

Negotiating Justice: American Muslim Women Navigating Islamic Divorce and Civil Law

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Abstract

Drawing on interviews with divorced American Muslim women, I will discuss the range of ways Muslim women in the U.S. incorporate Islamic law into their lives and how they negotiate the religious and legal aspects of their divorces. A common challenge my interlocutors faced in divorce was establishing an access to Islamic divorce and a divorce on equitable terms. Using their understanding of Islamic law as a standard for justice, my interlocutors employed both civil law and religio-legal strategies to re-define the terms of Islamic divorce for themselves. Their experiences demonstrate a need for reform in American Muslim divorce ethics and Islamic legal thought.

Nawal comes from an educated, conservative Canadian-American Muslim home and takes her faith very seriously.¹ She always knew that her parents would arrange her marriage to a man from her native country, Pakistan, and agreed to a proposal from a distant cousin, whom she did not know. She married him in both a civil and religious ceremony in Canada. Nawal soon found that she and her husband were incompatible because of their different upbringings. She faced constant abuse from him and his family as they made belligerent and disrespectful comments about her, taunting her, saying that she was ugly, a bad cook, and not good enough for him. His parents and siblings took priority over her and he threatened to divorce her if she objected to this. For years she attempted to save her marriage, which was expected of a good Muslim woman, but after Nawal could no longer tolerate his abuse, she filed for a civil divorce. She did

¹ I have used pseudonyms for all my informants for confidentiality.

not want her daughters to think that this was an acceptable model of a Muslim marriage.

During the two-year divorce, local Muslim community elders tried to reconcile the couple. Her reputation was destroyed and she was viewed as a woman of little patience and loose morals. Her husband counter-filed for a civil divorce, contested the custody of their daughters, and claimed possession of the home and all marital assets, emphasizing that under Islamic law she was entitled to nothing. Nawal challenged whether this was truly Islamic. He subsequently refused consent for an Islamic divorce and told their daughters they were still married in accordance to Islam and that she could not remarry, yet it was legal for him to marry again as he was allowed to have four wives.

Nawal's story reveals the many challenges American Muslim women face during a divorce. Dominant American Muslim culture rejects divorce as a reasonable resolution to conflicts that couples experience, with frequent citations to a *ḥadīth* (Prophetic saying) of disputed authenticity in which the Prophet Muhammad was reported to say, "Of all the lawful acts the most detestable to Allah is divorce".² Family pressure, Muslim communities, and social circles encourage women, in the form of religio-legal arguments, to stay in bad marriages, regardless of which spouse initiates the divorce and thus makes obtaining an Islamic divorce and establishing Islamic terms, which according to *fiqh* (Islamic Jurisprudence), are never an independent decision for women.

In this essay I will discuss only the legal aspects in divorce cases of nine women, particularly the women's experiences navigating between civil law and the multiple interpretations of religious law during a divorce.³ I will argue that the experiences of American Muslim women in contending with divorce law and exploring their relationships to legal and religious

² Hadith 2173 in *Sunan Abu Dawud: Kitab at-Talāq*. Retrieved September, 2005, from <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/012.sat.html#012.2173>. For examples of frequent citation see *fatwās* (legal opinions) by members of the FCNA at islamonline.net or discussion in Kecia Ali's *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Ḥadīth, and Jurisprudence* (Oxford: Oneworld Publications, 2006), pp. 24-36.

³ To avoid repetitive themes, I present a selection of interviews from Zahra Ayubi 'American Muslim Women Negotiating Divorce' (BA Honors Thesis, Brandeis University, 2006).

discourses, emphasise the need for reform of American Muslim legal thought on both marriage and divorce of American Muslims. In discussing how and whether women pursued an Islamic divorce in the American context, I will examine the legal choices women make based on their own sense of religious ethics and will shed light on the process of negotiation with ex-husbands, civil law, Islamic institutions, or the *imāms* who may or may not have assisted the women's needs in divorce. In particular, I am interested in how the women's religious identity and personal observance affected their decisions on whether to incorporate Islamic law in the negotiation of divorce; how they managed competing notions of Muslim marriage and divorce, and finally their use of the civil courts as a means to negotiate for Islamic justice.

Muslim divorce in the U.S. has generally centred around two legal issues. The first, scholars have studied U.S. court decisions on claims to Islamic law, paying particular attention to the enforceability of *mahr* (marriage dower) claims and stipulations made in some *nikāḥ* (Muslim marriage) contracts.⁴ Although these studies refer to individual cases, their focus is on tracking the admissibility of Islamic law in court, though they barely touch on the effects it has on women. Secondly, Muslim lawyers or leaders of Islamic institutions confront the lack of enforceability of Islamic law in the U.S. by advocating for the creation of institutionalised Islamic tribunals or the adoption of Muslim personal status laws that would grant Islamic divorces.⁵ These proposals, however, do not consider the women's relationship with religious law prior to divorce and rarely accept the plurality of Muslim interpretations of marriage, divorce, or Islamic law.

There has been little attention given to American Muslim women's

⁴ Asifa Quraishi and Najeeba Syeed-Miller, 1998. 'No Altars: A Survey of Islamic Family Law in the United States', *Islamic Family Law: Possibilities of Reform Through Internal Initiatives*. Retrieved June 3, 2005 from <http://www.law.emory.edu/IFL/index2.html>; Ghada Qaisi, 'A Student Note: Religious marriage Contracts: Judicial Enforcement of "Mahr" Agreements in American Courts', *Journal of Law and Religion*, 15, 1/2, 2000-2001, pp. 67-81.; Yvonne Haddad, Jane Smith, Kathleen Moore, *Muslim Women in America: the Challenge of Islamic Identity Today* (Oxford: Oxford University Press, 2006), pp. 113-118.

⁵ Abdul Hakim Quick, 'Al-Mu'allaqah: The Muslim Woman Between Divorce and Real Marriage', *Journal of Islamic Law*, 3, Spring/Summer, 1998, pp. 27-40; Talal Y. Eid, 'Marriage, Divorce, and Child Custody as Experienced by American Muslims: Religious, Social, and Legal Considerations' (ThD Dissertation, Harvard Divinity School, 2005).

perspectives and the personal, religious decisions they make in the legal divorce process, in particular, on how they select between religious interpretations for application in civil cases. In any divorce involving an American Muslim woman, a number of questions arise. Is there a need for Islamic divorce in the U.S. where civil law governs conjugal ties? What is the definition of Islamic divorce and do women have access to it? Who holds the authority to pronounce the divorce? What are “Islamic” divorce terms; are they just and are there limits to their reinterpretation? As women make decisions about these questions, they interpret religious texts, challenge patriarchal notions in the legal tradition, and yet may choose not to engage Islamic law at all.

Similar to the framework of “*tafsīr* through praxis,” which Sa’diyya Shaikh uses to describe South African women’s resistance to domestic violence, which places women’s experiences at the center of their understandings of the Qur’an, my informants also formulated their own *tafsīr* (Qur’anic exegesis) by patching together an understanding of divorce as an expression of divine justice, sometimes through textual references to justice in the Qur’an, *ḥadīths*, *sunna* (Prophet Muhammad’s example), and various laws of *fiqh*.⁶ In what also resembles liberation theology, these women have a sense of Islam as an ethical religion and a source of justice, which enables them to seek an equitable resolution to marital injustices through divorce, both civil or religious.

Field work: informants and methods

In this essay I will present the experiences of nine ethnically diverse American Muslim women who were all divorced in the U.S. Two of the women are American-born daughters of immigrants, four are immigrants, and three are converts to Islam, two of which are African American and one, a Caucasian. Two women are of Middle Eastern descent and four are of South Asian origins. They range in age from mid 20s to late 50s. Due to the limited number of informants in this investigation, I will not attempt to draw broad conclusions on the causes or prevalence of divorce or legal

⁶ Shaikh, Sa’diyya. ‘A Tafsir of Praxis: Gender, Marital Violence, and Resistance in a South African Muslim Community’ in Daniel Maguire and Sa’diyya Shaikh (eds.) *Violence Against Women in Contemporary World Religion: Roots and Cures* (Cleveland: Pilgrim Press, 2007), p. 70.

strategies. This qualitative discussion validates these women's narratives as real and important individual experiences that help us understand the dysfunction and potential for reform of American Muslim institutions. Like in other ethnographies involving North American Muslim women's stories, such as the works by Jamillah Karim, Carolyn Rouse, and Shahnaz Khan, my goal is to analyse a full narrative of the choices women make and examine the details of their experience.

There is no set model of how a Muslim woman obtains a divorce. I have, however, divided the ten divorces amongst my nine informants into three categories: first, two are exclusively religious divorces (resulting from exclusively religious marriages); second, there are three exclusively civil divorces; and finally, five are cases involving both civil and religious law. These last cases are the most revealing about how American Muslim women sift through religio-legal claims and try to adhere to their notions of Islamic justice in the divorce process. Their personal understanding of Islamic and civil law, level of religious observance, the type of community in which they lived, their financial situations, and the flexibility of religious authorities were all factors that affected these women's legal decisions.

American Muslim demographics, institutions, and marriage and divorce practices

There are approximately six million⁷ Muslims in the U.S. who comprise of transnational and American origins. Muslim communities have formed national-scale institutions, often along ethnic lines, such as the American Society of Muslims, which is predominantly African American, and the Muslim Students Association and the Islamic Society of North America, which are predominantly made up of American Muslims of immigrant origins. These organisations help amalgamate Muslim communities into a cohesive American Muslim population and formulate an ideal "Islamic" lifestyle within the U.S. One such organisation, the Fiqh Council of North America (FCNA), is a group of American Muslim scholars with varied training in Islamic law, who study classical and modern *fiqh* and pass *fatwās* (legal opinions) through websites and publications distributed

⁷ This figure is contested. Estimates range from 4.5 million to 9 million.

or sold at mosques on a variety of topics ranging from Islamic banking practices to Islamic divorce terms.

Compared to Muslim majority countries where Islamic law is encompassed by family codes in civil law, and many Commonwealth countries where Muslim personal law is recognised, Islamic law is not formalised in the United States. American Muslims live under civil law, but by practising Islam and participating in a Muslim lifestyle with respect to marriage and raising children, many Muslims adhere to both Islamic and civil laws and do so without any reservations. This creates a form of Islamic legal culture, rather than a binding system, that Muslims follow out of personal and religious obligation. The freedom of practising one's religion in the U.S. allows the two legal frameworks, religious and civil, to exist independently. The FCNA's *fatwās* are only binding for those who accept the authority of the scholars on the council and seek an authentic Islamic resolution to religio-legal challenges in America. On a community level, mosque boards, local imāms, and religious elders have also functioned as religious authorities for mediating legal disputes or religious controversies.

Some conservative segments of the Muslim society in the U.S. maintain careful adherence to Islamic legal principles, such as the prohibition of usury, whereby they object to purchase items on credit, or a man's right to practice polygamy by not declaring their plural marriages on civil documents. Other Muslims choose not to adopt Islamic laws in their daily lives. The practices of most American Muslims fall some where in the middle in the spectrum of legal adherence to *Sharī'a* and *fiqh*.⁸

For many American Muslims, a marriage involves two processes, civil and religious. The solemnisation of marriage in Islamic terms is important to Muslims because it forms a union in the "eyes of God" and within social traditions of Muslims, it distinguishes their marital relations from *zinā* (illicit sex). The *nikāḥ*, which is usually officiated by a figure of religious authority, who may also be licensed by the state to perform marriages (or else couples often have separate civil marriages), is composed of an offer and acceptance of marriage in front of two witnesses and usually contains

⁸ *Fiqh* refers to pre-modern and modern Islamic jurisprudence based on the *Sharī'a*, law derived from the Qur'an, *ḥadīth* and *sunna*. Often the term "Islamic law" incorporates both *Shari'a* and *fiqh*.

a previously determined *mahr*, which is paid, or partially deferred, by the husband to the wife at the time of *nikāḥ*. A divorce can also have both a religious and civil nature. Muslim women may choose which law determines the divorce terms, but many times it all depends entirely on the husband's willingness to co-operate as to whether an Islamic divorce will take place.

There are many types of divorce in Islamic law. *Talāq* is a unilateral repudiation pronounced by a husband, after which the wife observes a three-month waiting period, *'idda*, and at its conclusion, the marriage is irrevocably dissolved. During *'idda*, a man can withdraw the *talāq* and take his wife back; he can reject her a second time but after a third pronouncement the divorce is irrevocable. If the husband has an outstanding balance on the *mahr*, it must be paid in full to the wife upon *talāq*. This common practice should not be confused with potential compensation or alimony due to a wife when obtaining a civil divorce.

Khul' is an irrevocable divorce initiated by a wife usually in exchange for the return of the *mahr*, but most schools of jurisprudential thought agree that the husband's consent is required for it to be valid (although the husband's consent is not specifically mentioned in the Qur'anic verse upon which the legal concept of *khul'* is based).⁹ Theoretically, women also have access to a juridical divorce, *faskh*, which is concluded by a *qāḍī* (a judge trained in Islamic law) presiding in an Islamic court.¹⁰ In order to establish a case for *faskh* and waive return of the *mahr* to the husband, a woman must prove her case, such as the husband's insanity, impotence, imprisonment, abandonment, physical harm, or lack of moral conduct or financial maintenance. This option is not available in the U.S. as there is no juridical structure of Islamic law in place; however some imāms may issue informal Islamic divorce decrees.

In attempts to distinguish Muslims from the rest of the population and to promote pious lifestyles, Islamic institutions encourage U.S. Muslims to follow Islamic law in their family affairs. This generally involves romanticised references to the medieval *fiqh*, which restrict

⁹ See verse 2:229.

¹⁰ *Tatliq* is another kind of juridical divorce in cases of abandonment or absence of the husband in which a *qāḍī* or judge uses the husband's right to initiate divorce on his behalf.

women's self-determination, by organisations such as the FCNA.¹¹ *Fiqh* was constructed on the basis of pre-modern gender roles and it includes the legal assumption that women have very little power in determining their own affairs. They need consent from a *walī* (male guardian) to enter a marriage and their husbands' consent to exit a marriage. Thus, in applying classical *fiqh* standards, women are regulated through marriage and divorce and thus become fully responsible for upholding the vision of an ideal Muslim family to which the greater American Muslim community is committed. This vision is based on an unchanging *fiqh* that is treated as sacred, even though Islamic law in the U.S. context is an amalgamation of classical jurisprudence, immigrant notions of manifestations of *Sharī'a* in modern Muslim nation states. It is also the result of American Muslim apologetic attempts to shape Islamic law in response to non-Muslim, and western criticism that women have no rights in Islam. Increasingly, reform-minded Muslims refer to *Sharī'a* as the standard of God's justice, however this standard is disjointed from the evolution of Islamic legal thought in America.

The experiences that many immigrant Muslims have had of resistance to colonial domination in their countries of origin, or continued post-colonial opposition to "Western" gender roles, persuades immigrants and non-immigrants alike to adhere to a conservative model of gender roles in the U.S., which is considered Islamic. Ziba Mir-Hosseini points out that because of criticisms from outside the Muslim community regarding the "patriarchal biases of *fiqh* rules" Muslims often take an:

oppositional stance and a defensive or apologetic tone: oppositional, because their agenda is to resist the advance of the 'Western' values and lifestyles espoused by twentieth-century Muslim states and their secular elites; apologetic, because they attempt to explain and justify the gender biases which they inadvertently reveal by going back to *fiqh* texts.¹²

¹¹ Ali, *Sexual Ethics*, pp. xxiii.

¹² Ziba Mir-Hosseini, 'The Construction of Gender in Islamic Legal Thought and Strategies for Reform', *Hawwa* 1, 1, pp. 16.

As Kecia Ali says, even Muslim feminists like Azizah al-Hibri fall into apologetic traps of ignoring the fundamental ways in which Islamic law is an historical product of patriarchal interpretations. In their desire to show Islam in a favourable light and take pragmatic approaches to negotiating rights for women, feminist apologists latch onto isolated rights that allow women some agency in their matters such as claims to the *mahr* and rights to include stipulations in the *nikāh* and “provide new justifications and interpretations for these rights that do not accurately reflect their original place in a system of spousal rights and obligations.”¹³ In facing a plethora of religio-legal claims from their communities, some of my informants selected injunctions from *fiqh* favourable to women in order to obtain an Islamic divorce or construct favourable terms. However, many moved beyond apologetic tactics by focusing on justice as the underlying purpose of Islamic law, rather than searching for favourable *fiqh* terms in divorce.

Women who divorced exclusively using religious law

An exclusively religious marriage is one that is solemnised by the religious authority and not by civil law. At first, this type of marriage seems unfavourable for women because it allows the unofficial wife or co-wives¹⁴ to be deprived of health insurance or healthcare, public education or benefits acquired through marriage, and limits their mobility out of fear of discovery by state officials. In the event of an exclusive religious divorce, women may lose complete custody of their children and become financially disadvantaged. However, there may not be any civic difficulty in such marriages for women. For example, Noor and Tanveer, who did not have civil marriages, were able to determine or improve upon their divorce terms according to their own understanding of religion.

Noor, the daughter of Egyptian immigrants, is an obstetrician/gynaecologist who grew up in the U.S. with a strong sense of her Muslim identity and awareness of women’s Islamic rights. One evening after work, Noor found a new acquaintance visiting her parents’ home with an

¹³ Kecia Ali, ‘Progressive Muslims and Islamic Jurisprudence’ in Omid Safi (ed.), *Progressive Muslims on Justice, Gender, and Pluralism*, 163-189 (Oxford: Oneworld Publications, 2003), pp. 166.

¹⁴ For more on American Muslim polygyny see Debra Mubashshir Majeed, ‘The Battle Has Been Joined: Gay and Polygynous Marriages Are Out of the Closet and in Search of Legitimacy’, *Cross Currents*, 54, 2, 2004, pp. 73-81.

imam, proposing their *nikah* take place that very evening. Without the opportunity to reflect on any stipulations that she wanted to include in it, Noor accepted the *nikāh*. She remembers being overwhelmed: “I was not in my senses, post-call and not fully present.”¹⁵ The couple intended to have an additional civil marriage but that never occurred. This, however, did not bother Noor because in her view the *nikāh* was a spiritual contract and real marriage.

During the two-year marriage, Noor found her husband to be detached, aloof, and hid the entirety of his income. Her situation conflicted with her knowledge that in a Muslim marriage wives have the right to receive *nafaqa* (maintenance) from husbands, and that no one has a claim on a woman’s independent wealth and earnings. She never expected to have to financially support her husband and child. When she tried to confront him he became hostile and so she “left the house and declared a *khul’*. At first her husband was reluctant [to consent] but he accepted that he was not fulfilling his duties.”

After the *khul’* Noor devised a visitation schedule for her ex-husband and child and calculated the amount of child support she needed. Although religious contracts are rarely enforceable, to the surprise of Noor’s family, her ex-husband complied with the Islamic divorce terms. Noor concedes, “I trust[ed] him because he followed Islam. It would have been very easy [for him] not to,” indicating he felt morally and religiously compelled to co-operate. Later, however, she used civil law to make her divorce contract legally binding by taking written documentation of their agreement to court. It was for this reason that when her ex-husband failed on one occasion to make child-support payments, Noor was immediately able to file a complaint with the courts. A judge ordered him to make future payments through a wage deduction system instead of direct payments to Noor.

Even though civil law does not recognise exclusively religious marriages or divorce, Noor was able to use the courts to enforce her visitation schedule and child support payments because the court recognises paternity and enforces child support even when parents are not married according to civil law. However, if she was not financially

¹⁵ Noor. Personal Interview. June 1, 2005. All quotations from Noor are from this interview in Ayubi ‘American Muslim Women’, pp. 21-23.

secure, she would not be able to rely on the courts. For the future, Noor says that when she remarries she will contract a civil marriage as well as a *nikāh* for the sake of “protecting [her] rights.” This is an interesting shift in choice of legal system from her earlier position in which she felt that Islam sufficiently protected her rights. She now feels she must use civil law in order to preserve her Islamic rights as a wife.

Tanveer is a twice-divorced African-American woman. After learning from a difficult first marriage and divorce, which I will discuss later, Tanveer contracted her second *nikāh* with various stipulations regarding her personal autonomy during the marriage such as “being able to travel without supervision, fast without permission from [her] husband, and a unilateral right to divorce.”¹⁶ Tanveer did not have a second civil marriage as she felt that in the event of a possible divorce she did not want to relive the experience and trauma of a civil divorce. However, this marriage was a short one and Tanveer divorced again, but due to the stipulation of the right to unilateral divorce, it enabled her to divorce without contentious negotiations for her husband’s consent to *khul’*.

Stipulations as a Tool for Women

Although Noor and Tanveer decided their own terms in religious divorce, they both concede that their positive experience with religious contracts was due to their ex-husband’s “God-fearing” nature and desire to adhere to an Islamic morality that bound them to abide by the *nikāh* or divorce if they breached its conditions. Often Muslims have apologetically pointed to the bargaining power women have for stipulating conditions in the *nikāh*, as evidence of women’s equality in marriage according to *fiqh*, despite the lack of enforceability in many contexts and difficulties in negotiating stipulations in the first place.

In her study on spousal abuse among American Muslim women, Dena Hassouneh-Phillips explores the efficacy of stipulations.¹⁷ Hassouneh-Phillips explains that her interlocutors endured physical abuse because “marriage for Muslim women is integral to religious and social life [...].

¹⁶ Tanveer. Personal Interview. October 22, 2005. All quotations from Tanveer are from this interview in Ayubi ‘American Muslim Women’, pp. 23-24, 36-38.

¹⁷ Dena Saadat Hassouneh-Phillips, “‘Marriage Is Half of Faith and the Rest Is Fear Allah’: Marriage and Spousal Abuse Among American Muslims’, *Violence Against Women*, 7, 8, 2001, pp. 927-947.

Many of the women [...] unfortunately tolerated significant abuse for many years, hoping that through faith, things would improve over time.” They were often quoted the *ḥadīth*, “Marriage is half of faith.” Her informants’ attempts to empower themselves by drafting lengthy stipulations in the *nikāḥ* or renegotiating their marriage contracts in Islamic arbitration led by imāms proved ineffective in preventing the abuse.

Her analysis of the failure of stipulations as deterrents against domestic violence demonstrates that the inclusion of stipulations in the *nikāḥ* is not a definitive solution to ensure marriage partners are on equal footing. As Kecia Ali points out, including stipulations would not curb men’s access to a unilateral, no-fault Islamic divorce.¹⁸ There is no incentive (i.e. the threat of divorce) that pressures husbands to comply with stipulations, while the pressure exists for the wives. Stipulations cannot be a long term reform solution, not only because they are unenforceable contracts, but more vitally because: “it would not address this basic imbalance in men’s and women’s marital rights, or the definition of the marriage contract as being unilaterally in the husband’s domain (*fi yadihi*).”¹⁹

Even if all women stipulated the right to unilateral divorce through pre-nuptial agreements,²⁰ until an honest discussion of equal rights for men and women in Muslim marriage takes place, the definition of *nikāḥ* remains the same, a product of medieval gender inequalities in *fiqh*. Although in some cases women can hold men accountable to religious contracts. Noor’s need to employ the U.S. courts to enforce the terms of her *khul’* shows that Muslim women in the U.S. can benefit from legal duality in marriage and divorce negotiations to create incentive for husbands’ compliance. This poses the question, to which I will return, of whether the recognition of Islamic divorce law in the U.S. is desirable.

Women who divorced exclusively using civil law

In this section I will discuss the divorce experiences of three women,

¹⁸ Ali, *Sexual Ethics*, pp. 28.

¹⁹ Ali, ‘Progressive Muslims on Islamic Jurisprudence’, pp. 177. Also, American Muslim women do have access to no-fault civil divorce, but it is not always interpreted as equivalent to Islamic divorce.

²⁰ Azizah al-Hibri advocates building *nikāḥ* stipulations into pre-nuptial agreements in ‘An Introduction to Muslim Women’s Rights’ in Gisela Webb (ed.), *Windows of Faith: Muslim Women Scholar-Activists in North America*, 51-71 (Syracuse, NY: Syracuse University Press, 2000).

Firdaus, Zarrin, and Hafsa, who all had civil and religious marriages but chose to divorce using only using the civil law. They acknowledged Islamic law insofar as settling their personal questions or establishing an Islamic justification for seeking divorce. Their cases illustrate one way Muslim women accommodate both civil law and religious authority in the dissolution of their marriage.

Firdaus emigrated from Pakistan as a teenager and married her college sweetheart in a civil and religious marriage, the latter of which was “very important to [her]” because “it’s a requirement for a Muslim family to have a religious marriage.”²¹ After twenty-two years of marriage Firdaus learnt that her husband was cheating on her. Firdaus filed for civil divorce even after receiving many phone calls from her brother and elders in her community, who said divorce is not Islamic and not the answer.

Although the *nikāh* was important to her, she says, “Islamic divorce didn’t really come up because my husband and I were physically separated and the physical separation in combination with the American divorce resulted in the final divorce.” Her reasoning for use of the term, final divorce, resembles the idea of the irrevocability of *khul’* or, of *talāq* after the separation period of *idda* has expired. Although Firdaus did not pursue an Islamic divorce independently, her idea of physical separation coupled with the civil divorce was cause for final divorce which reflects various “religious” notions. With respect to *mahr* she said, “In a divorce, *mahr* doesn’t come into play [...] living in the United States, your divorce goes through the legal avenue in which everything you own is split half way. My *mahr* was so nominal compared to my divorce settlement that it just fell in.” She viewed both her civil divorce decree and settlement inclusive of Islamic law. It was also financially safer for Firdaus, who was unemployed, to receive half the marital assets and child support rather than claiming a nominal *mahr* as her compensation due at divorce.

Islamic Permission to Divorce using civil law

In contrast, Zarrin’s experience of a civil divorce was a negative one. She married straight out of high school and lived for thirteen years under strict conditions in which her controlling husband did not allow her to

²¹ Firdaus. Personal Interview. May 31, 2005. All quotations from Firdaus are from this interview in Ayubi ‘American Muslim Women’, pp. 26-28.

drive or learn English; he required her to log all the phone calls she made and received. After becoming depressed and contemplating suicide, Zarrin ignored her parents' wishes to stay in the marriage and went to a Muslim counsellor and a Muslim shelter as she did not want to "give [non-Muslims] a reason to say bad things about Muslims."²²

When she filed for divorce her husband said, "under Islamic laws [she] could not divorce him, [...] this was unholy and bad and [she] was going against God's will. [But She] knew it was the right thing."²³ Instead of negotiating religious divorce with her uncooperative husband, Zarrin confirmed with the *hoja* (figure of religious authority) who had officiated their marriage, if it would be acceptable in Islam for her to seek divorce: "I knew I was two hundred percent right but I just wanted to confirm. I described [to] him [only] the sexual problems he had and I [asked] is it okay under these conditions for me to divorce [...] he said yes, by all means go ahead and divorce." She presented the situation as a case for juridical divorce *faskh* to receive her *hoja's* approval, but she only pursued the divorce through civil law.

Zarrin initially viewed religious and civil laws as separate entities. Her *nikāh* was "the difference between *zina*" and permissible sexual relations; in comparing it to civil marriage she says, "in our religion at least two people need to know that you got married, that's why there are witnesses [...] and in legal marriage there are at least two witnesses so it is probably the same process." As the processes of civil and Islamic marriage resemble one another, she felt a civil marriage fulfilled the Islamic requirements of *nikāh*. Similarly, in seeking divorce, she confidently accepted the civil divorce as a religious divorce because her *hoja* had pre-approved it.

Zarrin's husband suggested an inexpensive Muslim lawyer who could settle their divorce. She agreed, realising that she could not afford a fight for child custody or a financial settlement. She recalls, "He said 'I want the custody of the kids because I'm afraid that you're going to kidnap them' [...] I had nothing. I had no rights whatsoever." The lawyer he hired was

²² Shahnaz Khan discusses Canadian Muslim women's dual struggles to overcome "Muslim" oppression while combating bigoted views of Muslims by non-Muslims in *Muslim Women: Crafting a North American Identity* (Florida: University Press of Florida, 2000).

²³ Zarrin. Personal Interview. October 11, 2005. All quotations from Zarrin are from this interview in Ayubi 'American Muslim Women', pp. 29-30.

“[reluctant] to draw up the papers” for finalising the divorce and told her to “go to another lawyer and get [her] rights” because he believed Zarrin was entitled to more as a Muslim woman and could make legitimate Islamic claims through the civil courts. As she could not afford her own attorney, she settled on her ex-husband’s terms, which he claimed were Islamic.

Hafsa was a first-generation Pakistani-American woman who fell in love and got engaged with a suitor from her community. Her brother, acting as her *wali* (male guardian), opposed the match because he had identified certain problematic features of her fiancé’s personality, but later consented to it. Within two months of the marriage, “all the issues he had as an individual [...] became apparent.”²⁴ He was depressed, dropped out of graduate school, drank and gambled excessively. To salvage the marriage, she supported him financially, paid his tuition, convinced him to go to counseling for “anger management and abusive behavior,” and take medications for his depression. He was unresponsive and inconsistent with treatment and after several failed attempts in helping her husband who promised to change, Hafsa filed for divorce.

Before doing so, she approached the progressive Imam she had selected to officiate her *nikāḥ* two years earlier because, “[she] wanted to make sure that [she] was doing everything according to Islam.” She told him exactly what had been going on [...] and he was supportive of her. The Imam felt that Hafsa chose divorce as a last resort and her repeated attempts to reconcile with her husband and involving others was comparable to attempts at reconciliation that may occur during the *‘idda* period. She recalls: “I really had done more than I needed to do [...] because he knew that I had gotten the psychiatrists and everybody involved, he did feel that somebody had tried to intervene.” With regard to an Islamic divorce she says, “I guess it was more along the lines of the law of the land superseding any cultural or religious beliefs [...] and for me that settled the question [...] I felt really comfortable in hearing it from him. The Imam just validated it for me.”

Although the Imam’s permission to divorce answered her question about Islamic divorce, Hafsa discussed her ten thousand dollar *mahr*

²⁴ Hafsa. Personal Interview. October 19, 2005. All quotations from Hafsa are from this interview in Ayubi ‘American Muslim Women’, pp. 31-34.

outside of court, in the hope that his parents would admit to their son's flawed character and honour the *nikāh*. As they were not obligated by civil law to pay her the ten thousand dollars, they claimed that the ring, the only gift she kept from the marriage, was intended to be her *mahr*. They did not address the money she had invested in attempting to salvage the marriage and although she felt their refusal to pay the *mahr* or reimburse her was not Islamic, she believed her civil divorce decree was.

Firdaus, Zarrin, and Hafsa consider the civil system as the institution that divorced them from their husbands as they felt civil law was inclusive of Islamic law or resembled it closely. For Firdaus's case this provided financial security. In the cases of Hafsa and Zarrin, by having religious permission from sympathetic imāms to divorce in the civil system they avoided making a distinction between the two legal entities, which could have allowed the ex-husbands to prevent an Islamic divorce from taking place. However, by subsuming Islamic law under civil law, they were not able to use the courts to negotiate for what they felt was their Islamic due such as financial compensation or custody, because either it was too late, cost prohibitive, or to ensure their ex-husbands' compliance.

Use of both civil and religious systems

Unlike the women I discussed in the previous section, five of my interlocutors, who are fairly well versed in Islamic legal debates and Muslim women's rights, treated the civil and religious divorces as separate and considered *khul'* or *talāq* essential to feel truly divorced in both a personal sense and in the eyes of God. Their cases fall into three categories based on the order in which civil and religious divorces took place. Sadaf and Tanveer declared *khul'*, then proceeded through the civil divorce process. Nawal and Lisa filed for civil divorce first and then sought Islamic divorce during or after the civil process. Aliya's ex-husband mailed her a *talāq* notice and she subsequently went through the civil divorce process. The order in which the religious or civil divorces took place greatly affected the women's agency in negotiating which laws, civil or Islamic, were applied and whether the women obtained Islamic divorce at all.

Sadaf is an African-American woman who converted to Islam in college and was widowed at a young age with two children. She faced community pressure to remarry and recalls, "I wasn't ready to get married but the

concern everywhere in the community was that I was alone and there was pressure on me to get married and so I just said okay.”²⁵ Because she was rushed into remarriage, several unresolved issues surfaced frequently. Sadaf’s husband was abusive, irresponsible with their children, and disrespectful towards her. After staying married for the sake of the children and getting pregnant year after year, Sadaf declared a *khul’*. Her husband refused consent but Sadaf took him to counseling with an imam who knew her situation well and convinced him to sign Islamic divorce papers.

She felt this was a real divorce: “when we got an Islamic divorce, I had seen myself as divorced, and the court would be a formality.” However, this process turned into a ten-year long custody battle and numerous court dates for missed child support payments. He “did what he could do to prolong the situation because he knew that [she] wanted the divorce.” Sadaf’s understanding of civil marriage as a separate entity from the religious marriage enabled her to remarry while the civil divorce case was pending. She says, “In my world, the Islamic part is necessary.” She then married the imam of a predominantly African-American mosque and had carefully drafted stipulations in her *nikāh*, which she felt her husband would respect because of his personal and public religious obligations.

Tanveer, whom I discussed earlier in the context of her second divorce, had a more complex first divorce. She had four children with her husband of 20 years but felt he was controlling and not the spiritual partner she envisioned him to be when they married. She recalls: “I felt that [during] the whole marriage, there wasn’t any communication and [any] level of love [...] So I felt, why am I married? He tried to exert a certain level of control over me [...], not acknowledging my spiritual autonomy.” She changed her core beliefs to suit his tastes and was “unhappy for a long time.” When Tanveer told her husband she wanted a divorce, “he was very angry and distraught and said [it was] because [she] wanted to be a career woman and that’s not Islamic and divorce is not Islamic. He said ‘it’s going to be on [her]. I’m not responsible for it.’” She decided to “do the Islamic [divorce] first because [she] felt that would have more weight spiritually.”

Tanveer met with a “moderate imam” to discuss her *khul’*. However,

²⁵ Sadaf. Personal Interview. November 21, 2005. All quotations from Sadaf are from this interview in Ayubi ‘American Muslim Women’, pp. 35-36.

he did not trust Tanveer's carefully deliberated decision and told her he would only sign as a witness for her *khul'* if she waited for two months to determine if divorce was her final decision. After two months, Tanveer left the house, returned the *mahr*, which was made up of some furniture and cash, and took the children as per their wishes. She determined the visitation schedule, which the court enforced, and sent her husband a notice titled "Declaration of Khula", signed by her and the Imam. Even though her husband was extremely angry a few months later he consented to the divorce.

In a traditional Muslim marriage there is no concept of conjugal wealth, a position which is supported by a *fatwā* by the FCNA²⁶. A woman leaves with the same wealth she brings into a marriage and has little or no claim on marital assets. This poses a challenge for women like Tanveer who divorce by both civil and Islamic laws: which law should determine the division of property and what financial settlement is considered Islamic for a homemaker who cannot rely on an extended family for support? As Tanveer first pursued the religious divorce and left the house, she encountered great financial hardships. Initially she "was not going to ask for anything [because] that definitely wasn't Islamic." However, a divorced friend convinced her that it was indeed Islamic: "Islamically [she] was entitled [to] something" because "[she] breast-fed the kids, [...] took care of the kids, and took care of the house while he was working." Using a similar reasoning found in Moroccan divorce law, Tanveer asked herself, "If I didn't do it, then how much would it cost for someone to do it?"²⁷ So she claimed half of the equity of the marital house and "made a clause that a portion of it should go to the children when they are eighteen." By first pursuing an Islamic divorce, Tanveer was able to ground herself in the *Sharī'a*, which her husband cited as the very reason she could not divorce

²⁶ FCNA declares that women are entitled to *some* compensation in *talāq* along with their *mahr* (the *fatwā* does not mention *khul'*), but not half the marital assets because it is un-Islamic. Sheikh Muhammad Ali Hanooti, "The Financial Settlement after Divorce in U.S.A', *Fiqh Council of North America*, Retrieved September, 2005 from <http://www.fiqhcouncil.org/articles/financial.html>

²⁷ *Ujrat al-mithl* is a fair wage paid to the wife for her services in the husband's household. See Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London: I.B.Tauris, 2000) pp. 147 for reference to *ujrat al-riḍā'*, wages for suckling children and *ujrat al-ḥadāna*, or fees for child care and continued child support in Moroccan Law.

him. It was important to Tanveer that the subsequent civil divorce terms be just and Islamic, but that was only possible through questioning the very core of what is Islamic.

Establishing a religious divorce before a civil divorce was beneficial to Sadaf and Tanveer in that they did not elicit much debate about obtaining religious divorces from their husbands, and perhaps showed their assertiveness by declaring *khul'* with the support of an understanding imam. The civil process, however, was either too lengthy or difficult for debating Islamic divorce terms.

The *Mu'allaqa* problem

The next two women I will discuss first initiated civil divorces and then had great difficulty in subsequently obtaining an Islamic divorce. The *mu'allaqa* (woman who is hanging, or in limbo) problem is a predicament that some American Muslim women experience as they have obtained a civil divorce but are unable to secure a religious divorce from their husbands or religious authorities. Upon learning that their wives had filed for a civil divorce, Nawal and Lisa's ex-husbands denied them Islamic divorce by taking advantage of women's limited access to an Islamic divorce and men's advantage in *fiqh* of owning the marriage contract as part of their domain.²⁸ According to Nawal and Lisa, their motivation for doing so was to take revenge on their ex-wives for filing a civil divorce and to spiritually bind them from moving on or remarrying.

When Nawal, whose marriage I detailed in the introduction, filed for civil divorce, her ex-husband suggested to "do this according to *Sharī'a* law."²⁹ He wanted to pay her the *mahr*, which she said was unnecessary because "[She] was the one requesting the divorce [...]" He then wanted mediation at the mosque to "make some decisions about the children and the property." Initially she thought this was the right course but she says, "I realised that [...] even if it was Islamically the right thing to do, there

²⁸ The *mu'allaqa* problem has a parallel in Jewish law, known as the *agunah* problem in which women have limited grounds to seek divorce. After civil divorce their ex-husbands can deny them religious divorce. The women cannot remarry according to Jewish law and any children they may have from civil remarriage would be illegitimate.

²⁹ Nawal. Personal Interview. August 27, 2005. All quotations from Nawal are from this interview in Ayubi 'American Muslim Women', pp. 47-50.

was no recourse behind it – no action I could take if he didn't abide by it." She concluded that his motivation for using *Sharī'a* and his offer to pay her the *mahr* was based on his distorted understanding of the law.³⁰ He said to her, "if it was by *Sharī'a*, it was by religion, he would get the house, he would get the children, he wouldn't have to pay child support." She responded,

Even if that happens in Pakistan, [...] the legal system here gives the woman a lot of rights that are closer to the *Sharī'a* than what the women in Pakistan are allowed and that's another reason why I wanted to go through the court system, because it would force him to do what he was supposed to be doing with respect to Islam.

With a belief that the Qur'an defines "Islamic" divorce terms as what is fair and just, Nawal turned to the civil court to carry out her sense of Islamic justice. In contrast, her ex-husband believed that an "Islamic" divorce is advantageous for men in *Sharī'a*, as defined by Pakistani legislations. This difference in their understanding of what is "Islamic" is a reflection of a broader national debate: which discourses of Islamic law ought to be incorporated into American Muslims' lives. As *Sharī'a* is not institutionalised, organisations such as the FCNA typically refer to traditional bodies of *fiqh*. However, individual American Muslims, such as Nawal, may refer to primary sources of the Qur'an and *sunna*, while recent immigrants may refer back to the family laws of their countries of origin where manifestations of *Sharī'a* are institutionalised through civil laws with which they are familiar.

The moment Nawal decided to use the civil system, her ex-husband retracted the idea that they should decide any terms according to *Sharī'a* as it would be unprofitable for him and he would have to share the marital assets with her. He subsequently refused her a *talāq* (although he threatened her with it during the marriage), refused to take the nominal *mahr* in return for *khul'* (although he initially suggested to divorce

³⁰ Advocacy for enforcement of all *mahr* claims in U.S. court overlook that some men attempt to prevent division of marital assets by claiming that women are only entitled to the *mahr*.

according to *Sharī'a* if she accepted her two hundred and seventy-three dollar *mahr* as a divorce settlement), contested custody of their daughters, and refused to swear on the Qur'an during his depositions, saying that “now we weren't doing it according to *Sharī'a*, everything should be a civil matter.”

Nawal recounts searching for just Islamic divorce terms:

I was told that the father was supposed to get the kids but in the end it turned out that was not the case. [...] Because a woman is not allowed to divorce the husband, *per se*, how is a woman supposed to go about getting a divorce in Islam? I needed guidance on the financial aspects and what were in my rights to request [in order to] stand in front of Allah on the Day of Judgment and say I did the best I could.

She constructed her civil divorce decree using her sense of Islamic justice and extensive research on modern *fiqh* and reformist discourse in Islamic law.

Obtaining an Islamic divorce pronouncement still remained an issue because “according to him it was just a civil divorce and according to the religious aspect [she] was still married to him”. This was a problem if she wished to remarry, and because she wanted to counsel her daughters when they knew that their parents were no longer married. She wrote to several American Muslim scholars and imāms, asking for an Islamic divorce decree but “they kept saying ask him again” for *talāq*. He had refused “on three different occasions.” She then “wrote to an Islamic judge in Pakistan about [her] divorce, [...her] life with him and why [she] needed to get the divorce.” After several months the judge granted her a *Sharī'a* divorce decree. In wanting to end her state of *mu'allaqa*, Nawal wrote to an informal, non-state employed *qāḍī* outside of the U.S. and based on descriptions in her letter, the unofficial *qāḍī* issued an unofficial divorce decree. In the United States, figures of religious authority have reservations in doing the same, citing that they have no official power, revealing that there is a lack of new *ijtihād* (juristic reasoning) to resolve the *mu'allaqa* problem within the American context. Nawal's need was not to obtain a legally binding Islamic divorce decree, but rather to have a

religious dissolution to the marriage because she had been married both by civil and religious law.

Lisa³¹, a Caucasian American who converted to Islam had no option of writing to a *qāḍī* from a native Muslim country. She married her boyfriend shortly after they both converted to Islam. Throughout the marriage Lisa was financially supporting her husband, who refused to work, had extreme rage, was depressed and physically abusive. When she began to fear for her life Lisa moved out of their home and filed for a civil divorce. To prevent her from remarrying, her husband refused her request for *talāq* and did not consent to *khul'*. While researching how she could obtain a religious divorce in the U.S., Lisa came across a *fatwā* of the FCNA that stated her civil divorce decree should be accepted by religious authorities as a religious divorce.³² Lisa acknowledged that her divorce case would take several years to finalise as her husband showed no sign of settling out of court.

Lisa learned that according to *fiqh*, an Islamic juridical divorce cannot be pronounced by anyone other than a *qāḍī*, presiding over an Islamic court. As there are no *qāḍīs*, or any formal *Shari'a* tribunals in the U.S., she had nowhere to take her case. However, Lisa recognised that even if there were such a system in place, the tribunal whose foremost interest as imagined by its proponents would be to save Muslim marriages and exercise classical *fiqh*, would have denied her a religious divorce because according to *fiqh* the burden of proof for grounds would fall on her. For each of her three reasons, her husband's mental incapacity, abuse, and lack of maintenance she would face a plethora of limitations from *fiqh*. She would have to produce four witnesses to testify to his mental state or produce medical records, which in the U.S. are inaccessible due to patient confidentiality laws; and so, if he appeared sane in the tribunal, she would be proven wrong. As her scars had faded she did not have any proof of physical abuse and there were no witnesses to that abuse. Finally lack of financial support for her could be overlooked, especially as Lisa supported her husband before their marriage and it could be supposed that he had a

³¹ Lisa's interview appears in Ayubi 'American Muslim Women', pp. 51-53.

³² Muzammil Siddiqi, 'Non-Muslim Judge Dissolving Islamic Marriage', *Islam Online Fatwa Bank*, Retrieved September, 2005 from http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503544550

right to expect continued support. Despite believing that she is divorced “in the eyes of Allah,” she recognizes that if *Shari’a* tribunals existed in the U.S it is quite possible that she would be denied an Islamic divorce.

When Nawal and Lisa were denied religious divorces by their husbands, they both researched the Qur’an, *sunna*, and *fiqh* in order to explore other avenues available to them for obtaining a religious divorce. The American imāms the women approached for documentation of Islamic divorce said that it was not in their power to grant them. While Nawal was able to find an authority from a foreign country to issue a religious divorce, Lisa believed that due to the unjust biases in classical *fiqh*, no authority existed to issue her a religious divorce in the U.S. Although Nawal’s case reveals the lack of a *qāḍī* system in the U.S., Lisa recognizes that the presence of such a system would not be beneficial as long as Muslim institutions uphold traditional interpretations of *fiqh* which accommodate a husbands’ unfettered access to an instant divorce and their right to withhold it when they wish, while insisting that women need an intermediary and proof to appeal for divorce.

Unexpected Triple Ṭalāq³³

In this section I will recount the experience of an immigrant Pakistani woman, Aliya, and the Muslim authorities’ support in granting a man’s right to an instant, unilateral divorce. She was married for ten years when her husband suddenly insisted on divorce. “He abandoned the children and [Aliya]”³⁴ and sent her an irrevocable triple *talāq* notice, “typewritten on a sheet of paper—Islamic divorce witnessed by two people.” Shocked, Aliya did not accept the notice as legal in the United States where Islamic law is unofficial. She said, “this was just a piece of paper especially because he didn’t even register it in Pakistan [...] and you can’t just write an Islamic divorce three times — it has to be over a three month period so technically that was not a divorce.” In her definition, Islamic divorce must take place within a formal, state-sponsored space, with the opportunity

³³ Triple *Talāq* is legally undesirable but valid divorce, in which a man repudiates his wife three times on a single occasion causing an instant, irrevocable divorce.

³⁴ Aliya. Personal Interview. October 28, 2005. All quotations from Aliya are from this interview in Ayubi ‘American Muslim Women’, pp. 43-46.

to reconcile during the *'idda*, which was obviously eliminated with the instantly irrevocable triple *ṭalāq*.

Soon after Aliya learned that religious authorities in Europe deemed his triple *talāq* notice as legitimate, enabling him to legally marry her best friend. He moved back to the U.S and to a state, in which he could file a no-fault civil divorce. He claimed to the judge that the *mahr* was all that Aliya was entitled to because in Islamic law "*mahr* is the amount you give in the divorce." Aliya fought back: "this is how they distort Islam [...] I got an affidavit saying that *mahr* is the amount you have to give your wife at the time of marriage, it has nothing to do with divorce." The case eventually went to trial and she received alimony and child support.

Even after his triple repudiation, which she believed was not a valid form of *talāq* and could be revoked, Aliya wanted to stay married. Muslim figures of authority and everyone in Aliya's life instantly accepted the triple *talāq* as valid, in contrast to a wife-initiated divorce. She had no chance to express her desire for reconciliation. Although Aliya would have wanted a divorce if she knew her husband was having an affair, his use of the unilateral right in *fiqh* to divorce without having to provide an explanation meant that Aliya had to accept an unwanted divorce.

Conclusions

The avenues my informants used in negotiating their divorces were either the civil system or Muslim networks familiar with Islamic law, and both. Their cases demonstrate several religio-legal challenges women face such as limited access to divorce, establishing equitable divorce terms, and confronting patriarchy in *fiqh*. It is clear that neither the civil system, nor services offered by various religious authorities offer women just solutions to the challenges that arise in a Muslim divorce. The civil system can be expensive, lengthy, and unprepared to handle litigants' debates over what is or is not Islamic. Meanwhile, religious authorities allow for the man's use of their unilateral right to divorce as a tool to threaten their wives or to withhold divorce, despite the existence of no-fault civil divorce and the sound arguments for a religious divorce by women.

There are several solutions to the challenges American Muslim women face in divorce but they are not all practical. Total abandonment of the *nikāḥ* is not a solution because as my interlocutors emphasise,

contracting a *nikāh* is central to affirming their Muslim identity and beliefs. The inclusion of stipulations in the *nikāh* does not address the gender inequities in *fiqh*, and the definition of *nikāh* within it. Finally, the establishment of tribunals or legalising the procedure for obtaining an Islamic divorce within the bounds of traditional Islamic law or current American Muslim legal thought would not allow women an easier access in either obtaining an Islamic divorce or establishing equitable terms for their divorce. Solutions may be found by improving the understanding of Islamic marriage and divorce ethics in the American Muslim discourses (i.e. American Muslim institutions and communities) which have so far been influenced by archaic *fiqh* from the medieval period. My interlocutors suggest use of the Qur'an, *sunnah*, and the understanding of justice as the criterion for Islamic law.

The experiences of divorced American Muslim women and the legal methods they use in negotiating justice, such as reinterpretation, research, and return to their belief of parity in an ethical Islam, are important cues for reform in American Muslim legal thought. My interlocutors' diverse interpretations of Islamic divorce, whether separate or the same as civil law, and the terms that they felt executed Islamic justice, suggest potential channels for reform in American *fiqh*. For example, Islamic marriage and civil marriage could remain separate processes in which couples negotiate what they believe the *nikāh* means. Entering into a Muslim marriage contract does not necessarily mean that both parties have the same understanding of the nature of the contract, which has been indicated by the numerous difficulties women face when dissolving the contract. Another potential option could be that Muslim couples should have one marriage contract, a civil contract which includes a *nikāh* which has been agreed to by both parties. The process of reform for American Muslims is reliant on the evolution, albeit slow, of Islamic legal culture and requires a different understanding of the definition of *nikāh* on the basis of equality, and the rethinking of Islamic law, as a system of justice.