

Introduction

IN EARLY 2004, in a case that received extensive coverage in the Egyptian media and on Arabic satellite channels,¹ Hind al-Hinnawy, a twenty-six-year-old Egyptian set and costume designer from a well-to-do family in Cairo, secretly married twenty-four-year-old television actor Ahmad al-Fishawy in a *urfi*, or unregistered “customary,” marriage contract. Unlike most such relationships, however, al-Hinnawy revealed the relationship to her parents because she became pregnant, although she waited until the second trimester so they would be unable to pressure her into having an abortion. The relationship between al-Hinnawy and al-Fishawy had fallen apart over the pregnancy, and al-Fishawy and his parents, well-known actors themselves, were unsuccessful in their attempts to convince her to have an abortion.² Al-Fishawy, who had become famous as the host of a television program “dispensing advice to devout Muslim youth,” which was subsequently canceled, denied that the marriage had occurred or that they had had sex, reportedly telling al-Hinnawy that he “would never marry an unveiled woman.”³

After having the child, al-Hinnawy filed a lawsuit against al-Fishawy in Cairo Family Court in December 2004, requesting he be compelled to submit to a DNA test in order to validate her daughter’s biological paternity.⁴ While uninterested in continuing a relationship or his money, she wanted to provide her daughter with legitimacy and Egyptian citizenship, which require a birth certificate that includes an Egyptian father’s name.⁵ Al-Hinnawy reported that in spring 2004, when she informed al-Fishawy of the pregnancy, he “nicely asked for both copies [of the marriage contract] so he could make the marriage official by registering it” but never returned her copy.⁶ Al-Hinnawy recognized

that she went against the social grain in Egypt by preferring what most consider “public disgrace” to “hypocrisy.”⁷

Al-Fishawy refused to take the DNA test ordered by the court in February 2005.⁸ In January 2006, a lower Egyptian family court denied al-Hinnawy state recognition of the legitimacy of the customary marriage on the basis that the witness testimonies were insufficient, no documents of proof were proffered, and “formal paternity could not be granted to children conceived out of an illicit relationship.”⁹ In March 2006, the Cairo Family Appeals Court overturned that ruling, recognizing the marriage and the young child as Ahmad al-Fishawy’s legitimate daughter, based on testimony from neighbors, witnesses, and other evidence.¹⁰ Al-Fishawy divorced al-Hinnawy following this ruling.¹¹ In late November 2008, al-Fishawy admitted during an Egyptian television talk show (*al-Bayt Baytak*) interview that he had taken a DNA test that affirmed he was the biological father of the child, named Lina. He shared that he and his parents were now on friendly and respectful terms with Hind al-Hinnawy and maintained a loving relationship with Lina, and he provided video and picture evidence attesting to this relationship.¹²

Al-Hinnawy is unusual in that her parents, an economist and a psychology professor, publicly advocated for her and their granddaughter after recovering from their shock.¹³ In a telling Arab satellite televised interview, Hinnawy’s mother criticized “boys and girls” who engaged in such relationships but challenged males: “The world is changing and the boys need to know that they cannot get away with everything. They need to take this issue seriously and ethically. The contract is not just a paper.”¹⁴ Hind al-Hinnawy viewed the publicity of the case as important for other Egyptian women in her predicament and had a similar message for men: “You are not always going to have [sexual] relations and run away.”¹⁵ By insisting that her intimate concerns had political and social dimensions that require public address, al-Hinnawy encouraged collective claims-making—many women, as well as human rights and women’s rights organizations, advocated for “Hind” and her daughter at all stages. The case encouraged such organizations to examine the widespread problems Hind’s situation illustrated with respect to gendered citizenship rights.

Al-Hinnawy’s case highlights some of the central and related concerns of this book, including the nature of emerging marital and sexual practices, values, and desires; pervasive “family crisis” discourse; transformations in women’s gender ideologies; and the wider political and social implications of postcolonial legal and pedagogical projects absorbed with managing, defin-

ing, developing, and protecting the “national family.” The principal sites of this transnational and comparative research are Egypt and the United Arab Emirates (UAE), although many of the phenomena examined can be found in other parts of the Middle East and North Africa.

Marriage, Divorce, and Weddings in Historical and Social Perspective

The conflict between al-Hinnawy and al-Fishawy about sex and the character and essence of marriage, paternity, and citizenship is only unusual in the notoriety that came to be attached to the couple and their situation. It unfolded not merely in private relationships and Egyptian courts, as would usually be the case for most people in similar positions, but in the limelight of new and old media. Customary marriage is one form of contemporary relationships among Muslims in a history of contestation and multiplicity as to the definition of licit marriage. Rather than being a static institution, marriage is regularly buffeted by legal, political, social, and economic developments in the Middle East and North Africa, as it is everywhere.¹⁶ Not surprisingly, cultural norms, practices, and traditions related to marriage, divorce, and weddings in the UAE and Egypt are plural. To be married is often understood as following the example of the Prophet Muhammad and completing half of the religion’s requirements.¹⁷ Marriage is also often understood to provide a licit framework for male sexual drive, especially given the likelihood that heterosexual activity might lead to offspring.¹⁸ The most common terms used to refer to marriage, *nikāh* and *zawāj*, are deployed in different ways in various contexts. For example, *nikāh* can refer to legally contracted marital sexual cohabitation, the marriage contract itself, heterosexual sex, or any type of sexual activity as, for example, in *nikāh al-mahārim*, or incest.¹⁹ The term *zawāj* is agreed by Islamic jurists to include “all the aspects of marriage.”²⁰

Muslims have engaged in a range of marriage practices that have been endorsed as orthodox by Islamic theorists and jurists. Muslim marriage is normatively understood to require a husband to provide material maintenance (*nafaqa*) at a level appropriate to the wife’s class, housing for the wife and child(ren), and maintenance and housing for his children in case of divorce. In return, a wife is expected to provide her husband with exclusive sexual access and to be obedient, if her Muslim husband is righteous. The Qur’an states that in addition to obedience to the husband, the virtuous Muslim woman is modest (as is expected for men) and exhibits motherly love.²¹ This economic and

social contract of exchange is premised on a gender complementarity framework that assigns a husband to lead or have guardianship (*qiwāma*) over the household, wife, and children.²² Classical Islamic traditions did not recognize a shared matrimonial regime, sometimes characterized as communal property.²³ Ottoman court records indicate that judges always buttressed a wife's right to secure her material support from the husband, and "[b]y repeatedly raising this issue," as Judith Tucker convincingly argues, "women also contributed to its centrality in the discourse on marriage."²⁴ This understanding of husbands as the normative breadwinners and social leaders of the household and wives as separate economic entities was incorporated into the rationalized family law of most postcolonial Middle East and North Africa states and is most relevant during a divorce, when the husband and wife are each supposed to leave the relationship with the property, gifts, and earnings they brought into or accumulated during the marriage, with the exception of what the husband spent for maintenance.

Different types of divorce and annulment can be initiated by Muslim men and women, and scholarly research on these issues in various Islamic traditions and historical and geographic settings indicate that the Arabic terms used to describe them do not imply the same conditions or circumstances: one cannot simply trace consistent genealogies and meanings for marital dissolutions called *khul'* or *faskh*, for example. The easiest divorces then and now are those that are mutually sought and where the couple has no disagreements about the rights and obligations that follow, including child custody and support for the wife. Male repudiation of the wife for any reason has also been an easy (although often economically and emotionally costly) and unilateral prerogative for Muslim husbands and usually occurs out of court. Women have been unable to initiate divorce as easily, although they often successfully resorted to Islamic judges or courts for a divorce judgment or to sue for a husband's material obligations if he initiated the divorce in the Ottoman period.²⁵ In Sunni Islam, the Maliki jurisprudence tradition was the most liberal in allowing women to obtain a divorce, followed by the Shafi'i and Hanbali schools.²⁶ Wife-initiated divorce was particularly difficult in the Hanafi tradition since it provided limited valid grounds of "harm" for women and made it the most difficult to prove such grounds to a judge.²⁷

One type of divorce initiated by women that did not depend on any male failure to fulfill a contractual obligation, termed *taṭliq* through *khul'*, was often recorded in Ottoman court registers in Syria and Palestine; women needed to offer

no valid reason in such cases although the husband typically had to agree and the wife usually had to forfeit her delayed dower and possibly give the husband other compensation.²⁹ Such divorces were also common in the court records of Ottoman Egypt,²⁹ although Abdal-Rehim Abdal-Rehim found no records in which the judge denied a wife's request for *khul'* divorce even when the husband did not agree to the divorce. Moreover, in some of the *khul'* cases, the wife did not pay the resistant husband compensation or forfeit dower.³⁰ In unhappy marriages in which divorce is sought by the husband in contemporary Egypt, he will egregiously violate marriage obligations to force her to ask for a divorce but is nonresponsive to court requests to appear so as to pressure the wife to renounce or reduce economic obligations required of him if the divorce is determined to be his fault.³¹ Typically, when a wife claims she wants a divorce on the basis of being harmed, a husband accuses the wife of disobedience without justification (*ḥaq al-tā'a*), opening the possibility that a court could find her guilty of such and rule that a husband does not have to provide her with the delayed dower or alimony support required if she was divorced through no fault of her own.³²

Although men have this right, native women in Trucial Oman (the previous name of the territories currently designated the United Arab Emirates) and the UAE were rarely repudiated (unilaterally divorced) by a husband. As Linda Soffan writes, "Divorce in tribal society is usually for reasons of barrenness or incompatibility."³³ Girls and women who found their married lives unbearable usually behaved in such a manner that men were compelled to divorce them, usually before the birth of children.³⁴ Married men with children typically did not prefer divorce because they lost contact with their children and had to pay the delayed dower in addition to major expenses required for any new marriage.³⁵ Christine Eickelman similarly found male-initiated divorce to be rare in nearby inner Oman in the late 1970s because of "its repercussions upon the complex, interlocking ties within the family cluster." Men were more likely to marry "an attractive, younger second wife."³⁶ Polygyny in Trucial Oman was generally limited to wealthy and politically influential men until the arrival of social and economic changes introduced by oil, gas, and other wealth. State elites distributed some of this wealth to natives, allowing Emirati men of more modest means to marry a second, younger, woman and to have additional children rather than to divorce a first wife.³⁷

Divorce and remarriage were relatively common and considered socially and religiously unproblematic in Trucial Oman/UAE and Egypt. Ken Cuno writes that before the twentieth century, men and women in Egypt experienced

little stigma as a result of divorce and remarried easily, which often elicited condemnation from European Christian observers. In the first half of the twentieth century, Egypt had the highest divorce rate among countries reporting data,³⁸ with one in three marriages in the 1930s ending in divorce.³⁹ Similarly, both partners easily remarried after divorce or widowhood and divorced people experienced little stigma in Trucial Oman/UAE.⁴⁰ Indeed, widowed or divorced native women rarely had “to look far for a new husband” since “women of the tribe were in high demand” given high maternal morbidity rates during the birth of a second child.⁴¹ By the late 1970s, however, Soffan notes that divorce was “increasingly frowned upon by the younger educated couples.”⁴² Emiratis I have interviewed since 2003 agree with this assessment. The increased censure of divorce is part of a newly dominant definition of the good modern family that frames divorce, male polygamy, and marital seriality as threatening to the well-being of the nation-state.

Guardianship power (*wilāya*) over the marriage of daughters differs in Muslim jurisprudence traditions. In the Hanafi tradition, Muslim women of majority, a status based on reaching physical or social maturity (*bulūgh* or *rushd*), had the legal right to refuse a marriage offer made through a male guardian (*walī al-nikāh*); it was forbidden for women to be married against their consent;⁴³ male guardians were required to be present and approve the marriage of any minor girl, usually below the age of fifteen; and females of majority could contract their own marriages. However, judges had the power and often did annul a marriage if the male guardian could show that the groom was not suitable to the woman’s status (lack of *kafāa*),⁴⁴ was dishonest about his or his father’s lineage or occupation, or the dowry’s value was deemed inappropriate to the socioeconomic background and status of the woman’s family.⁴⁵ The Maliki and Shafi’i jurisprudence traditions, by contrast, considered a female to be a minor and thus unable to contract her own marriage without male guardian permission *unless* she had been previously married. They also allowed a father to give a daughter in marriage, conclude a marriage contract on her behalf, and consent or object to her choice of a husband if such decisions are based on her best interests, take “her wishes into consideration,” and do not prevent her from marrying “without proper justification” (“improper” including status inequality or inappropriate dowry).⁴⁶

Amira Sonbol’s research demonstrates, nevertheless, that actual rulings within a given juridical tradition in Ottoman Egypt were inconsistent and contingent on the historical moment, the judge, and the local precedents that took

into account the social status, “family, money, beauty,” or level of male protection for the bride.⁴⁷ She found examples of Egyptian Hanafi judges validating forced marriages, marriages in which a father arranged a match with a man not of the bride’s status, and marriages in which the potential husband was the “guardian” giving the bride in marriage (to himself). Sonbol also found that an adult woman in late Ottoman Egypt could rarely “transact her own marriage against the wishes of her family,” even when she had been previously married.⁴⁸ Ron Shaham’s analysis of Egyptian *shari’a* court records for the first half of the twentieth century similarly found that adult women rarely married without paternal permission and were “often” married by their male guardians “without being notified about the marriage or against their will,” usually to control property or reinforce social or familial ties.⁴⁹ By contrast, Sonbol found contracts in which women (1) married themselves to men even in traditions that do not allow them to do so independently and (2) were the only witnesses to a marriage.⁵⁰ Sonbol reinforces a point also made by Annelies Moors that normative religious texts, laws, and requirements must be compared against practices.⁵¹

In contemporary Egypt, codified law based on the Hanafi tradition allows a woman “with full legal capacity,” which is determined as sixteen years or older, to marry without male mediation or permission, “whether she be virgin or previously married.”⁵² Egyptian legislators have recently attempted to codify the Maliki tradition in order to invalidate marriages that do not have guardian approval.⁵³ In the dominant Maliki and Hanbali traditions of the UAE, if a woman has not been previously married, the legal male guardian of the bride must approve of the match.⁵⁴ If parents arranged a marriage, a “girl was always asked for her consent to the marriage in front of the [local religious leader], another trusted and well-known male witness or before a group of people,” although she was unlikely to withhold such consent to a guardian.⁵⁵

An Islamic marriage ceremony typically begins with recitation of the opening passage of the Qur’an (not required), the *fatiha*, followed by completion of a witnessed and consensual contract that includes a verbal offer and acceptance between the two parties to the contract or their representatives.⁵⁶ Marriage registration requirements were instituted at different points in the twentieth century by most Middle East and North Africa states and have no bearing on whether a marriage is licit in Islamic terms. Sonbol makes the point that the formula of offer and acceptance is not specific to marriage contracts or even religious in nature; it is present in all contracts of exchange between “two parties with conditions for continuation and a legal system that determines how the contract could

be terminated.⁵⁷ The marriage contract is required to be undertaken verbally in front of witnesses who can repeat and verify the details in case marital conflicts emerge, accusations of adultery are made, or either party does not gain their rights or fulfill their obligations.⁵⁸ Marriages in which a groom asks witnesses to keep the marriage secret have been considered invalid, although the Hanafi and Shafi'i jurists have held that failure to announce a marriage beyond the minimum of two upright witnesses and the two parties to the contract does not make the contract secret or invalid.⁵⁹ Normatively, the Muslim marital contract requires a gift for the bride from the husband. While usually substantial, the material value and payment conditions of the dowry have always varied for differently situated women.⁶⁰ Similarly, the period preceding the sharing of a home by the married couple is marked by a range of ceremonies and celebrations that differ by class, ethnic, regional, and religious differences and are "subject to the historical transformations of the region."⁶¹

Marriage in Egypt is usually a series of events that may or may not occur in stages that are distributed over days, months, or years.⁶² Initial discussions between families are followed by research, if needed, on the backgrounds of the potential bride and groom by the family of the other side. If all goes well, there is a *shabka*, considered the beginning of an engagement period, in which jewelry (at least a pair of gold bracelets) and other gifts are given to the bride by the groom.⁶³ It is quite common for engagements to be broken off as this is the most acceptable period for a couple to get to know each other, especially among working-class women.⁶⁴ A marriage contract is completed and signed by the couple, two witnesses, and a religious official or registrar during the *katb al-kitāb* (writing of the contract) stage. The marriage may be celebrated and consummated before the couple lives together, in a ceremony called the *zafāf*, *dukhla*, or *gawāz*.⁶⁵ Money is saved by all parties as the marriage stages are combined.⁶⁶ Egyptian custom includes an additional written contract that lists the furniture and other gifts given to the bride (from both sides of the family) for the marital home, with the often inflated value of each item and a stipulation that they "are the sole property of the bride."⁶⁷ Any lawsuits related to these items, their value, and ownership in situations of divorce are addressed by criminal rather than civil courts.⁶⁸

As a large body of research on contemporary Egypt has demonstrated, including the important work of Diane Singerman, marriage is typically the point at which the largest "intergenerational transfer of wealth" occurs for most people.⁶⁹ From a parental perspective, the goal is to assure that the bride

and groom have as much as possible of the resources required for a successful marital life, so that “they are only responsible for eating and living.”⁷⁰ Poor and working-class women begin saving and working from a young age to purchase a trousseau (*gihāz*).⁷¹ The major costs related to marriage remain the responsibility of the groom and his family;⁷² although they are increasingly split between the two families.⁷³ The higher the contribution of the bride and her family to the trousseau and furnishings, the more prestige and negotiating power she enters the relationship with.⁷⁴ In 2006, the bride’s side in Egypt on average paid about 31 percent of marriage costs while the groom’s side paid the remainder.⁷⁵ Material contributions toward marriage and thus parental influence on a son are the highest among the richest and poorest parents.⁷⁶ The main area of significant parental support for many married couples is in housing.⁷⁷ In urban contemporary Egypt, a symbolic amount of dowry is registered in the marriage contract by an increasing number of couples,⁷⁸ and in recent years, a husband’s contributions in furniture, appliances, and “key money” (a down payment to rent a place) are more valued than any dowry, a high dowry, or jewelry.⁷⁹ Ostentatious wedding practices have increased in urban Egypt among the wealthier classes, sustaining a “wedding industry” that includes planners, DJs, “decoration specialists, video film specialists, flower decorators, light system suppliers, fancy wedding dress designers, makeup specialists, wedding magazines to advertise hair dressers, dress makers, [and] photographers.”⁸⁰ These products and services, which are unaffordable to the vast majority of Egyptians, constitute new desires for the thousands who attend or view lavish wedding celebrations on streets, television, or as poorly paid hotel and service staff.

Marriage has become increasingly expensive in the UAE as well. Contemporary UAE weddings are highly elaborate, with families often incurring great debt to pull off what Jane Bristol-Rhys calls “truly spectacular” events in an effort to have “the wedding of the year.”⁸¹ Most couples have wedding parties in hotels and take a honeymoon abroad.⁸² The weddings she attended averaged eight hundred guests, four hundred from each side of the family, easily reaching approximately US\$250,000 for each wedding’s event expenses alone.⁸³ ‘Abdul Salam Darwish, a high-ranking official in the reconciliation section of the Dubai courts, contends that weddings have indebted 90 percent of Emiratis at an average of “40 million dirhams per young man, the equivalent of 12 million [U.S.] dollars.”⁸⁴ Bristol-Rhys interviewed forty women from Abu Dhabi who were between sixty-two and seventy-five years old about the weddings of their youth. They reported that weddings were celebrated over three or four

days and were cooperative endeavors held at tent encampments with temporary abodes assembled by extended family groups as they arrived for the occasion.⁸⁵

Marriages in the UAE are usually arranged by mothers, sisters, and aunts who find potential partners, research possible brides or grooms and contact their parents, purchase gold for the bride, and make economic arrangements, although the male guardians are technically in charge.⁸⁶ The marriage contract in the Emirates is typically completed in a ceremony called *al-milka* that is officiated by the *muṭawwaʿ* (also referred to as *al-millik*), requires at least two witnesses, and precedes the wedding.⁸⁷ The *milka* ceremony usually occurs at a mosque or the bride's home and the conclusion of the contract is often "announced by firing a number of shots."⁸⁸ Heard-Bey stresses that no matter how close the premarital familial ties (for example, in cases of cousins marrying),⁸⁹ at least an oral contract was "almost certainly worked out" and its safeguarding rests largely in the fact that "everyone in the community is told [its] details."⁹⁰ The "most important" part of the marriage contract is usually the money, livestock, or real estate given directly to the bride as a dowry and expected to be kept by her in case of divorce.⁹¹ A delayed dowry must also be stated and paid in case of divorce or other conditions specified by the wife.⁹²

Secondary sources and field research support the dominant accounts that immediate and delayed dowry expectations have regularly increased since the 1970s in the UAE. Soffan writes that even "before oil wealth" men sometimes had to wait until "late in life" before they accumulated the necessary funds to marry, although the situation seemed difficult in a different way in the 1970s, as parents of daughters increasingly vied to "set the highest possible dowry."⁹³ Emirati women complained to her of feeling as if they were being sold and worried that native men were "marrying girls from outside the Emirates (many Indians and Egyptians, especially)." Legal attempts by the federal government in the 1970s to limit dowry amounts were unsuccessful.⁹⁴ More recently, UAE rulers have ineffectively decreed limits on dowry requests.⁹⁵ Religious leaders in the UAE and Egypt have, in turn, promoted the idea that marriage only requires token dowry, although this idea has not taken hold.⁹⁶

Consummation of the marriage usually occurred in a number of stages in Trucial Oman/UAE, beginning in the bride's home and bedroom assisted by a midwife (who may have circumcised the younger girl) or a hairdresser. After about a week, the couple moved to the home provided by the bridegroom.⁹⁷ Until the 1980s, an Emirati bride rarely interacted with a groom until the marriage was consummated.⁹⁸ Today, brides and grooms regularly visit,

although usually in chaperoned or group situations.⁹⁹ In a 1986 study of the UAE, Malcolm Peck notes a weakening of patriarchal authority as members of extended Emirati families increasingly lived in separate abodes, facilitated by government money for housing. Emirati men and women expected to exercise “greater choice” in marriage partners and partners were increasingly of “similar age” because of the high number of native women who complete university first. Moreover, greater leisure time had led to expectations of shared interests and recreation by the married couple, strengthening companionate bonds.¹⁰⁰

People in the UAE, Egypt, and other places contract customary marriages of the sort engaged in by Hind al-Hinnawy and Ahmad al-Fishawy in order to avoid the elaborate rituals, significant material costs, parental control, and complicated social expectations attached to engagements, weddings, and marriages, as well as to bypass cultural and social restrictions on heterosexual relations outside of marriage. Unlike regular marriages, most customary marriage contracts are not widely publicized by the couple, are short-term in practice, and do not require men to provide women with housing and economic maintenance. These contracts are also used in many instances to bypass the requirement in some of the classic Islamic legal schools for permission to marry from a girl or woman’s male guardian. As the al-Hinnawy case illustrates, when a woman citizen in such a relationship becomes pregnant and a man denies he is married to her, significant legal, political, and social dilemmas result because in Egypt and the UAE that child’s citizenship status depends on the mother being *licitly married to a male citizen*. In both countries, *‘urfi* paper contracts have a *volla!* quality of protection to them in that they can easily be waved in front of disapproving family members, the public, or the decency police after sexual partners have been caught or must reveal a relationship.¹⁰¹ The contracts also provide social flexibility if they are dated inaccurately, for example if a pregnancy results from a sexual relationship that must be legitimized post facto.

In avoiding states, families, and established religious authorities, customary marriages in their contemporary forms can facilitate nonheterosexual marital unions. Sexual and gender-“queer” practices and identities are recognized as indigenous, contrary to moralistic rhetoric emanating from conservative circles that condemns them as signs of Westernization or cultural invasion, and they are facilitated by gender segregation in some communities.¹⁰² One can assume that the oral or written customary contracting of marriage was part of the plan for a November 2005 mass wedding ceremony for male couples (in male and female dress) in a hotel along the Abu Dhabi-Dubai highway in the