Introduction

The present volume is a study of Muslim marriage in modernity. The essays that comprise the volume are written both by scholars of Islamic fiqh and by social scientists. As such, the collection stages an all-too-rare dialogue between practitioners of fiqh – those working with the source texts to derive new interpretations, to authorise rethinking, and thereby to create spaces of possibility for practices to change – and social scientists – who study practices of Islam. The question of marriage and intimate relationships is an important site of internal contestation, as the collection demonstrates. It demands both fidelity to the tradition and its historical modes of thought *and* adequacy to contemporary conditions. The contributors to this volume examine challenges to fiqh posed by the contemporary by critically analysing the practices and resources available to Muslims in a range of national and historical contexts. These critical approaches will enable a wide readership to understand how Muslims engage with the assumptions and epistemologies that underpin marriage and relationships in contemporary Islamic settings.

The volume begins by introducing the reader to several key internal debates about Muslim marriage, including the entailments of the marriage contract, the status of marital rape, and the relationship between spouses. Together, these essays provide insight into dominant Islamic legal and religious discourses about marriage. Discourses, as understood here, have a double valence: they are at once stable and can be challenged and changed.[1] Anthropologist Talal Asad has argued that tradition is discursive: the discourses that make it up aim to teach people how and why to engage in specific instituted practices.[2] Traditions only persist to the extent that they, and the discourses that comprise them, are at once linked to the past and able to change in response not only to present predicaments but also to aspirations for the future. Islam,

1 We follow Michel Foucault's conception of discursive formations in this analysis. Foucault argued that a discourse entailed statements that together constitute a system through which subjects and objects are formed and at times transformed. See Michel Foucault, *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith, 2nd ed. (London: Routledge, 2002), 41–43.

2 Talal Asad, 'The Idea of an Anthropology of Islam', *Qui Parle* 17, no. 2 (2009): 20.

as a discursive tradition is, accordingly 'a tradition of Muslim discourse that addresses itself to conceptions of the Islamic past and future, with reference to a particular Islamic practice in the present'.[3] Part I of the present volume both captures several dominant discourses within the Islamic tradition about marriage and presents loyal challenges to them, challenges that render the tradition dynamic and seek to bring Islamic discourses on marriage into closer proximity to the realities of contemporary everyday life. Thus, the discourses presented here constitute marriage as both an object of analysis and a site of intervention – they indicate how marriage is understood as well as how different scholars and jurists seek to change its normative entailments.

The essays in Part II present and analyse a different aspect of the discursive tradition, with special attention to the ways in which lay Muslims live and understand marriage. These essays are written by sociologists and anthropologists who explore the various ways in which Muslims engage with fiqh and social institutions that structure their daily lived experiences. The essays examine how individuals, jurists, political actors, and civil society organisations respond to the dynamics of specific socio-political domains on questions of marriage and relationships. A major intervention of the collection is that such practices and arguments are not separate from but spur reforms to fiqh. Indeed, presenting these sociological and anthropological essays alongside the fiqh interventions demonstrates that rather than an isolated theoretical and theological project, fiqh is where practical conundrums and lived problems meet legal theory. This is not a new phenomenon. Wael Hallaq has argued that 'the [Ottoman] qadi mediated a dialectic between, on the one hand, the social and moral imperatives – of which he was an integral part – and, on the other, the demands of legal doctrine which in turn recognized the supremacy of the unwritten codes of morality and morally grounded social relations.'[4] Hallaq's argument is that fiqh has always been responsive to moral and social codes as well as to the sources of law. In this way, the work of making fiqh adequate to social conditions is not distinctly modern but instead an integral aspect of it. Yet fiqh is rarely understood to be an effect of daily life meeting legal theory or doctrine, perhaps because lay Muslims neither think of themselves as reformers nor set out to change dominant fiqh concerning marriage (unlike their counterparts in Part I). Instead, they inhabit the tradition in innovative ways that nonetheless have the effect of changing Muslim marriage practices.

3 Ibid.

4 Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 169.