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The question of adoption has been largely overlooked in studies of the Muslim world given that Islam officially prohibits it on potent religious alibis. Considering such a practice from an ethnographic perspective, and not exclusively a legalistic one, opens up new dimensions in the study of family and kinship in the Muslim world. Yet, such a practice is predicated on the existence of children to be adopted as 'raw material' in the first place. And while historically there have been, and still continue to be, various intra-family exchanges of children outside legal frames and the practice of Islamic tutelage, *kafala*, the Muslim world, as elsewhere, is experiencing the problem of abandoned children as a by-product of deep social permutations.

Cover image of *Orphans of Islam*: untitled painting by Moroccan painter Mohammed Nabili.

There is a strong ethical quandary regarding out-of-wedlock children and the practice of secret adoption because the contemporary codified Muslim family laws generally proscribe the latter and recognize the former within very limited legal clauses.

Muslim family law continues to be one of the most controversial and hotly debated issues in the Muslim world today, and despite decades of debate concerning its use and adaptability (or lack thereof) to the changes of the modern world, no consensus has been arrived at so far. Such seems to be the normal outcome when these discussions are ideologically framed and interpret the laws as a depository and/or a vehicle of an 'authentic' Muslim identity. The situation seems to have even worsened in the post-9/11 world as those holding and promoting a conservative Muslim agenda have become part of a legitimate contestation politics against the largely negative image of Muslims in the Western world. Family law has been one of those elements constituting this passionate engagement because it goes beyond legal definitions, norms, and procedures, and taps into the heart of Muslim identity, culture, social cohesion, continuity, and values. It is, in a sense, an understandable move especially in the face of what some construe to be the continuing external onslaught of Western hegemony and imperialism, and the internal acculturation and alienation of the Muslim population. Those Muslims living in the largely post-colonial nation-states today who call for the adoption of a Muslim family code are also those who interpret such a move as abiding by strict (or at least laying some

nominal claim to) religious rules and as safeguarding the authenticity of the culture in question. While those other Muslims who argue for a radically different family code construct their quest as one that leads to a more egalitarian social system, as one that is able to accommodate the social and economic changes (especially those of women) in the contemporary liberal system and capitalist economies, and finally one that fosters an emancipatory role of religion in general but does not dismiss it, as is often believed to be the case.

Legal code
The two entrenched readings of the role of a legal code sketched above (whether to structure or to accommodate Muslim social reality), constitutes the intellectual and abstract aspect of the debate in much of the Muslim world today. And while this positioning is essential for a deep understanding of the implications and interplay between Muslim legal norms and Muslim social reality, tackling a 'tangible' problem as that of children out-of-wedlock in a Muslim context reveals a bewildering paradox. Research that explores the legal-religious component in addition to the other dimensions of the social problem of abandoned children in a Muslim context, in the field that is, shows the extent to which this is an issue made of many and various interconnected layers of complexity. Much has been written about the particularly ethical orientation of a number of Islamic religious/legal rules, and one of its many examples has been the fact that Islam protects orphans in an unparalleled way. In all classical texts of *fiqh* children born out-of-wedlock (*laqit*, sg. *luqata'*, pl.), although not strictly speaking orphans, are considered to be free clients, *mawali*, and are entitled to all the rights and duties of a Muslim since the notion of *taqwa* (piety, among many other meanings) is what characterizes a Muslim and not his/her lineage (*nasab*) or wealth (*hasab*). These *fiqh* texts equally comment on the prohibition of plain adoption in the Qur'an (what is known as the 'Zaid incident', Sura 33:4–5) as one aiming to foster, generally speaking, a social order built on truth. Truth implies here the prohibition of fictive kinship ties that may not only alienate those legally entitled heirs but that could also lead to future incestuous relations deemed to be potentially destructive of communal cohesion because they could possibly lead to a *fitna* (disorder, chaos). The Zaid incident carries another decisive politico-historical meaning not often dwelt upon by traditional religious scholars, which is the issue of the Prophet's succession given that pre-Islamic traditions made of an adopted son a fully legal heir. The Zaid incident was an important historical rupture with the existing social order and the ushering of new norms that were part and parcel of the new faith of Islam. Outside of the specific elements of this incident, which in fact has structured the sense of family, inheritance, and continuity, the question of what to do with a fairly substantial number of abandoned newborns and children could not be an issue in the classical framework

simply because neither the sociological nor the demographic conditions of the time made it a possible likelihood to be considered as such.

The case of Morocco
The radical economic and sociological changes that have shaken the Muslim world for the last two centuries have generated, indeed, entire regiments of issues and questions to be dealt with innovatively and seriously. Research on the issue shows, thus, that a purely legalistic and discursive approach to the question of abandoned children, *kafala*, and secret adoption cannot possibly be the panacea for dealing with this problem as it might have once been historically (and even this assertion remains questionable). Certain conservative voices argue that Islamic family code offers the solution, but in tangible terms such a reading is simply dismissing the complex reality component and hiding behind lofty ideas and ideals. On the other hand, considering only the reality factor without the sediments of the Muslim legacy that shaped this reality is being not only too utilitarian and positivist but also inattentive to the fine nuances in which a culture reproduces itself. Morocco is the case in point here. The issue of abandoned children continues to be stigmatized and taboo because of a myriad of reasons, among which should be mentioned the issues of 'unregulated' sexuality, the shame associated with it, and the anxiety concerning the 'chaos and loss of morality' – *fitna* – that the very being of the children engenders. The children themselves are believed to carry a sense of disorder and dislocation and are made to represent profanity; such is evident through the analysis of a number of cultural beliefs and practices. To underline just one point here is the fact that they are called the children of the forbidden, *ulad l'hram*. Religiously inclined people as well as secularists generally hold such a viewpoint to varying degrees. The legal provisions in place for the integration of the children either through existing care institutions or the *kafala* – tutelage or the legally accepted norm of adoption in Islam – as is to be practised today through the Moroccan family law, Mudawana, remains equally a very limited option as it dismisses important issues regarding a child's equilibrium and other family-related matters. Thus, if and when the issue of abandoned children is tackled in public space (notably through media) or in specialized literature, the discourse most often, though not exclusively, falls either into an apologetic or a moralizing tone while leaving important questions unexamined. Of these, the most revealing is the understanding of those objective processes at play (legal, economic, social, and imaginary) that create and define exclusion and marginality, and an analysis of the foundations of those very assumptions that legitimize these exclusions.

The research carried out on this issue gives thorough details and performs an analysis of the legal, institutional, and cultural mechanisms of exclusion and victimization of abandoned children as well as the

problems relating to *kafala* and secret adoption. It becomes evident that it would have been ideal to translate that ethical and all-inclusive stand of Islamic *fiqh* in the general *mu'amalat* (deeds, behavior) towards out-of-wedlock children, but contemporary social mechanisms yield almost an antagonistic result. Abandoned children in Morocco, as is the case in many other parts of the world, embody shame and are often made to pay the price of this shame by being excluded in a heavily stratified social order. The normative paradigms upheld and disseminated through the social institutions of which the state is the *wali* (guardian) fail to address in tangible terms the problem of the children and those cycles of ignorance, poverty, violence, and abuse that have given birth to them (pun intended). While upholding the Muslim-humanist claim that these children are not to be ill treated because of their condition, the reality is that they certainly are, just because – to point to a sociological truism – religion is not the only component in the engendering of a collective identity and its cultural traditions. The children are victimized because the physical environments (shelters, orphanages) in which they are lack social recognition and often basic necessities; because the legal norms and the procedural rules in place make their 'integration' extremely difficult if not impossible in some cases (difficulty to obtain a name for instance); because the culture generally construes them to be harbingers of evil and mistrusts them because of their supposedly profaned blood (evident through semantic analysis of the language and court cases); and because they are not tied to a legitimate kinship or web of relations that recognizes them as trustworthy actors of and in a given system.

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