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# Reformulating Transnational Muslim Families: The Case of *Shari'ah*-Compliant Child Marriages

FEDERICA SONA

## ABSTRACT

*Nowadays, an increasingly diverse demographic profile and higher figures of cross-national kinship formations characterize European countries. Paying attention to transnational Muslim families, the article examines the challenges posed to Western legal systems by (un)registered and potentially unacknowledged early marriages, as well as the techniques developed for underage Muslim spouses to enter into Islamically-compliant relationships. Investigating the so-called 'child marriages' of first- and second-generation migrant Muslim partners in two European countries (Italy and the U.K.), the paper compares the responses given by Civil and Common Law to similar phenomena and unveils (discriminatory) provisions resulting in undisclosed nuptial paradigms involving young partners. Muslim marriages are however complex in nature, particularly in socio-legal situations shaped by transnational processes. *Shari'ah*-compliant practices constantly evolve while fluidly adjusting themselves to current environments and local normativity. Consequently, both Muslim multi-sited actors and European legal systems engage in a hermeneutic exercise of normative reframing among social acceptability, religious admissibility, and legal permissibility.*

**Keywords:** *Islam; child marriage; shari'ah compliant; nuptial unions; transnational; (im)migration; hermeneutic reframing; Italy; United Kingdom*

## Introduction

More than two decades ago, Sally Engle Merry highlighted the great significance of transnational processes in shaping local socio-legal situations.<sup>1</sup> Particularly in respect of international migrants, the need to broaden and deepen analytical lenses has been repeatedly voiced by scholars. Basic assumptions are nowadays to be revisited in order to understand the lives of individuals embedded in multi-layered and multi-sited transnational social fields.<sup>2</sup> Migrant families, or better the family members of cross-border kinship networks, are increasingly part of "social units à géométrie variable",<sup>3</sup> where familiar network ties are created and maintained across national borders.<sup>4</sup> Legal, religious, and social normativity

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are however rarely perfectly superimposable, therefore nuptial unions involving Muslim partners may end up in grey areas where hermeneutic reframing of *shari'ah*-compliant relationships and normative reality occurs.

### **Transnational Muslim Families**

Paying specific attention to European transnational Muslim families, the proposed analysis concentrates on cross-national kinship formations among first- and second-generation migrants from Muslim-majority countries (MMCs) settled in European states. In the contemporary post-modern scenario, *shari'ah*-compliant marriages are indeed winning ground on European soil, where multiple techniques of management of cross-border Islamically-compliant matrimonial nuptial forms have been developed by both state institutions and Muslim transnational family members. The (non) recognition by European legal systems of matrimonial paradigms followed by (im)migrants of South-Asian, Northern-African, Middle-Eastern descent and Islamic belonging is thus investigated, while offering comparative insights into the socio-legal management of Muslims' nuptial union patterns in light of current European policies.

This article examines the challenges posed to Western legal systems by (un)registered and potentially unacknowledged early marriages, as well as the techniques developed for underage Muslim spouses to enter into *shari'ah*-compliant relationships. To further our understanding of these practices, the so-called “child marriages” of first- and second-generation migrant Muslim partners are investigated in European Economic Area (EEA) member countries, Italy and the United Kingdom. These two countries have been chosen as ideal frameworks to better understand the dynamic agency of changes in “transnational families” and the contextual developments of transnational kinship experiences.<sup>5</sup> In point of fact, the legal systems of these two European states are respectively moulded by Civil and Common Law principles. Additionally, the Muslim population settled in these two countries is significantly relevant having been estimated to amount to 3.6% and 4.8% respectively of the total population.<sup>6</sup> A further layer of interest is added by the fact that the Muslim migration pattern of these two countries is quite different. In the U.K., the Muslim presence is long-time rooted and predominantly of South-Asian origin. In Italy, Muslims are relatively recent North-African and Albanian newcomers, although it is now becoming Europe's number-two destination for Bangladeshi immigrants.<sup>7</sup>

In recent years, furthermore, a significant increase in displacement and migration has highly impacted these EEA countries.<sup>8</sup> Coping with the rapidly changing European demographic profile, Italy and the U.K. have developed various policy responses, specifically when facing matrimonial forms they are not (any longer) familiar with, in particular with reference to transnational kinship formations.

Looking into the existing gap between law on the books and law in action,<sup>9</sup> the essay revolves around the grey areas where both Muslim transnational actors and European legal systems engage in norm reformulation while attempting to understand and manage multiple and diverse cross-border and cross-values patterns of behaviour. Accordingly, the marriages of underage spouses are investigated analysing Islamic provisions and Muslim traditions—in the first part of the paper—and comparing the response given to these non-immediately intelligible nuptial forms by the legal systems of the studied countries—in the second part.

*Sharī'ah-Compliant Nuptial Practices at the Cross-Roads*

Amongst the great variety of “marriages spanning borders”,<sup>10</sup> *sharī'ah*-compliant cross-national family models are now increasingly entrenched in the European society. Scholarly studies building on field-collected data indicate that European Muslim transnational family members follow newly-created transnational nuptial practices at the cross-roads of state laws and *sharī'ah*.<sup>11</sup>

As highlighted by Thomas Faist, transnational social spaces are indeed characterised by “triadic relationships” involving host state, sending state, and “minority group-migrants and/or refugee groups, or ethnic minorities”.<sup>12</sup> In respect of the latter, when adopting the viewpoint of Muslim groups, marriage is regarded as the socio-legal duty of a pious Muslim;<sup>13</sup> emphasis is thus placed upon the prohibition to not commit fornication or adultery. *Islām* indeed prohibits sexual intercourse between partners who are not married to one another (*zinā*).<sup>14</sup> Entering into a *sharī'ah*-compliant relationship between a man and a woman is therefore a matter of pivotal importance. Islamic jurists agree upon the existence of a minimum number of elements for the validity of a nuptial contract; diverging interpretations are however offered concerning the necessity of these elements called *arkān al-nikāh*,<sup>15</sup> including the intended spouses marriageable age. Although different Islamic denominations (*Sunnī* and *Shī'ī*) and Islamic schools of judicial thought (*madāhib*) recognise diverse hierarchies of sources and methods of Islamic law, there is wider agreement on the prohibition of *zinā*.<sup>16</sup>

A further layer of complexity is added by the fact that European migrant Muslims variously articulate Islamic principles in their every-day married life scattered across multiple localities and normativity. At one edge of the spectrum, some Muslim partners may indeed adhere to what could be described as “strict interpretation”, therefore considering a valid Islamically-compliant marriage only the nuptial union that abides by the norms stated by the Islamic sources and methods recognised as valid by the party’s religious denomination and the interpretation of the school of judicial thought followed by his/her own family. At the opposite end of the spectrum, some partners may regard as “Muslim” some nuptial paradigms, which are not widely recognised as being *sharī'ah*-compliant by Islamic jurists or the laws of some Muslim-majority countries (MMCs). A civil marriage or a customary Muslim marriage (regarded as *de facto* cohabitation in the eyes of civil law), for instance, can be considered Islamically-compliant nuptial forms. The possible kinship scenarios entered into by Muslim partners are thus manifold.

Interestingly, although the rising age of marriages implies that alternative forms of liaisons are actually gaining ground among Muslims;<sup>17</sup> Muslim migrants living in European countries may marry, or have been married, when being underage. The present article thus focuses on two different scenarios; namely, young Muslim migrants willing to relocate to Europe, who may have entered into early marriages; or first-generation migrants arranging Islamic wedding celebrations (and sometimes also civil marriages) for their adolescent offspring.

*Islām and Child Marriages*

Migrant Muslim spouses might have the capacity to be married according to Islamic provisions and, in some cases, also have the capacity to register their marriage with civil effects in some MMCs; whilst at the same time lacking the possibility to claim the recognition of their nuptial union in compliance with European laws. Additionally, some cross-border Islamically-compliant nuptial practices are considered contrary to the public

policy of some European countries. Amongst potentially contested transnational *sharī'ah*-compliant nuptial unions, the so-called “child marriages” have been highly debated in recent years, having proven to be an increasingly common choice in case of displaced young Muslim girls and, sometimes, to be the nuptial form opted for by the offspring of first-generation migrants and refugees.<sup>18</sup>

Applying the “triadic relationships” model identified by Faist<sup>19</sup> to the idea of marriageable age, it becomes evident that social habits can significantly vary amongst Muslim groups as well as Islamic provisions and the laws of MMCs and European countries. As a result, early-married partners can face legal, religious and social challenges when relocating from MMCs to Europe.

A number of issues explain why child marriages have become a highly contested topic in diverse socio-legal environments. First of all, religious normative orders (e.g. Islamic provisions) and legal systems (e.g. those of EEA countries or of MMCs) identify the marriageable age relying upon different grounds. In the former, a person is granted the capacity to become a spouse at the onset of puberty. When adopting the state perspective, instead, the capacity to contract marriage is usually linked to a person’s civil and political capacity.

According to classic Islamic law, early marriages are admissible. More precisely, in compliance with *sharī'ah*, a nuptial guardian (*walī al-nikāh*) can marry a child, provided that the consummation of his/her marriage is postponed until the minor reaches puberty.<sup>20</sup> In some cases, the betrothal can even be concluded at the time of the spouse-to-be’s birth. For instance, Tanzeem clarifies that “[b]etrothel at the time of birth [is] generally a concept of joint families, where elders, usually the grand-parents, take the decision for new born and betroth of their grand-children. The optimum age of this type of engagement lies between 12–20 years”.<sup>21</sup>

In the eyes of *Islām*, autonomous marriage capacity is acquired at puberty, a status that can be confirmed by physical signs (e.g. menses), or assumed by Islamic scholars. In this case, the age at which adulthood is reached varies according to various Islamic denominations and schools of judicial thought. The highly variegated possibilities are summarised as follows by Büchler:

[...] scholarly opinions assume that puberty commences at slightly different lunar ages which, depending on the school, are either the same for both sexes or a little higher for male spouses. The range of marriageable ages for males extends from 15 years according to the Hanbali, the Shafi’i and the Jafari schools to 17 or 18 years in Hanafi and Maliki teaching. For female spouses, the range of marriageable ages extends from a high of 17 years, as represented by the Hanafi school, to 15 years according to both Shafi’i and Hanbali opinion, and down to as little as nine years according to Jafari teaching.<sup>22</sup>

The laws of MMCs can then prescribe higher age limits, and in some cases, even higher than those encompassed by European domestic legislations. For example, in Bangladesh, purported grooms are to be aged at least twenty-one years according to the lunar calendar;<sup>23</sup> in Egypt and Morocco, the prescribed minimum marriageable age for both fiancées and fiancés is eighteen years.<sup>24</sup> It should however be highlighted that the age limits established by some MMCs concern the marriage registration, and not the conclusion of the Islamic nuptial contract.<sup>25</sup> In some cases, pubescent partners may thus have the capacity to marry according to Islamic principles; only the official registration with civil effects of the marriage between the young spouses is postponed.

The described practice can be common among some social circles and even clarified by the laws of some MMCs. By way of illustration, the Kuwaiti family law stresses that intended spouses can be married when they reach puberty; nonetheless, a marriage contract can be officially registered (i.e. notarised) only when the girl is fifteen year-old and the boy seventeen.<sup>26</sup> As a result, early marriages can be officiated by an Islamic scholar and be valid in compliance with *shari'ah* although not being recorded in the nuptial register of a MMC. In some cases, ethnically-based traditions contradicting Islamic principles might actually be followed in some MMCs. Accordingly, unmarried young girls can be exchanged between families or tribes to resolve disputes (e.g. girls are regarded as reparation or compensation for crimes) and to settle debts (including dowry), as it has been reported with reference to some areas in Afghanistan and Pakistan.<sup>27</sup> In other case scenarios, child marriages can become highly politicised matter stressing religious and customary sentiments as well as ethnic and national and identities, as it happened in Yemen, where early marriages have sharply increased since the outbreak of the civil war.<sup>28</sup>

A close examination of the laws of some MMCs highlights additional factors that became specifically relevant in the encounter between Western and Eastern provisions on family matters. First of all, in MMCs, the marriageable age can be defined by the attainment of puberty, rather than a pre-defined age limit. Secondly, the lunar calendar—instead of the solar calendar—can be relied upon when calculating both the intended spouse's age as well as the age for official registration of the parties' marriage. Thirdly, age limits can differ for brides and grooms. All these elements highly impact on the reciprocal recognition of nuptial unions across diverse normative orders and legal systems.

### Highly Contested Underage Nuptial Unions

In Western countries, the debate on early marriages was recently stirred in relation to Syrian refugees. In 2016, for instance, the BBC stated that “[m]igrant child brides put Europe in a spin”, while reporting that

UNICEF figures from the vast Syrian refugee camps in Jordan suggest the proportion of registered marriages where the bride was under 18 rose from 12% in 2011 (roughly the same as the figure in pre-war Syria) to 18% in 2012, and as high as 25% by 2013.<sup>29</sup>

In effect, although marriages of underage spouses continue to decline—to varying extent—around the world,<sup>30</sup> a survey conducted in 2017 by the United Nations Population Fund, the American University of Beirut and Sawa for Development and Aid brought to light “an alarming rise in child marriages [...] among the most vulnerable Syrian refugee populations in Lebanon”.<sup>31</sup> A study coordinated by the American University of Beirut and the Women's Refugee Commission further clarified that, although child marriage was a common practice in pre-conflict Syria, new factors contribute to a higher risk of child marriage among the Syrian refugees in Lebanon, in particular,

[...] conflict- and displacement-related safety issues and feeling of insecurity, the worsening of economic conditions, and disrupted education for adolescent women changes in some marriage practices, including a shorter engagement period, lower bride price, change in cousin marriage practices, and a reduced age at marriage.<sup>32</sup>

In real terms, it has been estimated that, around the globe, one-third of girls become brides before the age of eighteen, and one in nine is married before the age of fifteen.<sup>33</sup> UNICEF recently clarified that on a global scale, about one in six adolescent girls—namely those aged fifteen to nineteen—are part of a nuptial relationship or married. The highest proportion of married adolescents (27%) can be found in West- and Central-African countries, followed by Eastern and Southern African countries (20%), and then by Middle-Eastern and North-African countries (13%).<sup>34</sup> Naturally, early nuptial unions also affect the Muslim populations in these countries.

Far from being solved, underage spouses now pose challenges to the European legal systems predominantly as a consequence of influxes of migrants and refugees. In Germany, for instance, the growing number of migrant girls who were married underage fostered a heated public debate and eventually led to the enactment of a law specifically aimed to tackle child marriages.<sup>35</sup> In broad terms, on European soil, two are the most common scenarios of the encounter between diverse matrimonial normativities: immigrants recently relocated to EEA countries (as labour migrants or refugees) may arrange marriages for their adolescent offspring, or they may submit evidence of early nuptial contracts when applying for family reunification.

In real terms, norms regulating marriages of young intended spouses exist in European legal systems. Mapping national legal age requirements in various Member States, the European Union Agency for Fundamental Rights recently stressed that, despite the fact that the Convention on the Rights of the Child recommends setting eighteen years as the minimum age for marriage,<sup>36</sup> “only Denmark, Germany, the Netherlands, Sweden (and Poland for men only) prohibit marriage below the age of eighteen. The rest allow earlier marriages if there is consent from parents [and/] or a national authority”.<sup>37</sup> Adolescent marriages are indeed legally valid in some European legal systems.

Early nuptial unions eventually fell into oblivion; cross-border family-hood however now brings fresh attention to these potentially *shari‘ah*-compliant marriages. In fact, some domestic provisions might actually accommodate early matrimonial unions by permitting civil marriages of teenage brides and grooms, or by legally recognising the status of spouses who entered into a foreign union when being under the age of majority, thus facilitating cross-borders family reunification processes, as examined in the following sections.

### **Comparing Common Law and Civil Law Responses to Early Marriages**

With regard to the Common Law and Civil Law legal systems examined in the present work the domestic provisions of the U.K. and Italy echo international principles as stated in the 1902 Hague Convention<sup>38</sup> and the scarcely ratified XXVI Hague Convention,<sup>39</sup> the criteria applied slightly vary in the two studied countries.

In the U.K., a foreign marriage is recognised as valid with civil effects when two requirements are satisfied: each spouse has the capacity to marry according to the *lex domicilii*, and the parties’ marriage complied with the formalities of the *lex loci celebrationis*.<sup>40</sup> The case law dates back to 1969, when it was argued that the (potentially polygamous) marriage of a twenty-six year-old Nigerian Muslim man with a thirteen year-old Nigerian Muslim girl was to be regarded as being “capable of recognition in our laws” since both spouses were domiciled in Nigeria and the marriage was valid according to Nigerian law.<sup>41</sup>

In Italy, transnational marriages have civil effects when the nuptial form is valid according to the law of the place where it was celebrated (*lex loci celebrationis*), or one of the

spouses' national law, or the law of the country of the parties' common residence at the time of the marriage.<sup>42</sup> Adopting the perspective of the Italian legal system, the capacity to marry is thus governed by the (*sharī'ah*-compliant) law of each intended migrant spouse at the time of the wedding solemnisation.<sup>43</sup>

It should be pointed out that, since the recognition rules differ, the same cross-border *sharī'ah*-compliant nuptial union can be recognised as civilly valid in one of the two analysed European legal systems, whilst being regarded as invalid, null or void in the other one.<sup>44</sup> Accordingly, the very same parties may be considered “spouses” in one European legal system, and “unmarried partners” in another one. Naturally, this implies a further layer of complexity in the reformulation of Islamically-compliant family unions. Furthermore, the above-described domestic discretionality on the recognition of transnational nuptial unions has a significant impact on displaced people. Although not all transnational family members are skilled legal systems navigators, forced migrants can usually benefit from reduced degrees of freedom in selecting their settlement country, and related family recognition and reunification policies.

#### *Family Reunifications and Early Marriages*

Although it has been highlighted that European family life is inevitably embedded in transnationalism,<sup>45</sup> when the recognition of a trans-jurisdictional marriage is asked to obtain an entry clearance as a spouse, immigrant partners need to satisfy additional requirements.

With respect to the U.K., the Home Office minutely details the prerequisites necessary to claim the recognition of a foreign marriage for migratory reasons.<sup>46</sup> Clayton and Firth identify the following “relationship requirements” for married partners who are subject to immigration control:<sup>47</sup> a present and settled sponsor; a successfully passed English speaking/listening test; the former meeting(s) of the parties; the intention to live permanently with each other; a genuine and subsisting marriage; and a validly contracted marriage. Regarding the latter prerequisite, when asked to recognise foreign nuptial unions, English courts apply the so-called “three test-rules”.<sup>48</sup> Scholarship however repeatedly pinpointed that British immigration authorities insist on requiring the foreign marriage's official registration even when unregistered customary/religious nuptial unions are regarded as valid marriages with civil effects in a foreign country.<sup>49</sup> This registration proves to be particularly problematic for displaced people who might not have access to official registrar in refugee camps, or not be familiar with the necessary bureaucratic procedures.<sup>50</sup> In fact, this can lead to case-by-case solutions and, sometimes, even to the production of forged documents, as discussed further in the paper.

In Italy, the Ministry of Interior presented a list of “objective” and “subjective” requisites.<sup>51</sup> Foreign (*sharī'ah*-compliant) marriages are not recognised as valid when contrary to public policy, such as marriages of underage spouses and polygamous unions. Notably, two specific provisions exist to specifically tackle polygamy. First, a certificate reporting details of the households and its dependents is to be submitted to verify that “another spouse” is not already settled in Italy. Secondly, only the *first marriage* perfected between “an Italian citizen and a citizen of Islamic belief” can be recorded in the official register.<sup>52</sup> Although directed to any foreign spouse, the wording of these two provisions appears to have been specifically tailored to address transnational Muslim nuptial paradigms, and therefore limit the recognition of controversial Islamically-compliant marriages such as polygynous unions.

Italian laws are thus predominantly focused on tackling polygamous unions instead of early marriages as contracted in non-EEA countries. In 2011, however, the Ministry of Interior stressed that any (*sharī'ah*-compliant) foreign marriage certificate—such as those released by Moroccan competent authorities—cannot be recorded with civil effects in Italy, unless both spouses' explicit consent to be married is clearly stated.<sup>53</sup> Building upon the opinion (*parere*) of the Ministry of Justice, the Ministry of Interior conceded that the foreign spouses can submit a joint written request to the registrar asking for their marriage to be registered with civil effects, thus confirming their free consent to enter into such matrimonial union. As a result, potentially forced unions were also prevented from being given civil validity on Italian soil.

In real terms, an analysis of unpublished case law indicates that the Italian judiciary seemed to be sympathetic in acknowledging the validity of early nuptial unions when the reunification claim was submitted once the spouses had reached the marriageable age as stated by Italian law (sixteen years), or the age of majority (eighteen years).<sup>54</sup> In other words, a foreign legally valid document certifying the marriage of adolescent spouses can be regarded as a valid proof in case of family reunification claims. Accordingly, some Italian tribunals may try to accommodate the specificities of cross-border families by recognising as valid with civil effects *sharī'ah*-compliant underage marriages perfected abroad.

Despite this approach, instead of risking the non-recognition of a foreign Islamically-compliant underage marriage, Muslim spouses may follow another route in some circumstances. The adolescent's spouse age as reported in the nuptial contract can be opportunely raised in order to meet the minimum marriageable age legally prescribed in the European country to which the couple is migrating or claiming reunification in. As an alternative, the adolescent passport is edited to reach the national threshold of legal capacity before applying for entry clearance as a spouse. In most of the cases examined by the author, the above-described scenario encompasses forgeries; in some limited options, however, either the parties did not have any written nuptial contract, or the spouse's age was not mentioned or incompletely reported—e.g. only the lunar year—on the parties' registered marriage contract or on the certificate released by the competent foreign registrar.<sup>55</sup> In the described scenarios, foreign *sharī'ah*-compliant unions were reformulated and translated into amended documents before being submitted to the European administrative and judicial authorities. The answer to the problems faced by young Muslim spouses was therefore found in adjusting the provided evidence to the European domestic requirements.

In light of the previous discussion, it can thus be stressed that child marriages are not easily recognised as valid nuptial unions for immigration purposes of underage partners; once the underage spouses are already settled on European soil, accommodations can nonetheless be found in the studied European countries, as clarified in the next subsection.

#### *Underage Spouses Marrying on European Soil*

Apart from first-generation migrants, early marriages can also affect second-generations: migrants' offspring can indeed autonomously enter into, or be invited to contract, a *sharī'ah*-compliant underage matrimony.

With regard to the studied European legal systems, in Italy, a spouse must be aged at least eighteen, otherwise his/her marriage is void.<sup>56</sup> Permission to marry can be granted to a fiancé/e over sixteen years of age.<sup>57</sup> In the U.K., if either spouse is under the age of

sixteen,<sup>58</sup> the marriage is void.<sup>59</sup> Additionally, in case of underage intended spouses, the written consent of each purported spouse's parent or guardian is requested.<sup>60</sup> The limit of this underage spouse's consent rule was repeatedly changed.<sup>61</sup> Formerly, the parents' consent was required for a fiancé/é younger than eighteen years.<sup>62</sup> From November 2008 to November 2011, the minimum age requirement for both non-EEA applicants and sponsors of spouse's and fiancé/é's visas increased to twenty-one years.<sup>63</sup> Having been challenged in the courts,<sup>64</sup> this rule was eventually amended and changed to eighteen again; accordingly, a spouse cannot enter the U.K. until both partners are at least eighteen year-old.

The British government adopted the above-described approach in order to cope with forced marriages. In fact, state responses to child marriages have been primarily made in the context of forced marriages and their criminalisation.<sup>65</sup> On British soil, there is indeed a growing concern that children from certain religious/ethnic communities are forced into transnational nuptial unions,<sup>66</sup> and specifically young Muslims.<sup>67</sup>

When early marriages are disclosed to public authorities, the U.K. case law is consistent in examining whether a child marriage was arranged or forced by the parties' parents or the extended families. By way of illustration, in a widely reported Scottish case, the "pretended marriage" of a sixteen year-old girl and a nineteen year-old boy was granted a decree of nullity on the ground of bureaucratic errors and due to the pursuer's lack of consent induced by duress.<sup>68</sup> In the examined situation, the parents of the Scottish teenage bride arranged the marriage of their daughter with a Pakistani groom, who obtained a six-months visitor visa. When considering the case, the judge remarkably stressed what follows:

It may be that in the multi-cultural society in which we now live such situations will continue to arise where ancient Eastern established cultural and religious ethics clash with the spirit of twenty-first century children of a new generation and Western ideas, languages and what these days passes for culture.<sup>69</sup>

It has thus been highlighted that the relevance of religious values can be framed by the judiciary as being "anti-modern", "other" and "inconsistent with the liberal democratic values of contemporary English society".<sup>70</sup> In real terms, however, the Scottish court acknowledged the cultural-dependent practices followed by the parties when stating:

I am certain, beyond a peradventure, that each [i.e. the pursuer and defender] was wholly dominated by his or her respective parents, especially the mothers. These mothers were of a different generation and were both themselves in arranged marriages. No doubt they thought they were doing the best for their children.<sup>71</sup>

A few years later, the English Family Division expressed a more explicitly cultural- and religiously-sensitive viewpoint when dealing with another highly debated nuptial case. The case regarded an Islamic marriage officiated in Britain by an *imām* between a fifteen-year-old girl and a man aged twenty-seven. The girl's parents were Kurdish Iraqi practicing Muslims who relocated to the U.K. as a result of the father being granted asylum on the ground of prosecution, imprisonment and torture. The marriage was contracted and consummated, then the girl claimed of having being sexually abused and beaten. As a result, the British local authority soon became actively involved in applying for a number of orders and care proceedings. When the case was brought before the Family Division in 2005, Mr Justice Munby, argued that "no social or cultural imperative

can extenuate and no pretend recourse to religious belief can possibly justify forced marriage".<sup>72</sup> Nonetheless, quoting Mr Justice Singer,<sup>73</sup> the judge also conceded that "a grey area then separates unacceptable forced marriage from marriages arranged traditionally which are in no way to be condemned".<sup>74</sup> In fact, the examined early marriage was regarded as

[...] a case of an arranged marriage, solemnised and consummated at a time when K was under age according to our law but arranged in circumstances and in a manner acceptable in the context of the family's beliefs and cultural mores. The marriage may have turned out disastrously, but the parents are not solely to blame. [...].<sup>75</sup>

Indeed, Mr Justice Munby highlighted that

[...] in the circumstances of this particular case it is more than usually important to bear in mind and understand the context—a context which [...] cannot be evaluated from a purely Euro-centric perspective.<sup>76</sup>

The English court was thus engaging in a hermeneutic exercise aimed to perceive the intended meaning of foreign value-motivated matrimonial paradigms, whilst also reframing the existing domestic normativity in the attempt to better understand and trying to accommodate transnational Muslim families within the limit of the relevant domestic laws.

As discussed in the last two subsections, when facing the actual implementation of diverse religious and normative orders, the judiciary is thus increasingly asked to engage with the interpretation of contemporary issues through the analysis of the authentic meaning and social effects of specific nuptial practices and forms. Accordingly, its response is (or can be) gradually adjusted to the current social change.

### *Invisible and Postponed Marriages*

The two paradigms of underage marriages examined in the subsections above also illustrate the challenges multi-sited families have to cope with in order for their cross-national kinship ties to be recognised, and for their customs and traditions to be acknowledged by European systems and societies.

Furthermore, an accurate analysis of the cross-border reformulation and adjustment of family provisions discloses (potentially) discriminatory and (partly) concealed nuptial forms. As discussed in the previous sections, the British immigration rules state that when the marriage is valid in the country in which it took place, and both parties had the capacity to marry each other under their domicile's *sharī'ah*-compliant law(s), then the marriage is valid.<sup>77</sup> The reunification based on marriage recognition is however refused if a spouse is aged under eighteen. This principle is in line with the European Directive according to which married children cannot act as sponsors in family reunification claims with respect to both their spouse and their parents.<sup>78</sup>

As a consequence, a person domiciled in England and Wales cannot marry abroad when being underage or intending to wed an underage foreign partner.<sup>79</sup> When the intended spouses are already on British soil, however, in case a fiancé/é is between the age of sixteen and eighteen and the marriage is perfected without the required parents' consent, or on a forged consent, then this marriage would still be valid.<sup>80</sup> From a legal perspective, the agency of adolescent spouses, as well as their nuptial statuses, are therefore highly affected by the parties' nationality and settlement country. In other words, the

actual articulation of early marriages faces diverse normativity and recognition depending upon the underage spouses' geographical arrangements.

Whereas (potentially) discriminatory norms can be found in the examined Common Law system, (partly) concealed Islamically-compliant early marriages were brought to light in the studied Civil Law system. The Italian Ministry of Interior indeed explains that nuptial unions concerning spouses under the age of sixteen, or between the age of sixteen and eighteen, are not to be recorded.<sup>81</sup> Nonetheless, the underage spouse can institute the action for marriage annulment personally not later than one year after s/he attained the age of majority.<sup>82</sup> As a result, provided that the partners do not object, a marriage between adolescent spouses can be recognised as valid with civil effects in Italy. Similarly to MMCs,<sup>83</sup> the official registration of mentioned underage nuptial union is simply *de facto* postponed.

In both the examined countries, when a non-EEA national is not involved, and the parties do not need entry clearance or a visa, adolescent Muslim intended spouses can enter into an unregistered *sharī'ah*-compliant marriage. The validity of this nuptial union is socially recognised by some Muslim communities, although not being recognised with civil effects. As a result, in the eyes of pious Muslims, the cohabitation between Muslim (teenage) spouses is legitimised by the parties' Islamic marriage contract; whereas others may characterise the same adolescent Islamically-married spouses as being engaged. The young cohabitantes may then marry with civil effects once they both reach the minimum marriageable age prescribed by the Italian and British legal systems—namely, sixteen years—or later. Criminal issue may nonetheless be raised in case at least one of the cohabiting partners is under the minimum age for sexual consent.<sup>84</sup>

Far from being solely a theoretical example, the above-described step-by-step matrimonial route is in effect portrayed as being socially accepted and *de facto* enacted by some Muslim partners in non-MMCs, also outside Europe. Moosa, for instance, explains that

[...] South African law may penalise civil marriages entered into by underage couples, but the Muslim marriage *per se* is not secularly recognised. [...] Of course, nothing will preclude an imam from officiating at the marriage of such children in terms of an Islamic *nikah* only, and thereafter, when both are of civil marriageable age, for them to enter into a civil marriage in terms of South African law, and, moreover, to even do so with a different who is also a registered civil marriage officer.<sup>85</sup>

Although an Islamic unregistered marriage can be legally invalid, null or void, and sometimes imply criminal charges for the partner who engages in sexual activities with a minor; this form of nuptial union can nonetheless be regarded as being socially accepted and also religiously legitimate.

In point of fact, when paying specific attention to individuals embedded in multi-layered transnational social fields, the theological hermeneutic exercise becomes “the art and skill of negotiating exchanges, connections, and differences (and presences/ absences) between and among God/s and humans, between cultures, times, places, eco-systems”.<sup>86</sup> The interaction between Islamic sources and social contexts, in particular, requires a flexible interpretation—both definitive and speculative—of *sharī'ah*.<sup>87</sup> Muslim nuptial practices are indeed complex in nature and constantly evolving while fluidly adjusting themselves to current environments and local normative orders, more specifically so in socio-legal situations reframed by transnational processes.

### Reciprocal Hermeneutic Reframing in the New Europe

Already in 2005, it was suggested that a “new Europe” was coming to light as corollary of multi-folded migratory patterns resulting into a negotiated crucial socio-cultural change.<sup>88</sup> In the contemporary multicultural super-diverse scenarios, Europeans inhabit a new “multi-local life-world”,<sup>89</sup> where transnational Muslim family members can creatively reformulate Islamically-compliant marriage paradigms.

Whereas *sharī‘ah*-compliant trans-jurisdictional nuptial practices are increasingly entrenched in the European society, domestic legal systems similarly engage in reformulation exercises in the attempt to adjust existing provisions to the rapidly changing society. A reciprocal hermeneutic reframing is indeed of pivotal importance in the encounter between transnational Muslim spouses and European states. In real terms, focusing knowledge as “coping with reality”, instead of “representing reality”,<sup>90</sup> a hermeneutic approach can *de facto* help both state and Islamic authorities in reshaping internal provisions whilst considering and responding to the actual needs of the members of contemporary transnational families living in fluid socio-legal contexts.

On European soil, EEA and non-EEA nationals may claim the recognition of *sharī‘ah*-compliant marriages celebrated in foreign countries. Accordingly, Muslim migrant fiance/és, who were married abroad, can request the official acknowledgement of their Islamic nuptial union by the legal system of their country of settlement. In the case of first-generation non-EEA national migrants, the official recognition of a foreign Islamically-compliant nuptial union is of pivotal importance for family reunification reasons, citizenship claims and family-related social security matters. This recognition can nonetheless become highly problematic.

The migrant spouse may be *de facto* impeded to provide an official document attesting his/her married status. In the case of displaced people, the nuptial certificate might be missing by the time the person reaches the European soil, or the parties might have not officially recorded their marriage being already relocated to another country at the time of their wedding. As alternative option, Muslim spouses might have entered into a marriage that—although being *sharī‘ah*-compliant—was not, or could not, be registered with civil effects in a MMC. The most common scenario concerns spouses who may have reached puberty and therefore having been married in compliance with Islamic provisions, but their nuptial union could not be officially recorded since at least one spouse did not meet the threshold of legal capacity, as detailed by the MMC’s law. The migrant spouses might also have opted for an early marriage that was officially recorded in a MMC. This nuptial union is usually regarded as being *sharī‘ah*-compliant, however underage marriages may not be considered as being legally valid for reunification claims by European legal systems.

The so-called “child marriages” thus become a privileged observatory to examine the development of legal accommodations as well as social narratives surrounding the highly contested recognition (and its implications in terms of settlement and welfare rights) of some Islamically-compliant nuptial paradigms. The proposed discussion indeed unpacked legal, social and religious challenges posed by, and to, underage Muslim spouses.

When adopting a legal perspective, it was revealed that European domestic provisions, although formerly fallen into oblivion, are nowadays brought back to attention. In recent years, the issue of child marriages has indeed grown in profile and it has become priority for many judges and policymakers, particularly in some European countries, which are currently dealing with foreign nuptial recognition claims submitted by non-EEA under-

age spouses. Whereas the average age at first marriage is increasing amid the citizens of the EU countries,<sup>91</sup> some first-generation Muslim migrants (predominantly displaced people) manifest a different trend. Additionally, the adolescent offspring of first-generation migrants may be encouraged by their (extended) family to enter into early Islamically-compliant nuptial unions.

When adopting the perspective of normativity endorsed by some social spheres, early marriages—predominately those among adolescents—might become *de facto* invisible as they are internally normalised. Adolescent Muslims might therefore be encouraged to enter into an unofficial religious Islamic marriage, or in a *sharī‘ah*-compliant marriage registered in a MMC. In Western environments, this happens predominantly when the parents attempt to prevent, or try to cope with, the pre-matrimonial sexuality of their teenage offspring (predominantly girls). If the spouses live in the two examined European countries—Italy or the U.K.—a civil marriage can be perfected when the partners are sixteen years old,<sup>92</sup> or when they reach the age of majority, as prescribed by the national domestic family laws. In some circumstances, the intended spouse can even marry abroad in a MMC. In other cases, the adolescent Muslims simply enter into a legally-undisclosed Islamic nuptial contract: the teenage partner is thus regarded as “spouse” by the partners’ families, as “fiancé/e” by the local Muslim community, and as “cohabitee” by the European legal system of the settlement country.

If the *sharī‘ah*-compliant matrimony is celebrated in a MMC, this nuptial union can be officially registered when the partners reach the age locally prescribed for the notarisation of the marriage with civil effects. Once the couple can satisfy the nuptial requirements prescribed by British or Italian laws, recognition of the foreign early marriage can be requested. This specifically happens when one of the young spouses is non-EEA national and a family reunification claim is put forward before the competent authorities in order for the partners to relocate as spouses on European soil.

## Conclusion

While comparing the social, religious, and legal validity of child marriages, it becomes evident that underage Islamic marriages are voluntarily disclosed to state authorities—both in MMCs and in European countries—only if and when needed, and provided the spouses’ ages meet the marriageable threshold prescribed by the relevant black-letter law. Social acceptability, religious admissibility, and legal permissibility of *sharī‘ah*-compliant early nuptial paradigms are indeed not perfectly superimposable. Rather than negotiating new state provisions, Muslim family members may opt for selective and step-by-step disclosure of underage Muslims’ matrimonial statuses.

The presented cross-border comparative analysis also unveiled that state provisions may *de facto* encompass discriminatory attitudes depending upon the adolescent spouses’ nationality, domicile and residence. Whereas younger intended spouses settled in the two examined European countries can enter into a religious and/or civil marriage when reaching the threshold of sixteen years, foreign purported spouses are actually prevented from recognition of underage marriages and related reunification claims. In the attempt to reformulate *sharī‘ah*-compliant matrimonial paradigms, Muslim underage partners and their families may thus resort to forgeries or enter into unofficial nuptial unions. If forced marriages are to be prevented and effectively opposed in order to protect the children’s best interest, a legal approach attentive to diverse cultural and religious normativity is to be argued for—and more specifically in the increasingly diverse European society, which is becoming internally transnational.

Facing the multiple challenges posed by cross-national kinship formations among first- and second-generation migrants, cultural- and religion-sensitive solutions are to be searched for. In the acknowledgement process of (intended) spouses embedded in multi-layered and multi-sited transnational social fields, the grey areas where cross-border family relations are constituted and (potentially) contested are to be explored, while engaging in reciprocal normative reframing.

## NOTES

1. Sally Engle Merry, "Anthropology, Law, and Transnational Processes", *Annual Review of Anthropology*, No. 21, 1992, pp. 357–379.
2. See *inter alia* Peggy Levitt, and Nina Glick-Schiller, "Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society", *The International Migration Review*, Conceptual and Methodological Developments in the Study of International Migration, Vol. 38, No. 3, Fall, 2004, pp. 1002–1039, at pp. 1002–1004 and 1013–1015.
3. Confederation of Family Organisations in the European Union, *Transnational Families and the Impact of Economic Migration on Families*. Brussels: COFACE, 2012.
4. Deborah Bryceson and Ulla Vuorela, eds., *The Transnational Family: New European Frontiers and Global Networks*. Oxford and New York: Berg, 2002. See also Leslie E. Fesenmyer, "Transnational Families", in *Migration: The COMPAS Anthology*, eds. Bridget Anderson, and Michael Keith, Oxford: COMPAS, 2014, pp. 133–134.
5. Harry Goulbourne et al. indeed highlight that these aspects are better understood "within a world of nation-states", while also alerting that transnational families should not remain an excessively vague and open concept. See, Harry Goulbourne, Tracey Reynolds, John Solomos, and Elisabetta Zontini, *Transnational Families: Ethnicities, Identities, and Social Capita*, USA, Canada: Routledge, 2010, respectively pp. 4–5, 7–8, 49–62.
6. In fact, in 2010, the Muslim population settled in the studied countries was estimated to be 2,869,000 in the U.K. and 1,583,000 in Italy. See Pew Research Center, *Muslim Networks and Movements in Western Europe*, Washington, DC: Pew Research Center's Forum on Religion & Public Life, 2010, p. 5; also confirmed by Pew Research Center, *The Future of World Religions: Population Growth Projections, 2010–2050. Why Muslims Are Rising Fastest and the Unaffiliated Are Shrinking as a Share of the World's Population*, Washington, DC: Pew Research Center's Forum on Religion & Public Life, 2015, p. 6.
7. For an introduction on *Islām* in the U.K., see Allison Scott-Baumann, "United Kingdom", in *Yearbook of Muslims in Europe*, eds. Samim Akgönül, Ahmet Alibašić, Jørgen Nielsen, and Egdūnas Raciū, Vol. 9, 2018, pp. 711–730, and Sophie Gilliat-Ray, "The United Kingdom", in *The Oxford Handbook of European Islam*, ed. Jocelyne Cesari, Oxford: Oxford University Press, 2014, pp. 64–103. With regard to Italy, see Maria Bombardieri, "Italy", in *Yearbook of Muslims in Europe*, eds. Samim Akgönül, Ahmet Alibašić, Jørgen Nielsen, and Egdūnas Raciū, Vol. 9, 2018, pp. 362–392, and Chantal Saint-Blancat, "Italy", in *The Oxford Handbook of European Islam*, ed. J. Cesari, Oxford: Oxford University Press, 2014, pp. 265–310. See also Ministry of Labour and Social Policies, *The Bangladeshi Community in Italy. Annual Report on the Presence of Immigrants 2013*, Roma: Ministero del Lavoro e delle Politiche Sociali, 2013.
8. On global migration and displacement, see respectively International Organization for Migration. *World Migration Report 2018*, Geneva: IOM, 2017, and Internal Displacement Monitoring Centre and the Norwegian Refugee Council, *2018 Global Report on Internal Displacement. GRID 2018*, Geneva: IDMC, 2018.
9. Roscoe Pound, "Law in Books and Law in Action", *American Law Review*, 44 (1910), 1910, pp. 12–36. On "living law", see also Eugene Ehrlich, *Fundamental Principles of the Sociology of Law*, Cambridge, MA: Harvard University Press, 2002 [1936].
10. I am here borrowing the terminology used by Katharine Charsley, "Transnational Marriage", in *Transnational Marriage. New Perspectives from Europe and Beyond*, ed. Katharine Charsley, London: Routledge, 2012, pp. 3–4.
11. Amid the latest, see for instance the collection of essays edited by Annelies Moors, Rajnaara Akhtar, and Rebecca Probert, *Sociology of Islam*, Special Issue "Unregistered Muslim Marriages: Regulations and Contestations", Vol. 6, No. 3, Sept., 2018; and Rajnaara Akhtar, Rebecca Probert, and Annelies Moors eds., Special Issue "Informal Muslim Marriages: Regulations and Contestations", *Oxford*

- Journal of Law and Religion* Vol. 7, No. 3, Oct, 2018. See also Mulki Al-Sharmani, Marja Tiilikainen, and Sanna Mustasaari, eds., *Migration Letters*, Special Issue “Transnational Migrant Families: Navigating Marriage, Generation and Gender in Multiple Spheres”, Vol. 14, No. 1, 2017.
12. Thomas Faist, “Transnational social spaces out of international migration: Evolution, significance and future prospects”, *European Journal of Sociology*, Vol. 39, No. 2, 1998, pp. 213–247, at page 217. For a broader discourse, see also Thomas Faist, *The Volume and Dynamics of International Migration and Transnational Social Spaces*, Oxford: Oxford University Press, 2000.
  13. *Al-Qur’ān* (30: 21; 24: 32). See also Ṣaḥīḥ al-Bukhārī (Vol. 7, 62: 1).
  14. For details, see *al-Qur’ān* (17: 32; 24: 2, 4–5; 25: 68).
  15. These regards the objects—i.e. rights and duties of the spouses—and the subjects—i.e. brides, grooms, guardians, deputies, witnesses, and celebrants. For a study, see for instance Roberta Aluffi Beck-Peccoz, “Il matrimonio nel diritto islamico”, in *Il matrimonio. Diritto ebraico, canonico e islamico: un commento alle fonti*, ed. Silvio Ferrari, Torino: Giappichelli, 2006, pp. 181–246; Laleh Bakhtiar, *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*, Chicago, IL: Kazi Publications, 1996, pp. 397–497; Yvon Linant de Bellefonds, *Traité de droit musulman comparé*, Vols. I–IV, Paris: Mouton, 1965–1973; David Pearl, and Werner F. Menski, *Muslim Family Law*, London: Sweet & Maxwell, 1998, pp. 139–149; David Santillana, *Il muḥtaṣar. Sommario del diritto malechita di Khaṭīb ibn Ishāq al-ḥundī*, Milano: Hoepli, 1919; Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Oxford Univ. Press, 1982, pp. 161–168.
  16. For further details on these norms, see the publications referred to in the footnote above.
  17. Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence*. Expanded and revised edition, Oxford: Oneworld, 2006–2016, at page 74.
  18. See the section below entitled *Highly Contested Underage Nuptial Unions*.
  19. Faist, *The Volume and Dynamics of International Migration and Transnational Social Spaces*, *op. cit.* See also footnote No. 12 above.
  20. For further details, including the perspectives of some MMCs, see *inter alia* Aluffi Beck-Peccoz, “Il matrimonio nel diritto islamico”, *op. cit.*, pp. 184–185; Yvon Linant de Bellefonds, *Traité de droit musulman comparé*, *op. cit.*, pp. 60–65, 72–73; M. Mahmood, *The Code of Muslim Family Laws*, Lahore: Al-Qanoon Publishers, 2007, pp. 398–406; Louis Milliot, and François-Paul Blanc, *Introduction a l’étude du droit musulman* (II ed.), Paris: Sirey, 1987, pp. 285–292; Jamal J. Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation*, Leiden: Brill, 2009, at page 29; Anwar A. Qadri, *Islamic Jurisprudence in the Modern World. A Reflection upon Comparative Study of the Law*, Bombay: N.M. Tripathi private Ltd, 1963, pp. 133–136; Syed Khalid-Rashid, *Muslim Law* (II ed.), Lucknow: Eastern Book, 1979, pp. 66–67; Sheikh Abdurraghiem Sallie, *The Bbook on Muslim Marriage. Kitāb al-nikah*, New Delhi: Islamic Book Service, 2001, pp. 56–60.
  21. Fatima Tanzeem, *Marriage Contract in Islam*, New Delhi: Deep & Deep Publications, 2007, at page 45.
  22. Andrea Büchler, and Christina Schlatter, “Marriage Age in Islamic and Contemporary Muslim Family Laws. A Comparative Survey”, *Electronic Journal of Islamic and Middle Eastern Law*, No. 1, 2013, pp. 37–74, at page 71. For further bibliographical references, see also *supra* footnote No. 15.
  23. See s. 2(2A), Child Marriage Restraint Act 1929, Act XIX of 1929, 1 October 1919, as amended (Legislative and Parliamentary Affairs Division, Ministry of Law). In Egypt and Morocco, the prescribed minimum marriageable age for both spouses is eighteen years;
  24. See respectively Law on Marriage Age, 11 December 1923, as modified by the 2008 amendments, and art. 19, Moroccan Family Code, 5 February 2004, Royal Edict (*Sherifyan Dahir*) No. 1/04/22 issued on 3 February 2004 (*12 Dou Al Hijja 1424*).
  25. For a translation into European languages of the laws of some MMCs, see *supra* footnote No. 42.
  26. Accordingly, any marriage-related dispute can be addressed by courts only when the nuptial unions has been acknowledged and registered by the competent state authority. See arts. 24, 26 and 92, Personal Status Law No. 51, 1984, as amended.
  27. Women Living Under Muslim Laws. *Child, Early and Forced Marriage: A Multi-Country Study. A Submission to the UN Office of the High Commissioner on Human Rights (OCHCR)*, London: WLUML, 2013.
  28. Rasha Jarhum, and Robert Hoppe, “Minimum Marriage Age Legislation in Yemen, 2008–2014: Exploring Some Limits to Portability of the ACF”, in *Women, Civil Society and Policy Change in the Arab World*, eds. Nasser Yassin, and Robert Hoppe, The Hague: Springer, 2019, pp. 111–145.
  29. See BBC, “Migrant Child Brides put Europe in a Spin”, *BBC World News*, 30 September 2016, <https://www.bbc.com/news/world-europe-37518289>. See also Anna Holligan, “Migrant Crisis:

- Dutch Alarm over Child Brides from Syria”, *BBC News*, The Hague, 20 October 2015, <https://www.bbc.com/news/world-europe-34573825>; BBC, “Child Marriage Numbers Falling, Says Unicef”, *BBC World News*, 6 March 2018, <https://www.bbc.com/news/world-43297085> (accessed 1 February 2019). Data on child marriages among Palestinian and Syrian refugees in Jordan can be found in United Nations Children’s Fund, *A Study on Early Marriage in Jordan*, Amman: UNICEF, Jordan Country Office, 2014. See also Paul Scott Prettitore, “Family Law Reform, Gender Equality, and Underage Marriage: A View from Morocco and Jordan”, *The Review of Faith & International Affairs*, Vol. 13, No. 3, 2015, pp. 32–40.
30. According to the latest available data, “in the last 10 years there has been a 15% decline in the prevalence of child marriage, measured as the proportion of women (aged 20–24 years) who were first married or in union before age 18. The proportion has dropped from 1 in 4 women (25%) to approximately 1 in 5 (21%)”, see, United Nations Children’s Fund, “Q&A: Child marriage. Global Data”, 6 March 2018, [https://www.girlsnotbrides.org/wp-content/uploads/2018/03/UNICEF\\_Child-Marriage-Global-Data\\_-\\_QandA.pdf](https://www.girlsnotbrides.org/wp-content/uploads/2018/03/UNICEF_Child-Marriage-Global-Data_-_QandA.pdf) (accessed 1 February 2019). See also United Nations Children’s Fund, *Child Marriage: Latest trends and future prospects*, UNICEF, New York, 2018, page 2; and United Nations Population Fund and United Nations Children’s Fund, *2017 Annual Report for the UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage*, UNICEF, New York, August 2018.
  31. United Nations Population Fund, “New Study Finds Child Marriage Rising Among Most Vulnerable Syrian Refugees”, *News*, 31 January 2017, <https://www.unfpa.org/news/new-study-finds-child-marriage-rising-among-most-vulnerable-syrian-refugees> (accessed 1 February 2019).
  32. Rima Mourtada, Jennifer Schlecht and Jocelyn DeJong, “A qualitative Study Exploring Child Marriage Practices among Syrian Conflict-affected Populations in Lebanon”, *Conflict and Health*, Vol. 11, Suppl. 1, No. 27, 2017, pp. 53–65, at page 53.
  33. Gayle Tzemach Lemmon and Lynn S. ElHarake, *Child Brides, Global Consequences. How to End Child Marriage*, New York: Council on Foreign Relations, July 2014. The authors also stress that “[...] If current trends continue without pause, in the next ten years, more than 140 million girls will be married before their eighteenth birthdays”.
  34. It should also be mentioned that “[c]hild marriage affects girls in far greater numbers than boys, with the prevalence among boys about one fifth the level among girls globally. Available data confirm that in every region boys are less likely than girls to marry before age 18, though there are countries in which boys marrying before age 18 is not uncommon. However, data on the number of boys affected by child marriage are limited, making it difficult to draw definitive conclusions on its status and progress”. See UNICEF, “Child Marriage”, March 2018, <https://data.unicef.org/topic/child-protection/child-marriage/> (accessed 1 February 2019).
  35. See Nina Dethloff, “Child Brides on The Move: Legal Responses to Culture Clashes”, *International Journal of Law, Policy and The Family*, 2018, No. 32, pp. 302–315.
  36. United Nations Convention on the Rights of the Child (UNCRC), General Assembly Resolution 44/25 of 20 November 1989, 2 September 1990.
  37. The European Union Agency for Fundamental Rights also “pointed to inconsistencies across Member States, and even within national jurisdictions, when it comes to areas like child protection, child-friendly justice and migrant children in detention”; see European Union Agency for Fundamental Rights, Background information, in *Mapping Minimum Age Requirements Concerning the Rights of the Child in the EU*, <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/background-information> (accessed 1 February 2019), 2017b; European Union Agency for Fundamental Rights, Marriage with consent of a public authority and/or public figure, *Mapping Minimum Age Requirements Concerning the Rights of the Child in the EU*, <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/marriage-age> (accessed 1 February 2019), 2017a.
  38. Hague Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage. *The Convention pour régler les conflits de lois concernant les conditions pour la validité du mariage*.
  39. XXVI Hague Convention of 14 March 1978 on *Celebration and Recognition of the Validity of Marriages*. This is a scarcely ratified document, nonetheless this important factor is sometimes overlooked by international family law books, see *inter alia* B. Stark, *International Family Law: An Introduction*, Burlington, VT: Ashgate, 2005, at pp.18–19.
  40. See *inter alia* John Murphy, *International Dimensions in Family Law*, Manchester: Manchester University Press. 2005, at page 64. See also Albert Venn Dicey, John H.C. Morris, Lawrence Collins, and Adrian Briggs, *Dicey, Morris and Collins on the Conflict of Laws*, London: Sweet and Maxwell, XV ed., Vols. I–II, 2012, and II Supp. 2015.

41. *Alhaji Mohamed v Knott* [1969] 1 QB 1.
42. Art. 28, Law 31 May 1995 No. 218, *GU* 3 June 1995 No. 128 SO.
43. Art. 27, Law 31 May 1995 No. 218, *supra*.
44. An analysis of these terms would require a detailed comparative study of family laws and case laws that goes beyond the present work. In a nutshell, an 'invalid' marriage identifies a nuptial union that is (potentially) voidable; a "void" marriage is instead a nuptial union that is not legally valid in compliance with the laws of a chosen legal system. The official recognition of the "nullity" of a marriage that is regarded as being null and void by a domestic law might become necessary in order for the family members to benefit from (some of) the legal consequences of a void marriage. These concepts have then been interpreted by judges and legal scholars, leading to other categories such as "inexistent" marriage, "putative" marriage and "non-marriage". For a discussion, see for instance, Rebecca Probert, and Maebh Harding, *Cretney and Probert's Family Law*, London: Sweet & Maxwell, 2018, pp. 47–66, and Joe Thomson, *Family Law in Scotland*, Totton: Bloomsbury, 2011, pp. 29–53, regarding the U.K. With reference to the Italian legal system, see Giovanni Bonilini, *Manuale di diritto di famiglia*, Milano: Utet Giuridica, 2018, pp. 183–217; M. Sesta, *Manuale di diritto di famiglia*, Padova: Cedam, 2019, pp. 54–62.
45. Edit Frenoy, "Transnational Families: The Right to Family Life in the Age of Global Migration", in *Routledge Handbook of International Family Law*, eds. Barbara Stark, and Jacqueline Heaton, London: Routledge, 2019, pp. 295–315.
46. See *inter alia* Home Office, "Part 8: Family Members. Family Members (Paragraphs A277 to 319Y)", in HO, *Immigration Rules*, 25 February 2016, last updated 1 February 2019, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members> (7 February 2019). See also United Kingdom Border Agency, "Chapter 08: Family members", in UKBA, *Immigration Directorate Instructions (IDIs), 2000-2012*, last updated 28 August 2014, <https://www.gov.uk/government/collections/chapter-8-family-members-transitional-arrangements-immigration-directorate-instructions#history> (7 February 2019); United Kingdom Border Agency, "Policy Paper. Chapter 8, Section 1: Spouses", in UKBA, *Immigration Directorate Instructions (IDIs), 2000-2012*, last updated 3 April 2017, <https://www.gov.uk/government/publications/chapter-8-section-1spouses> (7 February 2019); United Kingdom Visas and Immigration, "Guidance Spouses: SET03. 13 November 2013", in UKVI, *Immigration and Borders*, <https://www.gov.uk/government/publications/spouses-set03/spouses-set03> (7 February 2019); United Kingdom Visas and Immigration, "Archive: Immigration Rules. 22 January 2014 - 6 February 2019", in UKVI, *Visas and Immigration Operational Guidance-collection*, <https://www.gov.uk/government/collections/archive-immigration-rules> (7 February 2019). It should be mentioned that in April 2013 the Border Agency of the United Kingdom (UKBA) was superseded by the United Kingdom Visas and Immigration (UKVI).
47. Gina Clayton, and Georgina Firth, "Family life", in *Textbook on Immigration and Asylum Law*, Gina Clayton and Georgina Firth, with the collaboration of Caroline Sawyer, Rowena Moffatt, and Helena Wray, VIII ed., Oxford: Oxford University Press, 2018, pp. 275–328, at pp. 294–310. They also explain that the "relationship requirements" are now known as "eligibility criteria" and the new rules also include "suitability criteria", at page 304. For further details, see also pp. 304–310.
48. Namely, "formal validity", *Scrimshire v Scrimshire* (1752) 2 Hagg Con 395; 161 ER 782; "essential validity", *Brook v Brook* (1861) 9 HLC 193; 11 ER 703, and "public policy" *Alhaji Mohamed v Knott* [1968] 2 All ER 563; [1969] 1 QB 1; [1968] 2 WLR 1446, 132 JP 349. See also Della Evans, *International Families and the Law*, Bristol: Jordan & Sons. 1988, at pp. 101–108, and John Murphy, "The Discretionary Refusal of Recognition of Foreign Marriages", in *Ethnic Minorities, Their Families and the Law*, ed. John Murphy, Oxford and Portland (OR): Hart, 2000, pp. 71–86, at page 71; *ibid.*, *International Dimensions in Family Law*, *op. cit.*, 2005, at pp. 36–119; *ibid.*, "Rationality and Cultural Pluralism in the Non-Recognition of Foreign Marriages", in *The Multi-Cultural Family*, ed. Ann Laquer Estin, Aldershot: Ashgate, pp. 103–119, 2008 [2000], at page 643.
49. See *inter alia* David Pearl, and W.F. Menski, *Muslim Family Law*, *op. cit.*, 1998, at page 171, and Prakash Shah, "Rituals of Recognition: Ethnic Minority Marriages in British Legal Systems", in *Law and Ethnic Plurality: Socio-Legal Perspectives*, ed. Prakash Shah, Leiden: Martinus Nijhoff, 2007, pp. 177–202, at pp. 184–188.
50. For instance, it has been underlined that Syrian refugees face challenges when trying to register their marriages in Lebanon. See Mourtada et al., "A qualitative Study Exploring Child Marriage Practices among Syrian Conflict-affected Populations in Lebanon", *op. cit.*, at page 55.
51. See the Department for Civil Liberty and Immigration at <https://nullaostalavoro.interno.it/Ministero/Index2> (27 February 2016) with regard to art. 29, Delegated Decree 25 July 1998, No. 286, as modi-

- fied by Law 30 July 2002, No. 189, *GU*, Ser.Gen. No.199, 26 August 2002, SO No.173. The latest developments of Italian immigration law are to be found in Law Decree 4 October 2018 No. 113, *GU* No. 231, 4 October 2018, and in Law 1 December 2018 No. 132, *GU* Ser.Gen. No. 281, 3 December 2018.
52. Ministero dell'Interno, *Il Regolamento dello stato civile: guida all'applicazione. Massimario per l'ufficiale di stato civile*, authored by Rosalia Mazza, Federico Vitali, Donato Berloco, and Renzo Calvigioni, Roma: MI, 2012, at page 111. With respect to this quotation, two issues need to be pinpointed. First, it is not clear why the wording of the Ministry implies that the Italian citizen marrying a “citizen of Islamic belief” is not Muslim. Secondly, it would have been preferable writing about the marriage between an Italian citizen and a foreign national of a MMC.
  53. See Ministero dell'Interno, *Mamoramandum (circolare)* 13 October 2011, No.25.
  54. See Federica Sona, “Defending the Family Treasure-Chest: Navigating Muslim Families and Secured Positivistic Islands of European Legal Systems”, in *Family, Religion, and Law: Cultural Encounters in Europe*, Series Cultural Diversity and Law in Association with Religare, eds. Prakash Shah, Marie-Claire Foblets, and Mathias Rohe, Farnham: Ashgate, pp. 115–141, at pp. 127–128.
  55. These discrepancies usually become manifest when diplomatic premises were contacted to legalise some documents. For further details, see *ibid*.
  56. Art. 2 ICC, *supra* footnote No. 47, as modified by art. 1, Law 8 March 1975 No. 39, *GU* 10 March 1975 No. 67. states that the age of majority is fixed at the termination of the eighteenth year and that the person who reaches majority acquires the capacity to perform all acts. See also art. 84 ICC, *ibid*.
  57. The tribunal can permit the marriage of a person over sixteen years of age, if three requirements are satisfied, see art. 84(2) ICC.
  58. This requirement aims to mirror the age of consent in the U.K.S. 9, Sexual Offences Act 2003; page 4, Sexual Offences (Scotland) Act 2009; art. 16, Sexual Offences (Northern-Ireland) Order 2008.
  59. S. 2, Marriage Act 1949; Age of Marriage Act (Northern-Ireland) 1951; s. 11(A)(ii), Matrimonial Causes Act 1973; s. 1, Marriage (Scotland) Act 1977. The hardship of this rule is debated by scholars; see *inter alia* Rebecca Probert, *Cretney and Probert's Family Law* (VIII ed.), London: Sweet & Maxwell, 2012, at page 54. According to the Age of Marriage Act 1929, the marriage of a person under sixteen years was voidable rather than void; see Nigel Lowe and Gillian Douglas, *Bromley's Family Law* (IX ed.), Oxford: Oxford University Press, 1998, at page 31.
  60. S. 3, Marriage Act 1949. See *inter alia* Nigel Lowe, and Gillian Douglas, *Bromley's Family Law* (XI ed.), Oxford: Oxford University Press, 2015, at pp. 50–51, and Jonathan Herring, *Family Law* (VII ed.), Harlow: Pearson Education, 2015, at page 82. The Marriage (Scotland) Act 1977, section 1, does not require the parent's or guardian's consent.
  61. In real terms, Prakash Shah, “Trans-jurisdictional marriage and Family Reunification for Refugees in the United Kingdom”, *Istanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi*, Vol. 9, No. 2, 2010, pp. 93–113, at page 99 pinpoints that the age for sponsorship and the age for entry were already raised from sixteen to eighteen in 2002 and in 2004 respectively. See also Gina Clayton, *Textbook on Immigration and Asylum Law* (III ed.), Oxford and New York: Oxford University Press, 2008, at page 310.
  62. See Gillian Douglas, *An Introduction to Family Law* (II ed.). Clarendon Law Series. Oxford: Oxford University Press, 2004, at page 36; Mary Welstead, *Family Law*, Oxford and New York: Oxford University Press, 2008, at page 16; Jonathan Herring, *J. Family Law* (IV ed.), London: Longman, 2009, at pp. 49-50. Cf. Rebecca Probert, *Cretney and Probert's Family Law* (VIII ed.), *op.cit.*, 2012, at page 54.
  63. Paragraph 277, Immigration Rules (IR), HC 395 as amended by HC 1113. See also UKBA, Chapter 8, Family members, *IDIs*, *op. cit*.
  64. *Quila & Anor v Secretary of State for the Home Department* [2009] EWHC 3189 (Admin) (7.12.2009); *Quila & Ors v Secretary of State for the Home Department & Ors* [2010] EWCA Civ 1482 (21.12.2010); *R. (on the application of Quila and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant) and R. (on the application of Bibi and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant)* [2011] UKSC 45; [2011] 1 FLR 1187.
  65. Geetanjali Gangoli, Melanie McCarry, and Amina Razak, “Child Marriage or Forced Marriage? South Asian Communities in North East England”, *Children & Society*, No. 23, 2009, pp. 418–429, at page 420. The “close link” between forced and child marriages have also been highlighted by the FRA, see European Union Agency for Fundamental Rights, *Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices*, Luxembourg: Publications Office of the EU, 2014.
  66. See Nigel Lowe, and Gillian Douglas, *Bromley's Family Law* (XI ed.), Oxford: Oxford University Press, 2015, at pp. 50–51; Oonagh Gay, “Forced marriage”, *House of Commons Library*, Home Affairs Section, SN/HA/1003, 21 January 2015, pp. 1–13.

67. Ralph Grillo explains this context as follows “the growth of minority families with continuing transnational ties to places of origin, who may seek to maintain practices at odds with those of the societies in which they have settled and in conflict with international conventions of gender relations and human rights, a consequent backlash against multiculturalism, amid a deepening crisis of trust regarding Muslims”; Ralph Grillo, *Muslim Families, Politics and the Law. A Legal Industry in Multicultural Britain*, Aldershot: Ashgate, 2015, at page 59. This eventually led to the introduction of a Forced Marriage Protection Order (FMPO) under the Forced Marriage (Civil Protection) Act 2007, and to the criminalisation of both forced marriage and breach of a Forced Marriage Protection Order under Part 10 of the Anti-social Behaviour, Crime and Policing Act 2014. See Oonagh Gay, “Forced Marriage”, *op. cit.* For a debate and further bibliography, see *inter alia* Fauzia Shariff, “Towards a Transformative Paradigm in the U.K. Response to Forced Marriage: Excavating Community Engagement and Subjectivising Agency”, *Social and Legal Studies*, Vol. 21, No. 4, 2012, pp. 549–565, and Grillo, *Muslim Families, Politics and the Law, op. cit.*, pp. 59–91.
68. *Sohrab v. Khan*, [2002] S.C.L.R. 663. The marriage between the parties was not properly registered and a marriage schedule was missing (see paragraph 88). Additionally, the mother of the girl threatened to commit suicide if her daughter refused to enter into this marriage. Accordingly, the plaintiff brought an action for declaration of nullity.
69. *Sohrab v. Khan*, [2002] S.C.L.R. 663, paragraph 85.
70. Salim Farrar, and Ghena Krayem *Accommodating Muslims Under Common Law: A Comparative Analysis*, Abingdon and New York: Routledge, 2016, at page 65.
71. The decree of nullity was nonetheless granted since the religious marriage was contracted under duress; in the words of the judge: “[...] they both did put an intolerable pressure on both of these young people at an age when neither was able to take an informed decision about their future or to act in any way independently. Neither was in a position to resist the will of their parents”. *Sohrab v. Khan*, [2002] S.C.L.R. 663, paragraph 85.
72. *Re K; A Local Authority v N and Others* [2005] EWHC 2956 (Fam), [2007] 1 FLR 399, [2007] 1 FLR 399, paragraph 85.
73. See paragraph 7, *Re SK (An Adult) (Forced Marriage: Appropriate Relief)* [2004] EWHC 3202 (Fam), [2006] 1 WLR 81 sub nom *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2005] 2 FLR 230 (Re SK).
74. *Re K; A Local Authority v N and Others* [2005] EWHC 2956 (Fam), [2007] 1 FLR 399, [2007] 1 FLR 399, paragraph 88.
75. *Re K; Subnom A Local Authority v N and others* [2005] EWHC 2956 (Fam), paragraph 36.
76. *Ibid.*, paragraph 25.
77. Home Office, “Chapter 8. Section FM 1.3. Partners”, in *Immigration Directorates’ Instructions*, July 2012, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263218/recog.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263218/recog.pdf) (accessed 6 February 2019), at page 8; UK Visas and Immigration, “Guidance Spouses: SET03”, *op. cit.*, SET 3.5. See also footnote No. 43.
78. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *Official Journal* L 251, 3 October 2003, pp. 12–18. Remarkably, the United Kingdom—as well as Ireland and Denmark—is however excluded from the 25 EU Member States applying the common rules for exercising the right to family reunification as stated in mentioned directive.
79. See *inter alia Pugh v Pugh* [1951] 2 All ER 680.
80. For further discussion, see Herring, *Family Law, op. cit.*, 2015, page 82.
81. Ministero dell’Interno, *Il Regolamento dello stato civile, op. cit.*, 2012, at page 110.
82. Art. 107, 2 ICC, *supra*, footnote No. 44.
83. See *supra* section entitled *Child Marriages and Islām*.
84. In *Re SK (An Adult) (Forced Marriage: Appropriate Relief)* [2004] EWHC 3202 (Fam), for instance, two months after the wedding, the husband Islamically divorced his adolescent wife and accepted of having committed an offence under sections 9(1–2), Sexual Offence Act 2003. The husband argued for consensual sexual intercourse; in case of rape, section 1 of the Act implies an offence carrying a maximum sentence of life imprisonment. See *supra* section 5.2. In a similar highly reported case, a thirty-year-old man, married according to Roma customs to a fifteen-year-old girl, was held guilty of having had sexual intercourse with his young cohabitee by the Italian Court of Cassation. See Cassation Court No. 53135, 22 November 2017. See also Constitutional Court No. 376, 27 July 2000. Article 609-quarter, Italian Criminal Code, indeed clarifies that, sexual consent is presumptive when the victim is a minor who is not yet sixteen years old, but older than fourteen years of age, and the offender is the victim’s ascendant, parent (including adoptive parents), guardian, or is any

- other person to whom the victim has been entrusted for purposes of the minor's care, education, instruction, supervision, or custody, or any person who is cohabiting with the minor. For a comment, see Rachel A. Van Cleave, "Rape and the Querela in Italy: False Protection of Victim Agency", *Michigan Journal of Gender & Law*, No. 13, 2007, pp. 273–310, at pp. 294–295.
85. Najma Moosa, "South Africa", in *Parental Care and the Best Interests of the Child in Muslim Countries*, eds. Nadjma Yassari, Lena-Maria Möller, and Imen Gallala-Arndt, The Hague: Springer, 2017, pp. 219–257, at page 244.
  86. Marion Grau, *Refiguring Theological Hermeneutics: Hermes, Trickster, Fool*, The Hague: Springer, 2014, pp. 187–192.
  87. Younes Soualhi, "Islamic Legal Hermeneutics: The Context and Adequacy of Interpretation in Modern Islamic Discourse", *Islamic Studies*, Vol. 41, No. 4, Winter, 2002, pp. 585–615. See also Nadirsyah Hosen, "Islamic law in action", in *Research Handbook on Islamic Law and Society*, ed. Nadirsyah Hosen, Northampton: Edward Elgar, 2018, pp. 1–9.
  88. Sigrid Nökel, and Levent Tezcan, eds., *Islam and the New Europe: Continuities, Changes, Confrontations*. Series Yearbook of the Sociology of Islam No. 6, Bielefeld: Piscataway (NJ), 2005, pp. 8–12.
  89. Steven S. Vertovec, "Transnationalism and Identity", *Journal of Ethnic and Migration Studies*, 27, No. 4, 2001, pp. 573–582, at page 578.
  90. Elaine Atkins, "Reframing Curriculum Theory in Terms of Interpretation and Practice: A Hermeneutical Approach", *Journal of Curriculum Studies*, Vol. 20, No. 5, 1988, pp. 437–448, who also clarifies that "[h]ermeneuticists place rationality within the context of developing living traditions that not only inform and shape what human beings are but are always themselves in the process of reconstitution", at page 447.
  91. United Nations Economic Commission for Europe, *UNECE Statistical Database*, compiled from national and international (UNICEF TransMONEE) official sources, 1990-2015, [https://w3.unece.org/PXWeb2015/pxweb/en/STAT/STAT\\_\\_30-GE\\_\\_02-Families\\_households/051\\_en\\_GEFH\\_FirstMarriages\\_r.px?rxid=99ced047-3bf3-42d6-a15a-c415618d0918](https://w3.unece.org/PXWeb2015/pxweb/en/STAT/STAT__30-GE__02-Families_households/051_en_GEFH_FirstMarriages_r.px?rxid=99ced047-3bf3-42d6-a15a-c415618d0918) (accessed 1 February 2019) and [https://w3.unece.org/PXWeb2015/pxweb/en/STAT/STAT\\_\\_30-GE\\_\\_02-Families\\_households/052\\_en\\_GEFHAge1stMarige\\_r.px?rxid=99ced047-3bf3-42d6-a15a-c415618d0918](https://w3.unece.org/PXWeb2015/pxweb/en/STAT/STAT__30-GE__02-Families_households/052_en_GEFHAge1stMarige_r.px?rxid=99ced047-3bf3-42d6-a15a-c415618d0918) (accessed 1 February 2019).
  92. Provided that all the requested formalities are met, although validity exceptions exist as highlighted *supra* in the section entitled *Comparing Common Law and Civil Law Responses to Early Marriages* and its three subsections.