

# Islam, virginity, and public outrage in France

19 NOVEMBER, 2008

tags: Islam, Islamophobia

by Jovan Maud

Yesterday's Herald **reported** (<http://www.smh.com.au/articles/2008/11/18/1226770388616.html>) on a case in France in which a requested marriage annulment made by a Muslim man after he discovered that his wife was not a virgin was overturned. The article states that:

*Public outrage at April's annulment ruling forced the Government to order the case be reviewed, against the wishes of both spouses.*

*The groom, a Muslim engineer in his 30s whose name was not made public, sought the annulment after realising his bride was not a virgin on the night of their marriage in a civil ceremony in July 2006.*

*His wife, who admitted to him she had had premarital sex, said she accepted the annulment.*

The case is extraordinary both because the annulment was reversed due to public pressure and because it was done against the wishes of *both* spouses. Reading the article, I asked myself why a case like this would generate so much outrage while other cases involving a breach of trust between newlyweds would not register a blip on the public's radar. I can only assume that the case fitted neatly into stereotypes about "Islamic oppression of women", the public focusing mainly on the question of the bride's virginity rather than on the issue of trust. Ironically, the French public may likely be more fixated on the issue of virginity than the groom himself.

The fact that in all the outrage about this case the views of the bride were ignored also speaks volumes. I am reminded of discussions of "the veil" in which the opinions of veil-wearing Muslim women themselves tend to be excluded because it is assumed that these women have been so brainwashed by their socialisation that they do not realise they are being oppressed.

The case would seem to suggest that Muslims in France are subjected to a higher level of public scrutiny of their private dealings than most people would expect. It would also seem to suggest that gender relations within the Muslim community form a privileged site of critique by the non-Muslim population, an area in which people feel authorised to be outraged, and to express that outrage actively and publicly.

*from* → Gender & Sexuality, Human rights, Multiculturalism, Religion

6 Comments leave one →

**1. Zohaib PERMALINK****21 November, 2008 7:13 pm**

well... i visit your website first time and found this site very usefull and intresting !

well... you guys doing nice work and i just want to say that keep rocking and keep it up !!!!

Regards

Zohaib

**2. Ali Adolf Wu PERMALINK****21 November, 2008 11:48 pm**

Your conclusions are correct. Notwithstanding that, there is something else at stake here: whether a court should accept that certain conditions constitute breach of trust because the plaintiffs belong to a particular religious or ethnic “box,” i.e. whether the much-disputed “cultural defense” is admissible. This question is of fundamental importance, because if allowed, “cultural defense” grants certain privileges, or exemptions, to people who belong to particular “boxes.” Some people like Tariq Modood who argue that family law in Europe should be “communalised”, like in the former colonies where different sets of family law obtain for different ethnoreligious “boxes.” I see such a path as threatening the fundamentals of liberal societies.

No doubt, that two individuals who wish to end their marriage should be allowed to do so. Breach of trust seems as good a reason as any, and it does not matter if the trust was based on reprehensible principles in the first place. However, \*voiding\* a marriage is a different matter. The number of circumstances in which marriages can be voided is strictly circumscribed. If annulment is possible on the basis of the bride’s lying about her previous sexual experience (but not, for example, because she neglected to confess that her blond hair had been dyed rather than natural), then this means that civil law accepts honesty about sexual experience (and, notably, virginity) as being of constitutive importance for the consummation of marriage, either for the society as a whole or for people in a particular cultural “box” (unlike divorce, annulment seems to be based on a norm that obtains for a group, rather than individuals). For me, neither of these options is acceptable. While you are right that Muslims’ private lives are subjected to a kind of voyeurism that in many cases is unacceptable (and very often has a distorting effect), court cases where cultural defence is deployed are, for me, legitimate objects of scrutiny.

**3. kay PERMALINK****24 November, 2008 12:16 pm**

why did they not simply get divorced in the first place—siting irreconcilable differences instead of making a big deal out of “virginity”?

**4. Ali Adolf Wu PERMALINK****24 November, 2008 9:34 pm**

Exactly.

**5. Jovan PERMALINK\*****25 November, 2008 12:13 pm**

Thanks for the comments AAW and Kay.

AAW, you have made a distinction between divorce and 'voiding' that I hadn't considered. I don't know much about the precise terms of the law – either in Australia or France – on this matter, but I would've assumed that the marriage is considered void where the contract was entered into based on false pretexts. I would've thought that the precise grounds would not be quite as important as the argument that one party would not have entered into the marriage contract had they known particular facts that were withheld from them. Perhaps it is also important that the other partner knows that this is a 'dealbreaker' issue, I'm not sure. Based on this, it would seem reasonable to me that even the hair colour issue could be used as a legitimate argument if the aggrieved party could prove that this issue was so important to them (perhaps due to a morbid fear of hair dye) that they would never have married the other partner had they known this was the case. Of course if the grounds for annulment are as circumscribed as you suggest, maybe this sort of reasoning doesn't apply. Can you add any details about annulment is more oriented towards group norms than divorce? I honestly wouldn't have thought this would be the case.

I agree with you that the thoroughgoing communalising of the law would be dangerous for liberal societies. However, is it necessary for there to be 'boxes' in order for cultural arguments to be valid? I'm also not entirely convinced that a 'cultural' defence was even made in this case. In fact, it seemed that the lawyers for the couple we taking precisely the opposite approach by making the argument based on more 'universal' notions of trust and actively downplaying the importance of cultural specificity. As I mentioned above, it seemed that the people making the biggest deal out of virginity were the French public, and in so doing it was them, rather than the couple who were keenest to put them into a particular (Islamic) 'box'.

This raises a more general question about the possibilities of acknowledging cultural specificity while retaining the universality necessary for there to be a 'common ground' upon which these sorts of negotiations of identity can take place. Do they have to be mutually exclusive, where more attention to, or tolerance of, specificity necessarily equates with the 'ghettoisation' of the law? If we think in terms of 'boxes', where culturally-based arguments imply membership of mutually exclusive groupings, we are led in this direction. I wonder though if we can take the insights of anthropologists and others about the situational and overlapping nature of identity to provide a more nuanced approach to legal issues of this kind. This would probably require different underlying assumptions about 'culture', moving away from the notion that it fundamentally signifies a distance from an unmarked and universal (white European) subject. Maybe the key is to see 'culture' as always a factor, rather than limiting it to specific others.

Also, on the issue of divorce vs annulment, I can think of several reasons why the former would be seen as a poor alternative to the latter. The parties involved might not be comfortable with the status of 'divorcee', which could be the source of shame, and might entail some sort of stigma, hampering the prospects of remarriage. Furthermore, there might be the fear that a former spouse would continue to hold some sort of financial leverage and would be able to make claims to property or income following the divorce. Again, I don't know the precise terms of the law in France, but it may be possible that former spouses can make claims if they become unemployed and require support. I think that the assumption that we can just consider

divorce and annulment to be equally valid alternatives entails its own set of culturally-based assumptions, e.g. where status of 'single' and 'divorced' are not significantly different, that should be interrogated rather than being taken for granted.

Sorry about the length of this reply. I found once I got started it was hard to stop!

#### 6. **Ali Adolf Wu** [PERMALINK](#)

**26 November, 2008 12:09 am**

I completely agree that it should be possible to acknowledge cultural specificity without resorting to cultural "boxes". In fact, one could argue that any court, in deliberating on the motives and meaning of an act, inevitably acknowledges cultural specificity. Your suggestion about the possible stigma of divorce as opposed to annulment also makes sense. But judicial rulings are not simply reflections of the norms of the individuals concerned; they are supposed to create or reinforce norms. It may be true that the status of "divorcee" is stigmatizing for certain individuals, or that a bride's lying about having premarital intercourse is considered by certain individuals to be breach of trust (and what is more significant, that such intercourse itself compromises marriagiability). Should a court accept or reinforce such norms? There cannot be an analytical, "anthropological" answer to this; one must take sides. In my opinion, it should not accept them, since they contradict the principles of equality and limit individuals' possibilities in society. The court should act in such a way that satisfies both parties as much as possible (considering this is, after all, a family law matter) but also does not endorse norms that hem in individuals or create inequality.

I realise that this is too waffly, but really, what I am trying to say is simple enough: in the 1950s, I am sure many Italian men would make similar requests if they could (remember that dialogue from *Catch-22*: You can't marry me because I am not a virgin any more. You still want to marry me? Then I can't marry you because you're crazy.) It is in part because they could not make such demands — because courts did not question their own secular, modernizing rationality — that sexual norms have shifted towards greater equality between the sexes.

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