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Interfaith Marriage in Imāmī Law: The Search for Communal Boundaries and Legal Intent

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This paper investigates how Imāmī exegetes and jurists have grappled with and highly problematized a potential marriage between a Muslim man and a non-Muslim woman from amongst the people of the book (*ahl al-kitab*).¹ I first must confess what this paper is not. It is not an argument in support or against interfaith marriage, secondly, the subject of the marriage between a Muslim man and a woman from among the people of the book is a vast and complex subject most likely requiring a monograph to cover the complex web of claims and counter claims found within Muslim historiography, Qur'anic exegesis, hadith, and demonstrate jurisprudence (*al-fiqh al-istidlāl*). This is also but a work in progress and there are many scholars senior to me who perhaps vehemently disagree with the scholars I consulted in this study- namely Abu al-Fadl al-Tabrīsī, Yusuf Bahrañī, and Abd al-'Alā Al-Sabzawārī. .).² In performing an analysis of this nature, I will be concerned with both the process and the results produced by these authors. I have chosen three authors from different centuries who produced three genres of work as window into further understanding the multi-vocal nature of Imāmī Shī'ī discourse with regards to the non-Muslim 'other'. But, my humble attempt is to shed light on its complexity and highlight the confluence of identity politics and theology within the realm of marital law. The marriage of a man and a woman in Islamic traditional

¹ The jurists unanimously disallow the marriage of a Muslim woman to a non-Muslim man in both Shī'ite and Sunnite law. However it should be noted that for the purposes of this paper and brevity I will not be exploring this issue. Due to the limited length of this paper, I will not be discussing whether Zoroastrians are considered *ahl al-kitab*.

² The work of Sabzavārī in traditional Shī'ite legal circles is said to be similar to that of Sayyid al-Khū'ī in both its vastness and methodical eruditeness. He was also a contemporary of the Sayyid al-Khū'ī.

sources seems to be a major undertaking wrought with numerous legal regulations ideally deduced on the basis of Qur'anic and Sunna'ic injunctions. The religious orientation of a potential spouse is of the utmost importance, that is to say, to ensure continuity of the faith-based community and prevent eternal perdition, thus, both spouses are called upon to take care in selecting a spouse which shares a similar or identical belief system. In this respect, the Islamic sources are not very different from their Judaic and Christian counterparts. For instance, we find a great deal of material in both the Babylonian and Palestinian Talmud in which nearly every aspect of match making, betrothal, and married life are debated and regulated.³ One such topic is that of an interfaith marriage between a Jewish man and a non-Jewish woman, which the Rabbis of both the Mishnah and the Talmud have treated with the utmost contempt if not for the very reason that a non-Jewish woman has no legal capacity to enter into a legal "Jewish" matrimony. That is to say, the legitimacy of the marriage lies in its Jewishness *per se* if not for the very reason that the rabbinic guild wished to distinguish themselves from their Roman, Christian, and Zoroastrian counterparts. Marriage rites hence can serve as a form of cultural and religious identification against and or in contrast to the 'other'.⁴ Put differently, the marriage ceremony in general is a theatre in which certain norms and values are performed and confirmed, so integrity of community boundaries would certainly be included. Likewise in the late-antique and medieval Christian context, an

³An illustration of these minute details can be found in chapter *ketubot* tractates 46b-d. See: *The Talmud the Steinsaltz Edition vol. 10. tr.and ed. Rabbi Israel V Berman.* (Jerusalem: Israel Institute for Talmudic Publication and Mifta Books, 1993), 73-83. Rabbinic and Islamic law can both be described as world-organizing projects nice phrase! which have two common sites of confluence, that is, they both attempt to discover legal intent in human to human interaction as well as human-divine interaction. Both of these aforementioned areas are the subject of voluminous legal literature and this is worthy of comparison. For an introduction to this site of comparative study see: Jacob Neusner and Tamara Sonn. *Comparing Religions Through Law: Judaism and Islam.* (London: Routledge, 2009), 15- 17, and 20-60.

⁴ Micheal Satlow, *Jewish Marriage in Antiquity.* (Princeton: Princeton University Press, 2001), 158-159. Also, for an extensive comparative analysis of the legal treatment and perception of the other in rabbinic and Islamic law see: Jacob Neusner, Tamara Sonn, and Jonathon E. Brockopp. *Judaism and Islam in Practice.* (London: Routledge, 2000), 147-192.

interfaith marriage between a Christian man and a Jewish or Muslim woman (or vice versa) would provoke the ire and contempt of the religious authorities.⁵ Such a marriage had no religious validity whatsoever and would be considered a form of fornication and punishable by public burning as it often was in Europe.⁶ The act of laying with the ‘other’ constituted the crossing of boundaries in which the spiritually and culturally deficient other is given extraordinary intimate access in which the religious solidarity and identity of either community (whether Christian or Jewish) runs the risk of debasement. It is against this backdrop that I will now turn to the discourse of Imāmī Qur’anic exegesis and law.

As is customary, I shall begin with the Qur'an. The first verse used by both Sunni and Shī‘ī exegetes and jurists to justify the permissibility of a marriage between a Muslim man and a non-Muslim woman from among the “people of the book” is Surat al-Mā’ida , verse 5. It would seem that this verse clearly permits interfaith marriage, and depicts the potential for the *kitabī* as having the potential virtuosity and chastity (hence the term *muhsanāt*) to be included within the Muslim family unit not only in the role as a slave, but as a free, chaste Christian or Jewish woman. But as per the view of formative Imāmi exegetes such as al-Tusi (d.460 AH) and al-Tabirisi (d.529 AH) this verse by no means tells the entire story. Al-Tabirisi following in the footsteps of his Buyid Iraqi predecessors would launch a barrage of counter claims against such a marriage, especially that of permanent marriage which is considered to be a superior form of marriage as opposed to *mut’ah* which due to its inferior nature lacks the prestige of a permanent marriage. I am not so interested in Tabrisi’s legal view, but in the profound ethical

⁵ One source for this negative posture in rabbinic law can be derived from the following Biblical verse: “ You must not intermarry with them; you must not give a daughter of yours to a son of theirs, or take a daughter of theirs for a son of yours, for they will turn your children away from Me to worship other gods; the wrath of Yhwh would blaze out against you and he would instantly destroy you (Deut 7:3-4)”. See: *The Jewish Study Bible ed. Adele Berlin and Marc Zvi Brettler*. (Oxford: Oxford University Press, 2004), 383.

⁶ David Nirenberg. *Communities of Violence: Persecution of Minorities in the Middle Ages*. (Princeton: Princeton University Press, 1996), 127-165. The following is also stated rather explicitly in Deuteronomy

objections he puts forward which arise out of a clear Muslim supercessionist attitude in which Islam) as a world organizing project similar to Rabbinic Judaism was profoundly invested in categorizing the relationship between Muslim men and the problematic non-Muslim female other. Hence we may describe it as a wholesale act of othering. I will not be able to provide all the details here, but rather present the contours of his perspective on this matter. Tabrisi, acknowledges the well-known Sunni position allowing permanent marriage with Ahl al-Kitab, but quickly points out that “our companions do not permit the act of contracting a permanent marriage with a *kitābī*.” He then cites 2:221 and 60:10 in support of his claim. This is precisely where the affair becomes quite convoluted.

2:21 states (I am only quoting the relevant part): “....And do not marry the idolotress (*mushrika*) until they believe for a believing slave woman (*ummātun mu'mina*) is better than a polytheist woman (*mushrika*).” Tabrisi’s use of this verse is of paramount importance (and I might add he is certainly not the only one to do it) because he uses such a verse to classify ahl al-kitab as *mushrikun*- and by this measure the people of the book are not only not worthy of permanent marriage but would be condemned to eternal damnation. He also states in no uncertain terms, that 2:221 has not been abrogated nor furthy specifcied (*makhsusa*) by other verses-thus he argues for it being a general verse. Furthermore, the Qur'an itself in 4:448 states that: “God shall forgive not that partners are set up with him (*lā yughfiru an yushrika bi-hi*).” Tabrisi was fully aware of the controversy in invoking such a verse, and states that even if it cannot be proven that Ahl al-Kitab are *mushrikun* in the sense of being polytheists akin to the Meccans, nevertheless *al-shirk yutlaqu 'alā kullī* and thus there rejection of Muhammad’s prophethood and or the revelation of the Qur'an would constitute a form of *shirk* albeit different from what the Meccans were accused of and nor would it be classified with the same

intensity. I should emphasize that for Tabrisi, this highly exclusive reading of the Qur'an was normative in Imāmī circles for Shaykh al-Mufid, al-Tusi, and al-Murtada had very similar views, in-fact al-Murtadā prohibited both temporary and permanent marriage claiming *ijmā'* on the matter!

The second verse: 60:10

"O you who believe, test the believing women when they come to you as emigrants- God knows best about their faith- and if you are not sure of their belief, do not send them back to the disbelievers; they are not lawful wives for them nor are the disbelievers their lawful husbands...and do not yourself hold on to marriage ties with disbelieving women (*lā tumsikū bi-'ismi al-kawāfir*)."

This verse according to Tabrisi and others was revealed following the treaty of Hudabiyya (of which I do not have the time to dwell upon). It is clear from the historical sources that following the revelation, Umar b. al-Khattab was forced to divorce 2 of his meccan wives after which Mu'awiyya b. Abi Sufyan married them both. Nevertheless, my point is that despite the clear historical context of this verse Tabrisi has no problem in invoking it to prohibit or at least condemn marriage with a *kitābī* woman. In his view there is no doubt that *al-'iṣma* here is a synonym for *nikāḥ*. He then makes a rather stunning comment where he states: "it is not for anyone to limit (the implications) of this verse to idol worshippers due to the circumstances of its revelation, for the reason that its informative value lies not in the immediate circumstances of its revelation but in the general meaning and implied words- *wa laysa li-aḥadin an yukhiṣṣa al-ayā bi-'ābadatu al-wathan li-nuzūlihi bi-sababihinna li-anna al-mu'tabar bi-'umūm al-lafẓ lā bi al-sabab."*

Once, again Tabrisi argues that this verse can be generally applied- hence he is essentially grouping the *mushrikūn* of Mecca with Ahl al-Kitab in a general sense. That is not to say that such a reading is normative, but the vast majority of jurists nevertheless bemoan interfaith marriage due to what they view to be the “inferior” spiritual status of Ahl al-Kitab due to their *inkār* of the *nabuwwa* of Muhammad and the revelation of the Qur'an. Even Allamah Tabatabai makes it very clear that while he does not consider Ahl al-Kitab to be *mushrikūn* certainly not in the way al-Tabirisi does, but he states in more than one place in *al-Mizān* (perhaps inconsistently) under his commentary of 4:48 and Surat al-Bayyina, not to mention in Surat al-Ma'ida as well- perhaps this can be discussed later. Nevertheless, we find an exclusivist theology even in the work Allamah Tabatabai, I cannot say conclusively at this point, but there is no doubt that he uses some very strong language throughout *al-Mizan* indicating at the very least that *ahl al-kitab- yakfuruna bi-ayāt allāh*.

As for the hadith, the matter only becomes further complicated due to the presence of apparently opposing traditions, I will provide a few as a sample here:

- i. Zurara asked Imam al-Sadiq (as) concerning 5:5 “the chaste women among the people who were given a scripture before” and He Assadiq (as) said: It is abrogated (*mansukha*) by God's statement: “*lā tumsikū bi-‘ismi al-kawāfir*”
- ii. Muhammad b. Muslim relates from either Imam Baqir or Imam Sadiq concerning the meat of Bedouin Christians. The Imam replies by saying: “Ali forbade (*yanhā*) their slaughtered meat, game meat, and the act of taking them in marriage.”

- iii. Mu'awiyyah b. Wahab related from Imam al-Sadiq (as) concerning the status of a believing man who marries a Christian and Jewish woman. The Imam replied: “When he can manage to find a Muslim woman for marriage then there is no use in having a Jewish or Christian woman as a wife. I then said to him (the Imam)- he (the man in question) lusts for her (he has *shahwa for her*). The Imam then replied: If he does that (marries a Christian or Jewish woman), he must prevent her (*yamna'ahā*) from drinking alcohol and eating pork and know that he is weak in his religious conviction (*anna 'alayhi fi dīnihi ghaḍāda*).
- iv. Muḥammad b. Muslim related from Abī Ja‘far (Imam al-Ṣādiq or al- Bāqir): He [Muhammad b. Muslim] asked the Imām with regards to contracting a marriage with a Christian or Jewish woman. He [the Imām] replied: “there is no blame in it, are you not aware that Talḥa b. ‘Ubdah Alllah married (*tahata*) a Jewish woman during the time of messenger of God.⁷ **Interestingly, Ibn Abi Shayba in his Musannaf includes a report in which Umar b. Khatab berated both Talha and Hudhafah for marrying kitabi women. Whereas, Tusi (in al-Khilaf) claims that it was Ammar b. Yassar who disliked these marriages and not Umar. Nevertheless, these marriages seem to have been very controversial- if we were to accept these accounts of the past—This tradition is also fascinating because here Imam al-Sadiq is using the case of Talha to allow such a marriage, but Tusi looks down upon it in the Khilaf stating the objection of Ammar b. Yassar—it certainly is perplexing.

⁷ al-Ṭūsī. *Istibṣār* v.3, 3:179:3,4; al-Ṭūsī, *tahdhīb*, 7:298:5.

- v. Zurāra is said to have heard him Imam al-Sadiq state the following: “There is no blame in marrying a Jewish or Christian woman temporarily (*muta’ tan*) and he (already) has a woman (a wife).⁸

I have but provided a sample of the opposing traditions. Now, we know from the period of Saduq onwards there was a disagreement on this issue- and I currently do not have time to delve into the array of opinions ranging from allowing it only in mut’ah to outright prohibition, or it being limited only to slaves, or only in cases of *iḍtirār* strenuous difficulty. Needless to say, al-Saduq allowed both temporary and permanent marriage- albeit he does not give clear reasons as to why. On the other hand Tusi is alledged to have only allowed it in mut’ah or to have prohibited it all together—we have 2 opinions in this regard in both nihayah and mabsut. Nevertheless there are a web of competing claims and legal views on this matter.

I shall briefly highlight two case studies- one of Yusuf Bahrani and the other of the contemporary Usul jurist, Abd al ‘Ala al-Sabzawari- as a means of highlighting diversity in hermeneutics and eventual conclusions.

Yusuf al-Bahrani- al-Hada’iq al-Nadira:

This 17th century akhbari jurisprudent, clearly acknowledged the problem at hand both regarding the Qur'an and Hadith and recognizes all 5 of these hadiths to be *sahih* and does not take issue with their matn. Also fascinatingly, he accepts the riwayah that 5:5 was abrogated by 60:10 despite the fact that we have traditions precisely to the contrary stating that 5:5 in fact abrogated 60:10! Nevertheless, Bahrani stands certainly on the fringe when it comes to

⁸ al-‘Amīlī, 7:492:2; al-Tūsī, *tahdhīb*, 7:256:29.

believing that 5:5 could have been abrogated since Muqaddas Ardabili, Majlisi, and Fayd al-Kashani clearly reject this proposition since it is believed that Ma'ida was 'akhar nuzulan, and this position of Bahrani is further perplexing since there is a well known riwayah transmitted by Zurarah from Imam Baqir stating that Maida was revealed two to three months prior to the death of the Prophet-this is especially important with regards to the verse regarding wudu and the washing of the feet-Sahib al-Jawahar as an extensive discussion on this. It is clear that Bahrani even struggles to accept the notion that 5:5 of Maida can be abrogated except to state that it cannot be proven to him that it was revealed all at once. Nevertheless in both the exegetical works and judicial works on interfaith marriage- *naskh* is an important issue and used a hermeneutic to either support 5:5 or negate its probative value or *hujiiyah*. In light of the seeming ambivalence in the Qur'an, Bahrani cannot choose the position which best fits with the Qur'an as he states (*al-ayāt al-qur'ān fa-annahā mukhtalifa aydan*). Thus he is left with *mukhalafat lil-āmmah* opposition to the Sunnites based on the principle of *taqīyya* since *jama' bayna al-nuṣūs* was not an option for him as it would combine the *taqiyya* and non-*taqiyya* reports- in this regard Robert Gleaves work is particularly informative which demonstrates the limitations of Bahrani's epistemology which in this case resulted in him resorting to this option. However perhaps, more interestingly, he ends his discussion by warning Muslim men that a non-Muslim woman is not suitable (*kafū*) due to her consumption of alcohol for one, and most importantly he states: He states that since equality or similarity in faith and Islām is a condition for the fulfillment of *kafā'a* (*ishtirāt al-kafā'a fi al-nikāḥ allati hīya 'ibāratun 'an al-tusāwī fi al-īmān...aw al-islām*) in the absence of this, the 'aqd would not be deemed valid, however he nevertheless allows temporary marriage- which is a less prestigious form of marriage. Again I must emphasize that the *kitābī* woman for Bahrani

is religiously inferior and thus it would be below a Muslim man to marry such a woman. The language is clearly exclusivist and representative of most of the juridical discourse on this issue.

Abd al-‘Ala al-Sabzawari

I decided to look at this text for two reasons, one because he of course was a usuli jurist and it was the closest discourse to that of Sayyid al-Khu’I whom I initially wanted to look at but was not able to find his bahth on this issue. At the outset I should state that Sabzawari similar to al-Khu’I allowed permanent interfaith marriage although it is disliked- *makrūh*. Sabzawari interprets the incident of Talha marrying a jewish woman to be an allowance for permanent marriage. Furthermore, he rejects any insinuation that 5:5 was abrogated, in this sense his view concurs with Majlisi, Ardabili, Kashani, Sahib al-Jawahir, and contemporary exegetes and fuqaha. Therefore, for Sabzawari, 5:5 is clear and it cannot be dismissed and thus acts as the centre piece of his discussion in allowing permanent marriage with a kitabi, especially since the Talha report was interpreted to indicate the permissibility for permanent marriage as well and thus not limited only to mut’ah- or temporary marriage. Furthermore, Sabazwari does not venture to apply *mukhalafat lil-ammah* because for him the ahadith allowing permanent marriage concur just fine with 5:5. Of course, this is all determined by his understanding or murad of the texts.

That being said, I return to my main point, despite the allowance of such a marriage- Sabzawari makes it abundantly clear that as the *sahih* hadith states (*sahih* as per his view) *annahu fi dīnhi ‘alā ghadādatan-* that the man who insists on marrying a Jewish or Christian

woman while being able to marry a Muslim woman essentially has deficient religiosity. For this reason he emphasizes the *kirahah* in such a marriage. Let me restate what I mentioned at the introduction, which is that the *kitabi* women is a problematic other for all these Imami scholars if not for the vast majority of them. The language used in the exegetical and legal discourse is perhaps most unbefitting to be reproduced as being normative for a modern multi-religious and pluralistic environment-this can be debated depending on our philosophy of modernity and its accompanying power dynamics vis a vis the liberal state and secularity-these questions have been raised by important anthropologists of religion such as Talal Asad, and Saba Mahmoud. I have not delved too much into the hermeneutics and inner workings of these jurists for the sake of brevity. My main concern is however that, despite whatever conclusion is arrived at—the marriage between a Muslim man and a non-Muslim woman is at least ethically dubious for the Imami scholars who purport to speak on behalf of the tradition whether they be Sh. Tusi, Sh. Jafar Subhani. It reminds me of an often quoted tradition from the Imams which sates: *lā yanbaghī lil-muslim an yatazawaja yahūdiyya wa lā naṣrāniyya*. That is to say, there is little religious or spiritual benefit in such a marriage and infact Tusi in Mabsut lists a full page of objections to such a marriage including the negative social consequences, which I think lies at the centre of its problematic nature. That is to say, what will one do with the children which are produced from this marriage especially in the case of the mother “making them Jewish or Christian”- as the hadith emphasizes. In-fact on this matter al-Shafi’i lists similar sorts of concerns. Furthermore, Sabbzawari despite allowing a permanent marriage of this type questions whether a Muslim could ever even love a non-Muslim woman! He does so citing Qur’an 57:66: “You will not find people believing in God and the last day endearing those who oppose God and His Prophet (*man hāddā allaha wa rasūlahu*) even though they were their

own parents, children, brothers or kinsfolk...”⁹ It is clear that he looks highly down upon such an arrangement. In the end, I think it is abundantly clear that marriage is a very personal and intimate matter in which spouses often wish to share common desires, goals and world views. With this in mind, the exegetes and fuqaha who perhaps see themselves as guardians of “the tradition” I use this with air quotes, see the act of a Muslim opening himself up to the religious other as naturally provoking a profound sense of vulnerability especially with regards to his social status within the Muslim community. Lastly, Muslims are by no means the only ones who approach interfaith marriage with profound suspicion, we find very similar discourses in Hinduism, Sikhism, Christianity, and even within the bastion of Reform North American Judaism, not to mention conservative or orthodox Rabbinic Judaism. In-fact a Reform Rabbi I work within Toronto told me that to this day the Reform Jewish rabbis in Toronto will not officiate a marriage between a Jew and a non-Jew.

⁹ For instance see: al-Najāfī, 30:21, and al-Sabzawārī, 25:61. See Qur'an: 57:66.