Islamic Law, Women's Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage

By Quentin Wodon

Issues related to Islamic law, women's rights, and state law have long been and remain deeply contested. This is most evident in debates around family law reform in majority Muslim countries. As one recent example, in Mali, a secular state according to its Constitution, the National Assembly adopted in August 2009 a new family code proposed by the government. The new code consisted of 1,143 articles, and it had emerged from a decade-long process of consultations after several previous unsuccessful attempts at reforming family law.

The new code included provisions to set the minimum age for marriage at 18; change inheritance rules for women including the ability for them to remain in their dwelling upon the death of their husband; change rules for adoption and the recognition of children born out of wedlock; define marriage as a secular and public act that should be ratified by the state; and protect the integrity of the human body (which relates among others to the issue of female genital cutting or FGC[1]). Large demonstrations were organized in Bamako to protest the adoption of the new code. In a statement on the reform proposal, the High Islamic Council of Mali repeatedly used the words "visions from another culture, another milieu" to characterize the reform (Diamoutani 2009). Ultimately, the reform was not signed into law, illustrating how strong opposition to reform, including for changing the minimum age of marriage or preventing FGC, persists in some countries.

At the outset, it must be very clear that neither FGC nor child marriage are "Islamic" problems. FGC and child marriage are practiced in many non-Muslim communities, and both practices predate Islam. In addition, there are many majority Muslim countries where the incidence of both practices is very limited. In no way is there a one-to-one association between the practices and Islam. Yet in some countries arguments inspired by Islamic law have been used in order to suggest that prohibiting FGC and child marriage could be "un-Islamic," and faith leaders have substantial influence on whether the practices persist or not.

Mali is a case in point, but is not unique. In a special issue of *Islamic Law and Society* (Moors 2003), case studies to illustrate those debates—which often did not reach a conclusion—were prepared by Wurth (2003) for Yemen, Welchman (2003) for Palestine, Buskens (2003) for Morocco, and Schulz (2003) for Mali. Broader debates on the rights of women in Muslim societies and how they relate to *Shari'a* are also common (e.g., An-Na'im 1988 on women's rights and international law; Baden 1992 on women in Islamic countries; Chaudhry 1998 on inheritance law; and Warner 2004, on child marriage).

In the case of Mali, Schultz (2003) suggested that the association of a previous attempt at family law reform proposed by the government with advocacy by Western-backed women's NGOs and donors may have been one of the reasons why Islamic movements could be perceived by some as guardians of traditional and Islamic values. Schulz's analysis also reveals that the debate on family law does not neatly pitch women against men. While most women's NGOs have advocated for family law reform, a

number of Islamic women's groups have taken positions against reform, arguing that while it may respond to requests for independence from secular-oriented and well-to-do urban women, it does not take into account the reality of the life and the needs of rural and poor urban women. This could be debated, but clearly views about family law reform need not be neatly defined along gender lines, and more generally the possibility of conflict between proposed reforms in any given country and Islamic law must be taken seriously.

Within Muslim societies what is meant by Islamic law or *shari'a* takes multiple forms inasmuch as references to *shari'a* serve different and not necessarily compatible functions. As noted by Berger (2006), references to *shari'a* may at times have been used to promote an ideology that is (often but not always) pitted against the Western model of civilization. However *shari'a* is also (primarily in fact) a legal science with components of divine or prophetic origin (the *Qur'an* and the *Sunnah*) as well as elements of jurisprudence (*fiqh*) accumulated over centuries. Finally there may be a third concept of *shari'a* as associated with a contemporary phenomenon whereby given the rise of modernity and the secular state, attempts are being made to reaffirm *shari'a* at times in ways that were not considered in ancient times as appropriate. For example, the notion of an Islamic state is a relatively new construct developed in the mid-1950s. In classical Islam, *shari'a* as it applied to moral and religious conduct was clearly distinguished from that of *siyasa* as it pertained to the administration of the state, for example in the writings of Nizam al-Mulk.

This article[2] is about the second role of *shari'a* mentioned by Berger, namely its nature as a legal system, and about the importance of *shari'a* in guiding legislation in modern Muslim societies. One should be careful to avoid common pitfalls in such analysis. As noted by Peeters (1999), much of the (popular) debate on Islamic law and women's rights has been partisan, either incriminating (when Islamic law is criticized on the basis that it does not protect women's human rights) or apologetic (when it is argued that Islamic law recognized in many ways fundamental rights well before this was done in the West).

The incriminating approach is naïve, not only because it has little chance of success at convincing, but also because it does not take context into account. It does not make much sense to expect Islamic law, as formulated about a thousand years ago, to protect human rights, a concept that emerged only recently in the Western world. The fact that classical Islamic texts do not defend human rights as understood today cannot be used to incriminate Islamic Law. This would be like "judging Roman law by the yardstick of modern international public law" (Peters 1999). But this also implicitly means that a critique of the fact that in some majority Muslim countries the law today may not protect fundamental rights enough, and may not provide a measure of equality between men and women, need not a critique of Islamic Law itself, but should rather be a critique of state laws as they are implemented in specific countries. As argued by Behrouz (2003), it remains the responsibility of the state, in consultation with the religious leadership, to assess how to take into account instruments such as the Convention on the Elimination of All Forms of Discrimination against Women in order to promote gender equality.

The apologetic approach to *shari'a* is also inappropriate. It is clear that Islamic law probably had for many centuries a positive impact on women. As noted by Chaudhry

(1998) in a review of inheritance principles in Islamic law, “fourteen hundred years ago, Islam elevated women to a spiritual and legal status equal with men.” As early as in the seventh century *shari’a* granted to women a series of protections (including a legal personality as well as property and inheritance rights) that did not exist in many other societies in a similar way at that time. But this does not mean that Islamic law respected human rights as they are understood and implemented in modern societies, and it is also difficult to argue with the fact that today in many Muslim majority countries, women still cannot exercise some of their fundamental rights and do not have protections equal to those granted to men in a wide range of areas (An-Na’im 1998).

In what follows, a discussion is provided on the relationship between Islamic law and state law, referring as case studies to the issues of FGC and child marriage. For those not familiar with Islamic law, the paper first reviews briefly the main sources of Islamic law or *shari’a*. Next, as a case study, what Islamic law has to say about FGC as well as child marriage is discussed. Finally, a broader discussion of the relationship between Islamic and state law is provided, following some of the arguments put forward by An-Na’im (2009).

As a disclaimer, it must be stressed the author is neither a Muslim, nor an Islamic scholar, but simply a reader interested in those questions in part because they have substantial bearing for broader issues of human development and women’s rights, in this case in relationship to FGC and child marriage. Some of the questions discussed in this article are much debated, and the article is not meant to be authoritative in any way. It simply aims to be a contribution within the context of the special issue of this review devoted to child marriage and family law reform, so that other readers not necessarily familiar with the concepts discussed here can become more familiar with those concepts.

Sources of Islamic Law

Islamic law refers to a system of laws and jurisprudence associated with Islam (which literally means submission). This system was built over several centuries from multiple sources, all of which did not carry the same weight, neither historically nor today. In his overview of the origin and elements of Islamic law, Abdal-Haqq (1996; see also for historical details the volumes by Hallaq 2005, 2009a, 2009b) discusses both the sources of Islamic law (*shari’a*, which means the path to be followed) and the methodology used to deduce and apply the law to practical questions (Islamic jurisprudence or *fiqh*).

Consider first the sources of Islamic law. The primary sources are the *Qur’an* (that which should be recited, read or studied) and the *Sunnah* (the tradition of the Prophet Muhammad). The *Qur’an* is revealed by God to humankind through the Prophet. It has therefore the highest authority, which is to say that it is the deepest root (*asl*) of Islamic law. The *Sunnah* represents the actions and words of the Prophet, who is a model for Muslims to follow. *Hadiths* are reports by others of what the Prophet did or said, and they are considered as authoritative sources as well. Not all *hadiths* however carry the same weight. The *isnad* of a *hadith* is the chain of individuals who transmitted the deeds and sayings of the Prophet (there may be different chains as well for one deed or saying). If the *isnad* consists of disciples who are considered highly for their faith and wisdom and who report similar sayings or deeds by the Prophet, the *hadith* will carry more weight

than if only one disciple of lesser renown reports the saying or deed, or if the chain of reporting that links the *hadith* back to the Prophet has weak links.

Consider next the interpretation of Islamic law or *fiqh*, which literally means intelligence, and refers to the body of laws derived from *shari'a* principles through a process of deduction. As noted by Abdal-Haqq (1996), "While the principles and injunctions of the *shari'a* are infallible and not subject to amendment, *fiqh*-based standards can change according to circumstances." The process of *fiqh* itself has several components. The roots of *fiqh*, or *usul al-fiqh*, refer to methodological principles of interpretation, while the branches of *fiqh* or *faru al-fiqh* refer to the practice of the law, including the promulgation by Imams of *fatwas*. The process of *fiqh* is necessary because in some instances the Qur'an's injunctions are not easy to interpret. Exegesis of the Qur'an (*tasfir*) is thus needed, but different rules of interpretation have led to the co-existence of various schools of Islamic jurisprudence.

Five main methods for establishing *fiqh*-based law have been recognized by Islamic jurists. Collective reasoning achieving consensus (*ijma*) is highly regarded due precisely to the consensus being achieved. Individual reasoning by analogy (*qiyas*) is also admissible. A third method, *Istihsan*, consists in selecting one solution versus another typically in order to promote the public interest. One example quoted by Abdal-Haqq (1996) is the possibility for a physician to treat a person of the opposite sex when no alternatives are available. The fourth method, *Istihab*, refers to a principle of continuity whereby an existing situation is presumed to continue unless a proof is provided to the contrary. Finally the fifth method, *Urf*, refers of the possibility to follow local customs when these are not in contradiction with Islamic principles. Different schools of jurisprudence (*fiqh madhhabs* or *fiqh* ways of going) have emerged over time in part in reference to differences in what their original leaders treated as admissible sources of Islamic law. These schools are the Hanafi, Maliki, Shafii, Hanbali, and Jafari *madhhabs* (the first four schools belong to the *Sunni* tradition, with the fifth being instead *Shi'a*).

Female Genital Cutting

Divergence in the interpretation of *shari'a* in matters of family law exists among Muslim scholars. In order to provide a discussion of why various sources can be advocated to different effects, let's consider in this section the issue of FGC which remains practiced across much of Africa. FGC is associated with serious health risks for girls, and it results in part from (and possibly contributes to) the perpetuation of traditional gender roles in which women are often at a disadvantage. A recent UNICEF (2013) study suggests that 30 million girls may have to undergo FGC over the next decade.

As noted by Gemignani and Wodon (2015), the connection between Islam and FGC is by no means universal (see for example Gruenbaum 2001; Von der Osten-Sacken and Uwer 2007; Asmani and Abdi 2008). But at the same time traditional Islamic beliefs do contribute to the persistence of the practice due to the centrality of religion in the social life of villages and cities in majority Muslim countries, and the fact that most Muslims in Africa do believe that the practice is indeed recommended by their religion. While FGC predates Islam, and has been practiced by other religions, it is often more prevalent among Muslim populations in multi-religious states, and there is a long tradition of interpretation of the *shari'a* that validates the practice, even though this

tradition has been challenged with several countries outlawing the practice (with limited effect on practices on the ground, see for example Ako and Akweongo 2009).

FGC is practiced at various levels. So-called *sunna* (i.e., traditional) cutting or circumcision is the mildest form of FGC and it involves removing the tip of the clitoris with a razor or other tool. Clitoridectomy or excision entails removing most or all of the clitoris and sometimes all of the external genitalia. Infibulations are the most severe form of FGC and entail stitching the raw sides of the vagina after the removal of the clitoris. This last practice, which remains highly prevalent in some countries, has serious risks of medical side effects which can even in rare cases lead to death if the wounds do not heal.

A number of *shari'a*-based arguments have been made in favor of FGC, but most of these arguments appear to be weak upon closer inspection.[3] Because male and female genital circumcisions are not directly discussed in the Qur'an, references from the Qur'an that have been used to justify female circumcision are rather indirect. In verse 16:123, God tells the Prophet to follow the religion of Abraham, who is "a true believer." Abraham is considered as a model for Muslims. The Bible says that Abraham was put to the test by his Lord and this included getting circumcised at a late age (there are also several other passages in the Bible that recommend circumcision.) Since Abraham got circumcised, by extension one could argue that all Muslims should be circumcised. The argument is clearly rather weak and indirect, and thereby only somewhat rarely invoked. But in addition, it need not apply to female circumcision (which tends to be much harsher, and with potentially more medical risks than male circumcision).

With regards to the *Sunnah*, several *hadiths* discuss FGC. A first group of *hadiths* relates to ablutions after sexual intercourse. In mentioning circumcision these *hadiths* signal that circumcision was widespread and practiced well before the time of the Prophet (the practice was common among Jews and Christians), and recommended for men, but without strict normative content regarding the practice of FGC per se.

A more important *hadith* deals with the act of circumcision itself, and it is referred to as the "excisor's narration." In this *hadith*, Um Habibah, an exciser of female slaves, asked the Prophet whether excision was permitted. He responded: "Yes, it is allowed. Come closer so I can teach you: if you cut, do not overdo it (la tanhaki), because it brings more radiance to the face *(ashraq*) and it is more pleasant *(ahza)* for the husband" (there are slight variations in what the Prophet said). Thus, the Prophet suggested to the exciser to practice the lighter or "sunna" form of circumcision while at the same time prohibiting the harsher form of infibulation. In context, one could therefore argue that this hadith does not recommend circumcision, but rather restricts the more extreme forms of circumcision, but in the tradition, this hadith has been used to advocate for at least the milder forms of FGC. However, the hadith is considered as relatively weak (*da'if*) in terms of the strength of its *isnad* as well as its normative text.

A third group of hadiths suggests that cricumcision is good for moral virtues, which especially in the case of women relates to a certain conception of the proper attitude toward sexual pleasure, for example (in the case of the removal of the clitoris through FGC). The Prophet is also reported to have said that "Circumcision is a *sunna* (ndlr: recommended) for the men and *makrumah* (ndlr: an honorable deed) *for the women.*" Several other hadiths are attributed to him relating circumcisions to various other aspects of a Muslim's religious duty, including eligibility for pilgrmage. Yet the reliability of these *hadiths* has been debated and many are concidered as weak again.

Beyond the Qu'ran and the *Sunnah*, as mentioned earlier, *fiqh* has also been relied upon to discuss the practice of FGC. Rulings may take the form of *fatwas*, which are opinions rendered by prominent Islamic scholars in such a way that they can be easily understood by Muslim populations. Appeal to custom or tradition (*urf*) can for example be considered to establish a foundation for a practice such as FGC—which indeed predated Islam as long as the practice is not directly rejected in religious texts. Such sources will carry more weight if a consensus (*ijma*) is achieved among Islamic scholars on any given issue. While different interpretations of *shari'a* may exist in different countries, for any local interpretation of *shari'a*, what may matter the most is the consensus within a country, and within the specific tradition of Islamic jurisprudence that has developed in that country.

In the case of FGC, there is no clear consensus among Muslim scholars and jurists internationally, and this is also often the case even within a given country. The various schools of Islamic jurisprudence have held differing views on the practice, including as to whether the state can force a Muslim to submit to circumcision, or can prohibit the practice all together. As noted by Abdi (2008), the Hanafi view is broadly that FGC is optional (*sunna*), which means that those who practice it will be rewarded, but it is also not a sin not to practice it. The Maliki view holds that circumcision is mandatory for men and optional for women. The Shafii view holds that it is mandatory for both sexes. As to the Hanbali view, it is not fully clear as for some circumcision it is mandatory for both women and men, while for others it is mandatory for men and honorable (*makrumah*) for women.

Interpreting *Shari'a*: A Case Study

The above discussion outlines some of the arguments that have been made in favor of FGC, but it is clear that many of these arguments remain weak. In fact *Shari'a* also includes elements that can be invoked against the practice of FGC. The most important are the right to bodily integrity (*salâmat al-jism*), and the principle "no damage and no infliction" (*La darar wa la dirar*), which is the Islamic prohibition to not inflict damage on others if others in return do not inflict damage as well.

The role that these principles can play can be illustrated in the case of Egypt with a brief historical case study (historical because the events took place 20 years ago; see Balz 1998; Dupret 2001). In July 1996, the Egyptian Minister of Health promulgated a decree prohibiting FGC, and making it a crime to perform it. The decree was rapidly challenged in the Cairo Administrative Court by Islamic leaders who argued first that it violated *shari'a*, which is considered as the major source of legislation according to Article 2 of the Egyptian Constitution, and second that there was some consensus among Muslim jurists that FGC was a legitimate practice that was recommended in the prophetic tradition.

The plaintiffs won in the Administrative Court. The Court discussed the issue of FGC in light of a *fatwa* issued in 1981 by Shaykh Gad al-Haqq from the Egyptian Commission of Fatwas. Gad al-Haqq argued that it is not possible to abandon the teaching of the Prophet in favor of other teachings, even if those come from physicians, because medicine evolves and is not constant, and that "If the people of a region refuse to practice male and female circumcision, the chief of the state can declare war on them." The Court also argued on technical grounds that doctors and surgeons had the right to

practice medicine, including FGC, and that restrictions on such practices should take the form of a new law, and that the Minister of Health's decree did not have the force of law.

The Minister of Health appealed to the Supreme Administrative Court which ruled on admissibility that state legislation could indeed be challenged by individual plaintiffs on the basis that it might violate *shari'a*, but also that the Court reserved itself the right to adjudicate disputes by determining the substance of the principles of *shari'a* involved and how they apply in particular issues. In the case of FGC, the Administrative Court ended up ruling in favor of the prohibition of FGC by the Minister of Health and it based its decision on the principles of bodily integrity and no damage, no infliction.

In terms of the appropriate ways to interpret *shari'a*, the court stated that "The rules subject to interpretation are not stable in terms of their immutability and their meaning or in both respects. They belong to the realm of *ijtihâd*.... Their application is flexible and open to change according to time and clime, in order to ensure flexibility and dynamism, when coping with new developments in their various appearances, when regulating the matters of man for the sake of protecting their legally recognized interests and putting the general aims of the *shari'a* into practice." As to FGC, taking into account the risks involved in the practice, the court argued that there were no legitimizing reasons to force FGC on women. The Court also held that circumcision was neither a duty (*fard*) nor an obligation (*wâjib*) under Islamic Law, and again that the *shari'a* principle that should rule in this matter was that of *lâ darar wa lâ dirâr*. In his analysis of the Court's decision, Blaz (1998) concludes that while *shari'a* was recognized in the Egyptian Constitution as the major source of legislation, this did not prevent a judicial review of Islamic legal principles by the judiciary to prescribe a specific "legally acknowledged reading of the traditional body of *fiqh*" that takes into account modern considerations.

Child Marriage and *Istihsan*

Having discussed the question of the place of FGC in Islamic law both in general terms and through a case study, let us now turn more briefly to consider a second issue, that of child marriage. As is the case for FGC, there is divergence in the interpretation of what *shari'a* has to say about child marriage (usually defined as marrying before 18), and whether it is permissible or even recommended under Islamic law. Also as was the case for FGC, the practice of child marriage is widespread, not only among Muslims, but also in other faith traditions and communities. Today, child marriage affects nearly 40,000 girls each day according to UNICEF (2014), and estimates suggest that 140 million girls may marry early over the next decade if efforts to eliminate the practice are not successful.

There may be more support for child marriage than FGC among Islamic scholars. After all, the Prophet had nine wives including Aisha, an orphan said to be nine when she married. Teen marriage was the norm in the seventh century and before that (in the Christian tradition it is often suggested that Mary was 12 to 14 years old when she married Joseph). Pre-teen marriage was perhaps less frequent, but by no means rare.

An important verse of the Qur'an (4:6) suggests that child marriage may be permitted as long as the child is considered sound of judgment: "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up." Several passages in the Qur'an emphasize the need for girls to reach puberty before

getting married, but one specific verse (4:65) discusses conditions under which a man may divorce his wife, and how much time a man must wait before doing so. This period of time is related to the wife's menstruation and part of the text mentions women who do not menstruate. This part of the text has been used by some Islamic scholars as a justification for allowing marriage before puberty, but it could as easily be interpreted as referring to women who do not menstruate for other (possibly medical) reasons than the fact that they may be young.

Overall, on the basis of these and other verses in the Qur'an and the interpretation of *hadiths* as reported in the *Sunnah*, many Islamic scholars argue that a girl should at least reach puberty before getting married, which could still lead to marriage before the age of 18. In addition, a father (or guardian) may arrange for the marriage of a daughter who has not yet reached puberty if this is in the interest of the girl. On the other hand Islam does require both men and women to voluntarily consent to their marriage. Given the limited ability of children to provide well-informed consent for marriage, this lack of maturity could be used as an argument not to allow child marriage at all. Yet as noted however by Walker (2015) in a separate paper in this special issue, this argument is typically not seen as highly convincing by Islamic leaders to simply forbid child marriage.

How then could some of the resources of Islamic law be used to argue against child marriage? The concept of *Istihsan* discussed earlier could be value. *Istihsan* refers to preference for one option versus another given its contribution to the common good. At least in some schools of jurisprudence *Istihsan* can be used to promote one interpretation in *fiqh* versus another as part of the process of personal interpretation of the law (*ijtihad*).

How might this work? There is now substantial evidence that child marriage has a range of negative impacts on girls, their children, and their communities (see the review by Edmeades et al. 2015, in this special issue). The practice reduces the possibility for girls to enroll in secondary school and complete their education, which has negative effects on their ability to work when reaching adulthood and thereby leads to a higher risk of poverty for their family. Child marriage has also been shown to contribute to higher rates of infant and maternal mortality, as well as to higher rates of morbidity for both the girls when they deliver at a young age and their children (for example, the risks of low birth weights and stunting are higher for children born of adolescent girls). Using this empirical evidence one could argue with legitimacy on the basis of *Istihsan* that child marriage should be avoided. But one should also be aware of the fact that even legally prohibiting child marriages would probably not be enough in order to change existing cultural patterns.

Nature and Role of Islamic Law

As discussed in previous sections, various interpretations of *shari'a* can be articulated with regards to FGC and child marriage, and more generally in matters of family law and beyond. These interpretations can be considered as part of *fiqh*, which itself is a human rather than divine judgment. Beyond the possibility of different interpretation of *shari'a* on specific issues, one should also highlight the fact that there are also different interpretations of the relationship between *shari'a* and state law. While some argue that *shari'a* should become state law, others argue that *shari'a* and state law

are fundamentally different, so that it does may not make sense to try to adopt *shari'a* as state law.

One of the most prominent advocates of the latter interpretation of *shari'a* in relationship to state law is Abdullahi An-Na'im. An-Na`im (2008, 2009) advocates for a dialectic relationship between Islamic and State law that would respect the characteristics of each and would therefore not lead to an imposition of Islamic Law as state law. In order to do so, he draws on both historical review and contemporary issues to provide illustrations as to the potential risks and pitfalls of imposing Islamic Law as state law.

According to An-Na'im imposing Islamic law as state law simply on the basis of the belief that Islamic law is mandated by God would not respect the process through which state law is to be constructed in modern societies that both affirm constitutional principles and respect human rights. Imposing Islamic law as state law in majority Muslim countries would violate the rights of minority non-Muslims. In an essay on *dhimmihood*, citizenship, and human rights, An-Na'im (2010) further argues that the sole consideration that there could be different classes of citizens would be unacceptable under human rights standards (the *dhimma* in pre-modern Muslim states enabled Peoples of the Book—Christians and Jews—to be protected in their person and property provided they would pay taxes and practice their religion in private without evangelization).

The same problem could arise in entirely Muslim societies because various individuals might interpret Islamic law differently. There are for example different views among *Sunni* schools of Islamic jurisprudence about matters of law, not to take into account *Shi'a* and other interpretations. These divergences are to be expected given that human agency has always been needed to interpret the Qur'an and the *Sunnah*. Revealed and prophetic texts were written for guidance and did not constitute legal codes at the times they were written. Imposing a specific interpretation of Islamic law in any given Muslim society may very well violate the rights as well as the beliefs of fellow Muslims.

An-Na'im goes further in arguing that Islamic law and state law are also different in nature so that it is counter-productive to impose Islamic law as state law or to consider state law as representing Islamic law in an Islamic state. Islamic law is a religious normative system that can be adhered to only freely by Muslims. State law is mandatory and enforced via the coercive power of the state. When principles derived from Islamic law are enacted into state law, these laws become part of a set of secular laws and should be recognized as such, and do not belong any more to the realm of Islamic law. Said differently, when principles from Islamic law are enforced by the state, they lose to a large extent their religious nature. One could argue that imposing Islamic law as state law could be contrary to the spirit of Islam because Muslims would not be able to adhere to their faith freely. But it could also be detrimental to Islamic law itself because it could freeze Islamic law in a certain codification, thus restricting the ability of Muslims to interpret Islamic law, something considered essential in the *Qur'an*. Even if it were feasible to reach unanimity at a point in time and space on what constitutes a proper interpretation of Islamic law, this would not settle the issue as other interpretations could still arise.

From these two sides of the argument and his review of the historical emergence of both Islamic law and state law, An-Na`im (2009) concludes that Islamic and state law are incompatible as neither can be equated to the other. While Muslims have a religious duty to observe Islamic law, the state should remain broadly neutral regarding religions,

where neutrality is to be understood in the specific sense that the state should not enforce Islamic law, or any other religious point of view, as state law.

While Islamic law and state law are fundamentally incompatible in terms of their respective natures, they are nevertheless compatible in terms of potentially mutually beneficial relationships. The distinction between Islamic and state law does not mean that there can be no fruitful interactions between both. For example, Islamic law requires Muslims to obey state law for the sake of peace and harmony. In most societies there is a relationship between law and morality, with laws often being derived from a shared understanding of moral principles, and moral principles themselves often interpreted through religious lenses. Moral principles, and Islamic law in Muslim societies, can provide legitimacy to state laws, or inversely can be used to challenge specific laws as long as this takes place through a process of civic reason. Another example of positive interaction is the fact that there are many areas of common interest between Islamic and state law, so that the jurisprudence from Islamic law can be useful to inform state law.

The dialectic between Islamic and state law should be informed through a process of deliberation or civic reason which permits a public discussion of legislative proposals that may be inspired by religious beliefs but that should not necessarily lead citizens to challenge each other's religious views. An-Na`im's concept of civic reason is fairly close to that of public reason in Rawls' (1993) political liberalism, but An-Na`im emphasizes somewhat more the grounding of civic reason in the debates that need to take place within civil society, leaving ample space for argumentation by religious groups. The concept of civic reason encourages proponents of any specific interpretation of Islamic law to persuade fellow citizens on the appropriateness of implementing aspects of Islamic Law as state law not on the basis of their religion. This can be done among others on the basis of benefits that such implementation could provide for society. But again, this cannot be imposed and this must be done without violating individual rights.

An-Na`im finally emphasizes the fact that while the state must enforce state laws, these laws cannot cover the full realm of the duties and obligations that individuals have versus each other and to their community according to Islamic law (and Islamic law itself also does not represent the totality of Islam). To conclude this brief summary of An-Na`im's argument, Islamic law and state law are to be seen as complementary to each other, but each should ideally operate within its own area of validity and authority.

Conclusion

Views on women's rights in Muslim societies, for example as they pertain to FGC or child marriage, are closely related to deeply held religious beliefs. It is therefore not surprising that Islamic objections to the prohibition of FGC or child marriage, and more generally family law reforms, have been pervasive in a number of countries. Given the importance of those issues, the aim of this article has been to suggest that alternative interpretations of the requirements and nature of *shari'a* can be articulated, including in favor of the prohibition of FGC and perhaps even child marriage, and more generally in favor of the adoption of family law reforms. Whether the type of argumentations presented here on some of those topics and on the relationship between Islamic law and state law would convince opponents of reforms remains to be seen. But what is clear is that trying to come to some form of reasoned debate, and hopefully consensus, by making the case for reform within the realm of *shari'a* and *shari'a* discourse, is needed for

reforms to succeed. This is true not only in terms of reforms being formally enacted into law, but also in terms of the likelihood of actual implementation on the ground—with the support of local communities, where local faith leaders have a lot of influence.

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[1] The term female genital mutilation (FGM) is also used by the international community.

[2] The author is with the World Bank, but this paper was prepared on a personal basis as part of coursework towards a PhD in Theology and Religious Studies. The views expressed in the paper are solely those of the author only and need not represent those of the World Bank, its Executive Directors, or the countries they represent. The paper benefitted substantially from discussions with Abdullahi An-Na'im.

[3] This discussion is based in part on an Amnesty International text available without author or date no longer available on the original website. For a discussion of the issues in multiple traditions and a position against circumcision, see also Abu-Sahlieh (2002a, 2002b).