her by claiming that she was a friend of his aunt. A few days after he greeted her at the airport with a bouquet of red roses, Samia and Mario went to the mosque and concluded a Muslim marriage in a very private ceremony which included only a few of her husband's family members and two witnesses.

⁴⁸ One of the requirements for a marriage involving Libyan nationals to be recognised in Libya is that such marriage must be certified by an authorised Libyan marriage official. A civil marriage involving Libyans concluded in Malta does not suffice, whilst Muslim marriages concluded in Malta before the Imam, involving Libyans, are recognised in Libya and spouses are given the *Kutajb El Ayla* (trans. Family book).

Mario had converted to Islam many years earlier and had concluded both an Islamic and a civil marriage with another woman. However, his first wife abruptly abandoned him and left Malta altogether. Although the Imam immediately granted Mario an Islamic divorce from his first marriage, it took several years before the Civil Courts granted him an annulment.⁴⁹ Since Mario was still awaiting the dissolution of his first marriage, the couple could not marry civilly.

After concluding their Muslim marriage at the Malta mosque, the couple moved into their new matrimonial home. However, the delay in having Mario's first marriage annulled, coupled with the non-recognition of their Muslim marriage, almost led to Samia's deportation when she entered in hospital in labour with their first son. Her details came to the notice of the Maltese police, who observed that her tourist visa had expired a year earlier and they confronted Samia with a warning of deportation. Pointing out that at the time she did not know that her Muslim marriage is unrecognised, Samia recalled, 'I cried and cried... I told them I did not know. I was married to a Maltese but they said no I was not, and then I told them my son has a Maltese father, and they said they must make tests to check. I was very afraid that they would send me back, alone, and keep my son in Malta.'

Although Samia was eventually allowed to stay in Malta once her son has a Maltese father, it is clear that the traumatic experience she had undergone left a lasting impression. When her husband's first marriage was finally annulled, the couple rushed to conclude a civil marriage to obtain official recognition of their (previously unrecognised) married status and this despite the fact that their family and friends had long considered them to be married. As previously observed, Claire and other spouses who celebrate a Muslim marriage in Malta, generally aim to juxtapose both Islamic and

⁴⁹ This was pre-2011, when Maltese law made no provision for divorce.

Civil marriages so as to achieve recognition within the ambit of the law. However other couples like Samia and Mario can only conclude an unregistered Muslim marriage and legally prohibited from concluding a civil wedding.

The inability to contract a civil marriage could stem from various causes. A previous civil marriage with a different spouse would prevent the conclusion of a new (bigamous) civil marriage; even though the previous union is in the process of being legally dissolved, through divorce or annulment. In each of these scenarios, lengthy court proceedings must elapse; at least four years before a divorce degree could be issued. Spouses often form new relationships while proceedings are pending and since a civil marriage is not an option at this stage, they sometimes conclude a Muslim marriage instead, particularly when these newly formed couples desire their intimate relationship to be *halal*.

The negative implications of an unrecognised Muslim marriage in Malta are related to the important role given by Maltese law to marriage as a means by which foreigners can be legally integrated into Maltese society. The principal route by which to obtain Maltese citizenship, which does not involve investing over 600,000 Euros for a Maltese passport⁵⁰ or relying upon Ministerial discretion, is by contracting a recognised marriage with a Maltese citizen and supplying proof of continuous residence in Malta for five years following marriage. As a study by the second author of this paper on the integration of Third Country Nationals (TCN) in Malta concludes:

In most cases it is difficult to obtain a legal status which is sufficiently long term to promote social integration (citizenship/long-term residence); unless the TCN marries a Maltese spouse or has a Maltese employer who is willing to act as his or her patron. In these cases, the power and responsibility to socially integrate TCN is transferred by the state to the Maltese spouse/employer/partner and the possibility of social integration is purchased

⁵⁰ This is through the Individual Investor Programme. Applicants must also buy a property for 350,000 Euros or rent a property for 16,000 Euros per year, and make an investment in stocks or bonds for 150,000 Euros.

by the TCN at the cost of dependency upon the former and only if the TCN conforms to conservative Maltese understandings of marriage and work.⁵¹

The conclusion of a legally unrecognised Islamic marriage could thus have serious repercussions. Like Samia, many other non-EU migrants are exposed to the risk of immediate deportation despite having married a Maltese in Malta. Some of these migrants are not even aware that their Muslim marriage is not recognised in Malta, let alone what the implications of this non-recognition are. They opt out of contracting a civil marriage simply because it had no importance to them. Moreover once their status in Malta becomes irregular, due to an expired visa or residence permit, the Marriage Registrar on this basis does not allow them to contract a civil marriage and this despite this additional prerequisite does not derive from the Marriage Act.⁵² Similarly, asylum seekers who have only concluded a Muslim marriage might be separated when a spouse with one kind of international protection status is individually relocated to another country through a resettlement program,⁵³ especially if an NGO does not send this undocumented Muslim asylum seeker to the Imam for a Muslim marriage certificate.

Given the critical role of a recognised marriage in granting access to citizenship, residence and various other rights, the Maltese institutions concerned with enabling and registering marriages are vigilant in controlling access to civil marriage and conscious that in so doing they are also determining the boundaries of the national community. In one case, the Marriage Registrar's office did not even accept a Maltese passport as proof of Maltese citizenship, insisting that an additional letter from the Office of the Prime

⁵¹ David Zammit, *Consultative Assessment on the Integration of Third Country Nationals* (International Organisation of Migration: 2012) 28-29

⁵² Ibtisam Sadegh, 'Third Country National' in V. Colcelli (Ed.) *Dictionary of Statuses within EU Law*. Springer (forthcoming)

⁵³ Malta has concluded various agreements with European and non-European countries aimed at relocating asylum seekers to other countries. These resettlement programs are managed by non-governmental organisations such as International Organisation for Migration (IOM) and the office of United Nations High Commissioner for Refugees (UNHCR).

Minister was necessary for a Maltese citizen of Syrian origin to have his marriage in Russia registered in Malta.⁵⁴ In another a Nigerian man whose visa to reside in Malta had just expired and who wished to marry his German partner in Malta was not allowed to marry civilly in Malta as the Registrar refused to issue the marriage banns on the grounds of the unlawful status of the Nigerian applicant.⁵⁵

Clearly migrants like Samia often face a Catch-22 situation as regards to marriage and legal status: a recognised marriage can be a means of regularising one's legal status in Malta but an irregular status also prevents access to a recognised marriage.⁵⁶ Despite the ease with which a Muslim marriage may be contracted, strong practical incentives remain to jump through the bureaucratic hoops and contract a civil marriage.

Walking down the aisle...

Six months after their first meeting in 1991, Anna and Ahmed, at the time 20 and 27, had an imminent and tough decision to make: either to end their relationship -Ahmed's visa was about to expire and he would have to return to Libya- or to marry civilly. 'I had a huge crush. I saw him and wanted him. I wanted him at all costs', said Anna, and so the two decided to conclude a civil marriage. Anna's Maltese parents were surprised at her persistence: a practising Catholic who daily attended mass, to marry a 'Muslim, Libyan, Arab.' Although disheartened that she was only marrying civilly without the Church's blessing, they shame-facedly accompanied their daughter to the Registrar's office. There, the couple concluded a civil marriage; but Anna's parents made it clear that for them their daughter was still considered as single. Anna continued to live with

⁵⁴ Mazen Dadouch vs Director of the Public Registry, Constitutional Case, 9th March 2007

⁵⁵ See the judgment of the Maltese Civil Court in the names Ogunyemi Kehinde Olusegum and Sandra Wetterich vs. Director of the Public Registry and the Attorney General, decided on the 4th May 2010. See also the Ombudsman, Case Notes, Case 11 (August 2009), The right of immigrants to marry (Office of the Ombudsman Malta; no. 28 Case, October 2009).

⁵⁶ Sadegh (n51)

her parents, Ahmed in the small flat he rented and the two continued to get to know each other and meet regularly, chaperoned by Anna's parents.

Six months later, Anna and Ahmed wanted to live together. They therefore agreed with Anna's parents that they would marry in church and follow it up with a large, reception completely organised and paid for by Anna's father. She recalled: 'he made everything himself, at his own expense, and in fact, my husband had told him, "we do not wish to be connected to any expenses that you will make. He told him that this wedding was not his pleasure, but if it must be, then he should go ahead'. Anna ordered a white gown, and her parents invited all of their relatives, friends, colleagues and neighbours for a large reception with plentiful food and alcoholic drinks.

On her father's insistence, before getting married in church, Anna went to speak to a Maltese counsellor knowledgeable in religion. They also attended and enjoyed the *Cana* course, -an obligatory Catholic marriage-preparation course comprising various lectures and discussions- and a priest, chosen by her parents, married them. Anna and Ahmed had two witnesses; her Catholic aunt and his Muslim friend, the only person present on behalf of Ahmed. The priest was a missionary, luckily visiting Malta for a few days;

He knew a lot about Islam, and made the (wedding) mass, explaining within the homily, the meaning of Isa (Jesus) peace be upon him, in Islam. It was therefore really beautiful, because who was present (at the mass) realised that there were connections to Islam. That Muslims, and that is, this new man who I had brought, also believes in Jesus and Lady Mary being virgin, and everyone said how beautiful and how interesting it was.

After they moved in together Ahmed felt uncomfortable with their relationship not being *halal*, as he did not consider himself married in Islam. Ahmed asked at the mosque whether they could get married and also asked Anna if she would consider concluding an Islamic marriage. She recalled: 'I said, might as well, because like I

wanted to be recognised as married in my religion, then likewise he should be comfortable with himself that he is not living with me only with papers (civil marriage). And very little later, we were married by Imam Elsadi’.

Anna’s parents attended the Muslim wedding and her father agreed to act as Anna’s *wali*. On the Imam’s insistence to write at least something symbolic as *mahr*, the couple agreed to a small sum. Anna recounted how happy she was that the Imam, considering that her parents are important people in Anna’s life, took his time to explain to her parents any questions they had on Islam.

Maltese law would not have allowed Anna and Ahmed to conclude a Civil Marriage after their Catholic marriage, since canonical marriages must be registered and will have civil effects. However it does not prohibit couples from making one of a broad spectrum of choices. These include celebrating an exclusive Catholic or Civil marriage, celebrating a Civil and a subsequent Catholic marriage or even celebrating multiple religious marriages and a civil marriage as in the rare case of Anna and Ahmed. Their choices do not necessarily contradict any State or religious laws as what is considered to be permitted and forbidden under Sharia family law, Canon law and within Maltese law at times coincides, whilst at other times it conflicts.⁵⁷ In certain cases there may also be a religious impediment to concluding an Islamic or Catholic marriage. Thus the Imam commented that a Muslim woman is prohibited from concluding an Islamic marriage with a non-Muslim man; albeit the couple could conclude a civil marriage. Similarly, divorcees from a civil marriage are prohibited from concluding a Church marriage.

Anna commented that she was able to marry in Church because she had not celebrated a previous canonical marriage and because she had told the Church authorities that she did not intend to marry in the mosque. She stated: ‘At the time they

⁵⁷ William Twining, Normative and legal pluralism: a global perspective, *Duke J. Comp. & Int’l L.* 20 (2009) 473

told us that we had to choose whether (to marry) by church or by mosque. That was the Curia procedure. It was either- or.’ Although she was a practising Catholic who later converted to Islam, Anna commented that she married in Church mainly because it was meaningful to her parents, pointing to the irony that her parents are not practicing Catholics. For her ‘non-religious’ Catholic parents, her Church wedding was important so that she and Ahmed would be regarded as married in Maltese society. She similarly claimed that her parents’ initial reaction that she should not visit them again when she first wore a headscarf after about 12 years of marriage was: ‘always because of society, not because it bothered them.’

Anna’s story emphasises the role of social surveillance in Malta and illustrates the importance of a Church marriage to socially legitimise unions. Anna and Ahmed’s decision to celebrate three different marriage ceremonies highlights the practical choices such couples make.⁵⁸ These are decisions which, while not expressly envisaged by either state or religious laws, seek to satisfy the various objectives the spouses’ pursue through their marriages. In Anna and Ahmed’s case, these included the desire to reside lawfully as a couple in Malta, to remain loyal to their respective families and religions of origin and to advertise, through their ability to deploy Catholic ceremonial forms, that they were legitimately married. Their use of Church ceremonies as a means to obtain social approval must be understood as a response to the ongoing utilisation by the Maltese state of Church marriage for gate-keeping purposes. This approach, which is deeply rooted in Maltese legal culture, appears to have been maintained despite the dilution of the Catholic concept of marriage which has resulted from recent legal reforms.⁵⁹ Consequently an attempt to introduce elements of Catholic ceremonial forms

⁵⁸ Baudouin Dupret, ‘Legal pluralism, plurality of laws, and legal practices: theories, critiques, and praxiological re-specification’ *Eur. J. Legal Stud.* 1 (2007) 296

⁵⁹ The introduction of same-sex marriages within the Maltese legal system said the Archbishop in a public statement is perceived by many Catholics to pose a threat to traditional Catholic understandings of

can be discerned even in the case of couples who only choose to marry according to Muslim and civil ceremonies, as demonstrated by the case of Ali and his wife.

Ali, a Libyan student, visited Malta and decided to continue his studies in accountancy there. When his university course came to an end, he and Marija, his Maltese girlfriend, needed to decide whether to get married and extend his residence permit. As much as he wanted to stay in Malta, Ali pointed out that he would never wish to break Maltese law as regards his: ‘visa, you know. I don’t like this. Either I stay with my dignity or I leave.’ Ali stressed, however, that his civil marriage, celebrated over fifteen years ago, was not a marriage of convenience, emphasising that all decisions were equally taken together with Marija. Ali describes his civil marriage celebrated in Malta, as a fusion of a Civil and a Church marriage: ‘I cannot get married by church, because I am Muslim.⁶⁰ So we decided, the people who are working there (at the Civil Registry), they will come there (the hotel which was the venue of their wedding)... We did it like it was in a church, our guests and us.’ Ali described how the guests sat in rows with an aisle in the middle which led to a table where the Marriage Registrar sat.

Subsequently Ali and Marija concluded a Muslim marriage in Libya, which is also considered as valid under Libyan marriage law. Ali stated that this decision was based on his belief that a marriage in Malta, including a Muslim one in the Corradino Mosque, would not be socially recognized in Libya and because he also believed that Maltese law prohibited Muslim marriages from taking place in Malta. These multiple marriages thus served to legitimise Ali and Marija’s status as a married couple before various audiences, including Libyan and Maltese civil servants, Ali’s Libyan family and friends and Marija’s Maltese family and friends. Thus apart from his Libyan marriage,

marriage., ‘Marriage remains a union exclusively between man and woman – Archbishop’, *Malta Independent*, 26th June 2017.

⁶⁰ Although as already noted the Catholic Church sometimes marries interfaith couples, many Muslim spouses claim that on the basis of principle, as ‘Muslims’, they cannot marry in church and some interlocutors also believed that the Church would prohibit them from entering Catholic marriages.

Ali's Maltese Civil marriage had been creatively blended with Catholic ritual symbolism to tailor it to a Maltese social context where the recognition that a marriage is legitimate seemed proportionate to the extent to which Catholic ceremonial forms are followed.

Conclusion

In Malta unregistered Muslim marriages take place in a liminal space between the “recognised” and the “unlawful”, the “official” and the “unofficial”. Imam Elsadi navigates this space with ease by replacing these binary dichotomies with a spectrum of varying degrees of legality; so that the Muslim marriages he celebrates are neither completely ‘inside’ nor ‘outside’ the law⁶¹ and can be described as alternately unrecognised or official, depending on the context. This empowers the Imam not only by allowing him to evoke a parallel juridical reality co-existing with and overlapping with Maltese state law,⁶² but also enabling him to ‘vernacularize’⁶³ Islamic law itself. While uncomfortable with the reluctance of the Maltese state to formally recognise the marriage certificates he issues, Elsadi does not insist upon such recognition; acknowledging that this turns his mosque into the fulcrum of an alternative Muslim juridical order co-existing with Maltese law.⁶⁴

Given its geographical position at the centre of the Mediterranean, its long colonial history and vigorous trading and tourist based economy, mixed marriages have never been rare in Malta. Indeed hybridity seems to be the dominant feature of Maltese

⁶¹ Olivia Harris (ed.) *Inside and Outside the Law*. Routledge, 2003.

⁶² Twining (n56)

⁶³ Peggy Levitt & Sally Merry, ‘Vernacularization on the ground: Local uses of global women's rights in Peru, China, India and the United States’, *Global Networks* Vol. 9:4 (2009) 441-461

⁶⁴ John Griffiths, *What is Legal Pluralism?* (Journal of Legal Pluralism 1986; 24) 1-55

language, culture and law.⁶⁵ Accordingly, Maltese marriage legislation was never fully codified⁶⁶ and even though it now formally portrays a dualistic marriage regime distinguishing between religious and civil marriages, the concept of marriage in civil law and public policy was until very recently completely based on Catholic instead of secular legal criteria. There remains an informal tendency to consider the Catholic concept of marriage to be the exclusive source of matrimonial legitimacy.

Nowadays marriage has been given new importance by the independent Maltese nation-state, where it primarily determines membership of the Maltese national community. Maltese law still reflects a notion of shared blood as the basis of the national community, where establishing kinship-ties with Maltese are the medium for becoming Maltese.⁶⁷ This has brought about a situation where state officials in charge of recognising marriage are ‘more Catholic than the Pope’ as they are as vigilant in scrutinising the history and form of a particular marriage in order to determine whether or not it conforms to Catholic norms as Church officials in determining whether to allow access to a Church wedding or not.

Whereas under British colonial rule, mixed marriages were typically conducted between Maltese Catholics and British Protestants, nowadays mixed marriages are mostly understood as marriages concluded between Maltese Catholics and Arab Muslims. However the continuing impact of the historical regulation of Maltese Catholic/Protestant mixed marriages, where the form of such weddings was mandatorily Catholic,⁶⁸ can be observed both in the restrictive approach of the Maltese

⁶⁵ Donlan, Seán Patrick, Biagio Andò, and David Edward Zammit, *A Happy Union-Malta's Legal Hybridity* (Tulane European and Civil Law Forum, 2012) 165

⁶⁶ Vernon V. Palmer, (ed.) *Mixed jurisdictions worldwide: the third legal family* (Cambridge University Press, 2012); Hilda I. Lee, *British Policy towards the Religion, ancient Laws and Customs in Malta 1824-1851 Part II. The Revision of the Codes of Law* in *Melita Historica* (Journal of the Malta Historical Society, 1964) 1-13

⁶⁷ Zammit (n50)

⁶⁸ Bonello (n22)

Marriage Registry towards the registration of Muslim religious marriages celebrated in Malta and also in the ceremonial strategies by which our interviewees introduced various “Catholic” practices into their Muslim weddings.

In this context, the Imam and the couples who wish to contract a Muslim marriage in Malta have responded by strategically utilising the non-recognition of unregistered Muslim marriages in order to cater for certain relationships which cannot easily be accepted under Malta’s strict marriage laws. Their need and desire to do this not only reflects the desire to promote and form *halal* relationships, but it also stems from the importance marriage is still given by the Maltese state and society. At the same time couples may creatively juggle Catholic, Civil and Islamic weddings, or at least adopt ceremonial forms of Muslim marriage which echo key features of a Church wedding. The tendency to somehow Catholicise the wedding ceremony is generally part of an attempt to add legitimacy and recognition to a mixed marriage. As a result, Muslims and Catholics are pluralising Maltese marriage laws at the level of everyday social practice. At the same time they are also developing new understandings of Islamic marriage itself, at least insofar as key ceremonial aspects are concerned.

Unregistered Muslim marriages thus appear, at least in this Maltese context, to be far more than simply a tool through which a religious minority can reproduce its traditional way of life. They are simultaneously a medium for transcultural brokerage and a means of empowering the spouses to take control of their matrimonial projects and challenge different religious and secular separatist logics.

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