

# Cousin Marriage is not Choice: Muslim Marriage and Underdevelopment

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The Middle East has much going for it. It is strategically located in a mostly temperate zone. It has significant oil finds. Its population is young and in many cases well educated. Still, the Middle East has had less than stellar growth, a record it shares with the Muslim world at large. Once ahead of Europe, its failure to keep up is longstanding (Lewis, 1993), suggesting that the culprit is unrelated to a particular circumstance, time period, or geographic region.

This paper proposes that the problem lies in the consent regime: marriage is subject to parental consent (namely, paternal or guardian). Formally, only women are thus subjected. But to paraphrase, marriage consent that is half parental and half individual is all one thing or all the other.

This paper makes three contributions. First, it describes the specifics of Classical Muslim family law that effectively render Muslim marriage one of parental consent despite pronouncements to the contrary. The distinction is important because relative to individual consent, parental consent favors the old over the young; men over women (Edlund and Lagerlöf, 2006).

Second, the paper provides a novel explanation for why cousin marriage is common in the Muslim world where consanguineous marriage rates range from 20-60%.<sup>1</sup> As mentioned, the authority to marry lies with the father of the bride, but the marriage payment *mahr* belongs to her. This split bill may be what underpins the prevalence of cousin marriage. Cousin marriage can be viewed as a form of marriage by exchange in which the bride giver's reward is a bride in return. When two brothers arrange for their sons's marriage by exchange of daugh-

ters the result is cousin marriage.

Cousin marriage as a means of diverting resources from the bride to her male kin – thus undoing a principal improvement for women introduced under Islam: the bride being the designated owner of the *mahr* – has to the best of my knowledge not been considered in the literature.

Cousin marriage also supports another signature feature of Muslim society: the subordination of the individual to the clan (Lewis and Churchill, 2009) and the attendant suppression of individualism and meritocracy in favor of clan loyalty, conformity, and nepotism.

Third, this marriage system which favors men over women, the old over the young, and the collective over the individual, handicaps economic growth.

This explanation of the prevalence of cousin marriage or the Muslim World's lagging behind the West and lately, East Asia, has to the best of my knowledge not been previously advanced.

## I. Classical Muslim Family Law

Sharia law is Islamic canonical law based on the teachings of the Quran and the traditions of the Prophet. It was formulated in the first centuries of Islam. This formative period (Usual al-Fiqh) culminated in the 9th century. It was followed by a conservative period of imitation (Taqlid).

In the 19th century, modernization demands in the Muslim World led to the adoption of Western legal systems but reform of family law was considered un-Islamic and exempted.

More recent attempts to bring family law in line with modern ideas of gender equality and human rights have been met with solid resistance and been branded un-Islamic. This conservatism can be contrasted with

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<sup>1</sup>The inbreeding coefficient between spouses is that of second cousins or higher.

the responsiveness of the law in other areas – a contrast that underlines the political nature of what is considered consistent with Islam (Mir-Hosseini et al., 2013). Thus, Classical Law remains highly relevant in the Muslim World.

Marriage, according to Classical Law, is a transactional and hierarchical relationship. The husband owes the wife maintenance, and the wife owes the husband conjugal society and obedience. By this is typically meant that the wife should grant the husband sexual access and not leave the husband's domicile without his consent.<sup>2</sup>

The groom is required to pay the bride a *mahr*, part of which can be deferred (paid out at the dissolution of the marriage). The marriage payment is followed by the bride's taking up residence with the husband.

The Muslim marriage contract requires the consent of the groom. By contrast, the bride's consent is neither necessary nor sufficient. The operative consent is that of her guardian, *wali*. The rights of the *wali* are vested with (in order of priority) father, grand-father, or other male relative. Importantly, a father (or grand-father) can force a girl to marry, that is, he can contract her in a binding marriage without her consent.

Esposito (2001, page 16): “A distinguishing feature of Islamic law is the power that it bestows upon the father or grandfather, who can contract a valid marriage for minors that cannot be annulled at puberty.”

In addition, even adult women cannot marry without the consent of the *wali*. Three of the four Sunni schools are of the opinion that the guardian has the sole authority with respect to the marriage of his sane and major female ward if she is a virgin. Only if she has been previously married is her consent also required (alongside that of the guardian's).

Only the Hanafi school allows the woman to contract her own marriage, but this right

<sup>2</sup>Whether the wife is also obligated to do domestic work or even nurse her children, or can demand wages for that has been debated (Mir-Hosseini et al., 2013, page 11).

is undermined by two provisions. First, the *wali* can dissolve the marriage.<sup>3</sup> Second, the above power of the father (or guardian) to contract a minor daughter into marriage by force holds even in the Hanafi school. Thus, an under-age bride can be married off against her will, as long as she is contracted by her father. Father's right, combined with no effective minimum age of marriage, supports a culture in which fathers have the absolute right to marry off their daughters regardless of age.<sup>4</sup>

In sum, Classical Law gives the father the power to decide his daughter's marriage, but also designates the bride the owner of the marriage payment *mahr*. All this power to no use? Cue cousin marriage.

## II. Cousin Marriage

The prevalence of cousin marriage in the Muslim world stands out (Korotayev, 2000; Vardi-Saliternik, Friedlander and Cohen, 2002; Bittles, Black and Govindaraju, 2010). In Pakistan and Saudi Arabia, the rate of consanguineous marriage (the plurality of which are between first cousins) approaches 60%; in other Muslim countries, the rate falls in the 20-50% range (Hamamy, 2012).<sup>5</sup>

Frazer (1919) noted the similarity between cousin marriage and marriage by barter, a form of exchange favored in materially simple environments such as among Australian Aboriginals. Absent other means of exchange, a man pays for his bride by providing an equivalent female in return. For practical reasons, sisters are at high risk of being thus used. If the ex-

<sup>3</sup>If it fails to conform to the doctrine of *kafaa* (equality). For instance, a Muslim woman is not allowed to marry a non-Muslim man and a free Muslim woman cannot marry a Muslim slave.

<sup>4</sup>Pakistan is of the Hanafi school. In 1997 Abdul Waheed v. Asma Jehangir (PLD 1997 Lah 331), a woman's right to consent to her own marriage was affirmed. The ruling overturned a lower court's dismissal of the Hanafi opinion as a minority opinion (Yefet, 2009, page 357-358).

<sup>5</sup>Its extensive practice through the generations has led to elevated levels of autosomal recessive diseases and congenital anomalies, consequences that are obscured by high mortality/morbidity or under-served environments, e.g., Corry (2014).

change of sisters is possible between two unrelated men, would kinship not make this trade even more feasible?

But why would the materially much more advanced Muslim society resort to cousin marriage? The answer, I propose, lies in a father's right to decide his daughter's marriage combined with his inability to pocket the resulting bride price. As a subterfuge, a father may seek a favor in return, a motive discernible from the practise of gifting daughters to the rich and powerful.<sup>6</sup> But brides-as-gifts has sharply decreasing returns, there are only so many powerful men to go around.

A more common variation would be to have a man give a daughter in marriage against the promise of a bride in return, possibly at a future date. The ability to enforce such promises can be challenging and here family comes in handy. On average, fathers have equally many sons and daughters. By promising daughters to a extended-family bridal pool, and allowing sons to draw from the same, a system of exchange can be maintained in which daughters' marriage market value is captured by fathers and brothers.

Cousin marriage among advanced societies is not unique to the Muslim World, European aristocracy was no stranger to cousin marriage (or nepotism). However, outside of the landed classes, cousin marriage was rare and frowned upon.<sup>7</sup> The role of property in promoting cousin marriage is interesting because it limited clannish behavior to the propertied strata of society. In Muslim society, by contrast, the clan is a powerful institution throughout society. What the Muslim man has, even if poor, is power over his daughter, and this power may be what underpins the ubiquity of clans.

A sister paying for her brother's marriage is particularly egregious in the case of marriage by sister exchange (*watta satta*).<sup>8</sup> A

<sup>6</sup>Osama Bin Laden's sixth wife was a gift from her father.

<sup>7</sup>Islam allows for cousin marriage, the Catholic Church does not.

<sup>8</sup>It is in fact barred in Saudi Arabia on the grounds that using a sister as payment for a bride is contrary to

similar, if less direct, exchange may underlie cousin marriage.

The money-saving aspect of cousin marriage (lower *mahr*) is well known. In fact, the lower *mahr* has been seen as reflecting (to the bride) a more beneficial marriage. By marrying in the family, or exchanging sisters, a web of connections protect women against abuse – the in-laws are family or married to family (Bittles, Black and Govindaraju, 2010; Jacoby and Mansuri, 2010; Do, Iyer and Joshi, 2013).

This paper offers a less benign interpretation. Sharia makes the woman the owner of the *mahr*, male guardianship – via cousin marriage – erodes its value.

### III. Growth

The Muslim world did very well in its first 600 years or so. Then it lost momentum. Medieval Europe, on the other hand, powered on. By the late Middle Ages, Europe was ahead – a lead it has maintained since.

Thus, the story of the Muslim world's lagging behind is equally that of European ascent, the latter which has been duely chronicled. Still unanswered, however, is why Europe managed to maintain sustained, innovation driven growth. Economic historians concur that Europe was more accepting of new ideas, risk taking, and individual enterprise (Landes, 1969; Jones, 1988; Mokyr, 1990; Gorodnichenko and Roland, 2011). The origins of this more independent and daring mentality, individualism in short, is a holy grail of sorts.

This paper points to the marriage consent regime as ground zero for individualism. Granted, guardianship only applies to women, and the lack of agency only applies to marriage. But, in the limit, guardianship in marriage is to women what slavery is to men.<sup>9</sup> The effects of slavery perme-

the spirit of Islam.

<sup>9</sup>The right to decide marriage is valuable because absent marriage, there is only one known parent, the mother. Islam does not recognize adoption or paternity of children born out of wedlock, with the exception that a man can legitimize children borne by a woman his slave. Marriage makes the husband the father of children borne by the wife. The so called paternity presumption is universal to all marriage contracts (Edlund,

ate society; a slave society does not just describe the mores of the slaves. It describes a whole system, from an indolent owner class to an oppressed slave class, and its supporting ideology. Similarly, guardianship in marriage can shape society to the core.

In Europe, Christianity's emphasis on individual consent in marriage guaranteed both men and women the right to decide marriage – a situation unique among advanced pre-industrial societies. Equipped with this right, young adults were free to ignore their elders to an extent unknown elsewhere.

Outside of Europe, paternal control over marriage reduces young women to property and young men married when their father allowed them to. The Muslim practise of cousin marriage adds clan loyalty to the ties implied by paternal consent.

The step to growth inhibiting gerontocracy, conformism and nepotism is short. Just as young firms are more likely to champion new technology (Greenwood and Jovanovic, 1999), the harnessing of the young mind may be a critical difference. Wrote Mokyr (1990, pages 182-183):

All societies developed to some extent a disapproval of young members who do not conform to existing practices. ... The more hostile this attitude, the more likely conformist attitudes will dominate and the new generation will be just like the old ones, producing technological stasis.

#### IV. Discussion

In this paper I have argued that the lack of individual consent in marriage has dulled individual initiative and thus societal capacity for innovation by producing a system in which men marry by conforming to clan elders and lording over unmarried sisters. Sisters-as-property makes even the poorest of men a rentier – once the demands of everyday life are met – and interestingly: “The literature concerning the Ottoman world is especially full of remarks

about cultural introversion and metaphors of dormancy.” (Jones, 1988, page 95).

The male entitlement, however, hinges on the commitment of sisters to the bridal pool giving brothers a direct stake in their sisters' chastity and obedience. As self-appointed guarantors of their sisters' arranged marriages, brothers form the grist of honor culture and its not-so-honorable killings.

The Muslim worlds is not alone in denying women the right to decide their own marriage. Before 1950, few non-Western countries had marriage by individual consent. The list of countries that introduced individual consent in the 20th Century includes: Japan (parental and individual 1898, individual 1947), Turkey (1923), Israel (1948) PRC (1950), Taiwan (1950), Tunisia (1957) Singapore (1965), South Korea (1977).<sup>10</sup>

Among these countries, Turkey and Tunisia stand out. They are both Muslim majority countries with poor to middling economic performance, seemingly contradicting the case for consent as the key dimension. However, unlike their East Asian counterparts, neither country has shed its attachment to arrange marriage. Both countries have high rates of consanguineous marriage (Koc, 2008; Kaplan et Al., 2016; Halim et Al., 2016).

That cousin marriage robs women of the *mahr* and saps the initiative of young men is speculation. The effects of inbreeding depression are not. Cousin marriage is not choice.

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<sup>10</sup>Individual consent only unless otherwise specified.

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