

Contesting the Boundaries between Civil and Religious Marriage: State and Mosque Discourse in Pluralistic Norway¹

Anja Bredal, OsloMet – Oslo Metropolitan University

Abstract

This article discusses the relation between civil and religious marriage, at the interface between the state's legal discourse and the discourses and practices of Norwegian mosques. A central question is what kinds of effects the governance of Islam in Norway has had in the field of marriage. Against the background of political debates on the system of marriage authorization of faith communities, the analysis draws on interviews with public officials and administrative leaders of mosques, the majority of whom are authorized to perform legal marriage. While the Norwegian state concept of marriage authorization is based on a separation of the civil act and the religious act, mosque administrators rather highlight the similarity and continuity between the two. Contrary to state concerns, though, the analysis suggests that the civil marriages have affected the religious, rather than vice versa. What is interesting is that this reasoning actually results in Norwegian marriage certificates replacing or suppressing the Islamic marriage contract, although agreements on *mahr* (dower) are still made more informally. Thus, our findings suggest that there has been a secularizing effect.

Key Words: Islamic marriage; civil marriage; marriage registration; secularization; Norway

¹ I want to thank Annelies Moors for her outstanding help and encouragement, Werner Menski, Rebecca Probert, and Rajnaara Akhtar for their comments and for organizing the symposium Unregistered Muslim Marriages – Regulations and Contestations

Contesting the Boundaries between Civil and Religious Marriage: State and Mosque Discourse in Pluralistic Norway

In Norway, a legally valid marriage can be officiated by either a civil or a religious institution, provided the latter is authorized by the state to perform marriage. As a question of secular governance, this system of marriage authorization of religious communities is increasingly debated, most recently in connection with a governmental commission on public policies on religion (Norwegian Official Reports 2013). The commission's majority proposed to restrict legal marriage conclusion to a purely civil ceremony. The underlying understanding is that legal marriage in the hands of religious institutions necessarily implies that religion gets the upper hand.

Debates about marriage authorization have been linked to the issue of unregistered marriages. As in other European countries, unregistered Muslim marriages, sometimes called *nikah*² marriages, have drawn negative attention in Norwegian public debate.³ Such marriages are associated with a range of concerns, such as limping divorces, forced marriage and bigamy, and the discourse on so-called parallel society (Bøe forthcoming 2018; Bredal and Wærstad 2014; Emblem 2009; Ferrari de Carli 2008; Liversage and Jensen 2011; Wærstad 2015). This is related to a more general discourse of suspicion, related to the growing hostility against Islam and Muslims in general (Bangstad and Elgvin 2017).

Critics tend to assume that the best way to increase the level of marriage registration is to make civil marriage compulsory and remove the delegated authority of solemnizing marriage from the Church and other faith communities. Based on empirical research among

² In the following, '*nikah*-only marriage' will refer to non-state registered Muslim marriages.

³ See, for example, Bowen (2016) for the UK and Moors (2013) for the Netherlands, Liversage and Jensen (2011) for Denmark, and Roald (2009) for Sweden.

Norwegian public officials and mosque administrators in Oslo, this article introduces a more nuanced analysis of the dynamic between secularizing and ‘religionizing’ forces in connection with marriage solemnization. Discussing the relation between civil and religious marriage, at the interface between the state’s legal discourse and the discourses and practices of Norwegian mosques, it argues that the delegation of civil marriage to religious communities has to some extent resulted in a secularization of the Muslim marriage contract.

Religion is often considered as a problem that modern secular states try to solve or govern (Sullivan 2005, in Bangstad 2011). Defining the system of marriage authorization as a matter of religious freedom frames it as a concession made by the state to religion. However, the other side of delegating civil legal power to religious institutions is that this power is then circumscribed by formal regulations, including supervision, control, and sanctions. In our analysis we build on Talal Asad’s notion that secular rule is about how the state defines and regulates religion, rather than simply entailing a separation of state and religion (Asad 2003). Engaging with debates about secular governance with a focus on marriage, and the particular form this has taken in Norway, we look not only at how state authorities govern religion, but also at how major mosques have responded to these efforts in a context of increased anti-Islam sentiments that also affect mosque functionaries.

In this article the central question is what kinds of effects the governance of Islam in Norway has had in the field of marriage. How is the relation between state and religion conceived of and regulated with respect to the conclusion of marriages? We start with briefly presenting the research data and the ways in which the state, Islam, and politics are entangled in the regulation of and discussions about marriage authorization in Norway. In the next two sections we first present how civil servants insist on a perspective of separation and difference between civil and religious marriage, and then explore how functionaries of major mosques

position themselves. Do they follow the idea that civil and religious marriage are different and separate? Is there an impact of religion on civil marriage, or is something else going on?

Research data and questions

The paper is based on qualitative semi-structured interviews with two groups of informants.⁴ First, I have interviewed representatives of 13 mosques in the Oslo area, 12 of which are Sunni and one is a Shia congregation. In concurrence with the general pattern of Sunni mosques in Norway (Bangstad and Elgvin 2017), the majority of these mosques caters to specific ethnic groups: four Pakistani, one Somali, one Turkish, one Bosnian-Herzegovinian, one Afghani, and one Moroccan mosque are included. The remaining congregations, including the one Shia mosque, have a more ethnically diverse membership of mainly Middle Eastern and North African origin. The interviewees are administrative leaders of the mosques, so called ‘forstander,’ an institutional role that is explained below.⁵ A majority of the mosques (eight in total) held the authorization to officiate legal marriage, while five mosques did not have such authorization. The purpose of the interviews was to gain insight in the perspectives of these administrative leaders regarding civil and religious marriage. We wanted to explore how they conceive of the right to perform civil marriage and their perspectives on non-state-registered *nikah* marriages. Other topics discussed in the interviews centered on their understanding of differences and similarities of religious and civil marriage in terms of

⁴ The data collection was carried out as part of a study on unregistered marriage commissioned by the Directorate for Children, Youth and Family Affairs during 2013-2014 (Bredal and Wærstad 2011), which also included a Sikh temple, the Catholic Church, and a Christian Pentecostal congregation. The material has been supplemented by three more recent interviews with representatives of mosques from a study on family counseling, including faith-based services, from 2016 (Bredal and Vislie 2017).

⁵ In one case, the former administrative leader was interviewed.

validity, and more generally, how *nikah* marriages may or may not be problematic for the mosque, its members, and for the state.

Secondly, we have also conducted interviews and e-mail correspondence with public officials who engage with faith communities on the one hand and marriage issues on the other, both at the central level—ministry and directorate—and at the regional level—County Governors. The topics of the interviews were similar to those raised with the mosques. We investigated how the informants conceived of religious marriages, be it as part of a legal marriage conclusion or as an unregistered marriage. Do they perceive and experience *nikah* marriage as a problem, and for whom?

In addition to interview data, this study includes a review of legal and policy documents concerning the governance of religion and marriage, as well as casework documents from state institutions dealing with marriage and religion. These documents included examples of marriage rituals from religious communities that had been reviewed by the Directorate for Children, Youth and Family Affairs in connection with an application for marriage authorization, and documents from Country Governor's offices that reported having dealt with cases of unregistered marriage. The latter were basically letters from the County Governor reprimanding mosques for officiating unregistered Muslim marriages (see below).

Islam, the state, and marriage regulation in Norway

Historically the Evangelical Lutheran Church was the state church of Norway; it still holds a privileged place in Norwegian society as a 'People's Church.' Following recent constitutional changes, a new law establishes the Church as an independent legal entity rather than a branch of the civil service, but it is still funded by the state. Norway belongs to what Jänterä-Jareborg (2014) describes as a tradition of Nordic Folk's Churches that is characterized by high but

declining membership combined with low daily engagement. According to Statistics Norway, in 2015, 73% of the population (16–79-year-olds) were members of the Church of Norway and 9% belonged to other faith and secular worldview communities, while 14% were not members of any community.⁶ While Christian Lutheran membership is declining in all the Nordic countries, there is a growth of other religions, especially Islam (Furseth 2017).

Bangstad and Elgvin (2017) estimate that there are a total of 130–140 registered mosques in Norway. As data on citizens' religious beliefs are not officially registered, the exact number of self-identifying Muslims in Norway is unknown. By 1 January 2017, the membership in Norwegian mosques amounted to 2.8 % of the population (Bangstad and Elgvin 2017). The vast majority of Norwegian Muslims are Sunni (80%), with 20 % Shia Muslims. A small Ahmadiyya community was estimated at 1,500 members in 2010 (Bangstad and Elgvin, 2017). The interlocutors for this study included both Sunni and Shia representatives but no Ahmadiyya.

Funding of faith and worldview communities is central to Norwegian governance of religion.⁷ Such communities can choose to register with the state in order to receive financial support, based on membership figures and proportionately equivalent to the sum budgeted for the Church of Norway. Faith and worldview communities that receive state grants are also entitled to corresponding grants from the municipalities where members of that community live.

As part of becoming registered, the faith community has to appoint a spiritual or administrative leader between the age of 23 and 75 who will be in charge of statutory duties. *The Act relating to religious communities etc.*, Section 24, outlines the requirements for this

⁶ Source: Statistics Norway <https://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/norge-et-sekulaert-samfunn?tabell=164131>, accessed 30 December 2017.

⁷ The official Norwegian terminology 'tros- og livssynssamfunn' has various translations in English. I have chosen the term 'faith and worldview communities,' with the latter referring to secular humanist communities. Thus, in this article, 'faith communities' will refer to religious institutions governed by state policies.

role as follows: 'He must live an honorable life and be capable of carrying out his statutory duties.' The law further stipulates that he or she 'has the same responsibility as a public servant with regard to duties enjoined on him by or pursuant to statute' and that the County Governor has the power of supervision and control. In Christian communities, including the Catholic Church, the priest inhabits both the civil and religious roles and thus performs both the civil and religious part of the ceremony. Muslim institutions have chosen to separate the administrative duties from the religious ones. In other words, the administrative leaders of registered Norwegian mosques function as the state's representative when dealing with statutory matters, including that of officiating marriages.

In order to have a legal marriage in Norway, the prospective spouses must fill out a personal declaration form to confirm that they fulfill the statutory requirements of being 18 years or older, are not already married, are legally entitled to be in the country, and are not a close relative of the spouse-to-be.⁸ As part of signing the declaration, they confirm that they enter the marriage by their own free will and that they 'recognize men and women's equal rights according to Norwegian law.' The latter phrase is elaborated on in an explanatory note on page two of the form, where it says: 'It follows from the Marriage Act that both spouses have equal right to divorce.'⁹ Following a procedure of approval the Tax Administration then issues a 'certificate of no impediment,' which is sent or brought to the wedding official. After the wedding, the same official returns the documents to the Tax Administration, which issues a marriage certificate to the spouses.

For a marriage ceremony to be legally valid, the two persons are required to be present together, coming before the official who is to perform the wedding ceremony.¹⁰ They must

⁸ Marriage may not be contracted between relatives in direct line of ascent or descent or between brothers and sisters. There is currently no prohibition against marriage between cousins but this has been suggested several times.

⁹ Source: <file:///C:/Users/kunde/Downloads/Q-0150B.pdf> Accessed 30 Dec 2017.

¹⁰ Marriages entered into by proxy or by telephone are not recognised as being valid under Norwegian law.

declare that they want to get married to each other, and the official must declare that they are a married couple. If these conditions are not met, the marriage is invalid. Other grounds for invalidness is if the official who performed the ceremony was not authorized to do so or if there was no valid certificate of no impediment.

As is the case with the other Nordic states, Norway follows a double-track system of marriage conclusion that allows legal marriage to be performed both by a civil institution and by a religious institution, as ‘legally equal alternatives’ (Jänterä-Jareborg 2014). The religious alternative is based on a delegation of power from the state.¹¹ Norway does not have a national record of faith communities with the right to perform marriage. According to information from the County Governor of Oslo and Akershus per November 2013, there were 61 registered Muslim communities in these two counties, which hold roughly a quarter of Norway’s population. A bit fewer than half (28) of these mosques were authorized to perform marriage (Bredal and Wærstad 2014). This includes most if not all the major mosques in Oslo. In order to be authorized to perform marriage, a faith community first needs to have their priest or administrative leader approved by the County Governor as explained above. Then, they will send their marriage ritual to the Directorate for Children, Youth and Family Affairs for approval. The Directorate’s assessment of the marriage ritual draws on the above-mentioned requirements of marriage in the Marriage Act and is presented as follows on the directorate’s webpage:

The marriage ritual must be in accordance with Norwegian law and general gender equality principles. This implies among other things that:

¹¹ In Norway, also worldview communities can be authorized.

- *Marriage rituals with dowry or mahr¹² will not be approved, because agreements on dowry and/or mahr are not a requirement for contracting marriage according to the Marriage Act.*
- Both parties must be asked the same questions
- The parties must be declared as married, according to the Marriage Act section 11.¹³

The same requirements are presented in a handbook for administrative leaders of faith communities, issued by the Ministry of Culture (Ministry of Culture 2012). The handbook further elaborates that ‘It may be allowed to render direct quotations from religious works even if these quotes may conflict with the general [gender] equality principles.’¹⁴

If the marriage ritual is approved, state power to officiate marriage is delegated to the registered priest or administrative leader in person. This authorization can only be retracted indirectly. If the County Governor retracts the approval of the religious community or the priest/administrative leader, the marriage authorization is also withdrawn.

Marriage authorization is not only a right but also a duty of the person authorized to perform marriages. According to the Marriage Act, section 13, the marriage official has the option to reserve him/herself if one or both marriage parties are non-members or divorcees. Otherwise, he or she is obliged to perform the marriage upon the request of the parties if they fulfil the criteria of the law. If a couple is denied the conclusion of their marriage by the administrative leader of their faith community, they may issue a complaint to the County Governor’s office (Ministry of Culture 2012). This could for instance be the case if a couple is turned away on the grounds that their parents did not accept their decision to marry; some of

¹² The explicit reference to *mahr* was added after the time of our data collection.

¹³ https://www.bufdir.no/Ekteskap_og_skilsmisse/Godkjenning_av_vigselsritualer/ Accessed December 30 2017.

¹⁴ Translated into English by the author. Source: https://www.regjeringen.no/contentassets/871d823dbc294e57bcf31d84f0c3cbae/forstandere_i_trossamfunn_v-953b_feb2012.pdf Accessed 30 December 2017.

the interviewed mosque leaders saw parents' acceptance as a prerequisite for marriage. However, there is no indication that such complaints have been made.

Political debates about Islam and marriage

While the Norwegian debate on marriage authorization of faith communities has been dominated by the controversy over same-sex marriage, Islamic marriage and divorce have also increasingly gained public attention. One focus has been on so-called limping divorces, where women have a civil divorce but is still considered married in a religious sense because their husbands do not agree to the divorce. Islamic divorce tends to be associated with issues such as shariah law and shariah councils, the alleged power of imams and mosques, and so called parallel society.¹⁵ Norway is also a pioneer in developing public policies against forced marriages and was the first country in Europe to introduce a specific section in the Criminal Act (Bredal 2005). The most well-known cases taken to court were religious-only marriages, including the case of a woman in Oslo who was forced to contract a *nikah* marriage at the age of 13 (Lidén and Bredal 2017).

Politicians have also taken on the issue of marriage authorization, as evident in the words of a Labour Party representative, 'To get married is an act of legal significance. It is high time that Norway as a modern and secular society separates this act from religious acts.'¹⁶ This statement illustrates a main line of argument against the current marriage authorization system of Norway. In such political debates, critics present it as an anomaly of secular society. Similar arguments were reflected and expanded on by a recent governmental

¹⁵ Muslim women's problems with getting a divorce have been the focus of several research projects (de Carli 2008; Kayed 1999; Thorbjørnsrud 2003; Vogt 2000; Wærstad 2006; Wærstad 2016).

¹⁶ <https://www.dagbladet.no/nyheter/aps-storste-partilag-vil-frata-trossamfunn-vigselsretten/67401245> Accessed 30 December 2017.

commission; the Commission on Faith and Worldviews (2010–2013), named the Stålsett Commission after its leader.¹⁷ Their remit was framed in terms of improving governance of cultural and religious diversity as a whole, including secular humanism and the Church of Norway. Marriage authorization is discussed in a separate chapter of their report, as practically the only remaining state power delegated to faith communities, except for duties connected to membership registers and funding.

The commission emphasized that the conclusion of marriage has two sides:

As a legal institution, it is an official act with civil law implications. As this, it is completely an act based on Norwegian law. At the same time conclusion of marriage is, for many people, a central life phase transition associated with many traditions and rituals, of both secular and religious character. These are two separate sides of the conclusion of marriage. (Norwegian Official Reports 2013: 201)

The report refers to researcher Anne Sofie Roald (2009), who has argued in favor of removing the marriage authorization system in Sweden. According to the report, she claims that this system legitimizes gender inequality within Jewish and Muslim marriage and gives mixed signals to a growing Muslim population in Sweden. It creates the false impression that Islamic family law is accepted within the Swedish legal system. The commission agrees that civil marriage in the hands of religious institutions may work to legitimize discrimination and create doubt about the legality of Norwegian marriages with a focus on drawbacks for women and gay persons. However, the commission also acknowledges that the argument can be reversed, the report notes. Retaining the system of marriage authorization may contribute to pushing faith communities toward more equal treatment. In this respect, the authorization

¹⁷ See Lefebvre and Brodeur (2017) for a discussion of the commission's work.

system represents a venue for dialogue and influence. As it turned out, the commission was divided in its position on marriage conclusion. The majority of 10 members recommended that a single-track system be introduced, allowing only civil institutions to perform legal marriage, while a minority of five members, including the commission leader, wanted to retain the two-track system. The government agreed with the minority.

Unregistered religious-only marriages were not a direct concern of the commission. The issue was, however, raised in the consultation process following the report by The Directorate for Children, Family and Youth Affairs. They argued that introducing a single-track system might contribute to reducing the importance of religious marriage.¹⁸

The state discourse of difference and separation

As mentioned previously, the requirements of marriage, represented in the handbook for administrative leaders of faith communities, leave room for interpretation. In order to gain insight into the state discourse on marriage authorization, we approached the Ministry of Culture asking it to clarify and elaborate on these requirements. In particular, we asked them to explain the reference to ‘general gender equality principles’ and the prohibition on dowry.¹⁹ In their reply, the ministry underlined that the criteria refer to what they see as the civil act. Thus, they distinguish between ‘the legal act in itself’ and something going on ‘on the side,’ as illustrated in this excerpt from the e-mailed response:

¹⁸ Source: <https://www.regjeringen.no/contentassets/3810c6a1d2eb412485319c1dfbef00e4/318-bufdir.pdf>
Accessed 30 December 2017.

¹⁹ Our request only mentioned dowry, as there was no reference to *mahr* in the requirements at the time. As mentioned in footnote 12, *mahr* was only added after our data collection, but our interviews with public officials at the time revealed that the mention of dowry was intended to include *mahr*. In fact, the public officials thought that dowry and *mahr* were the same.

That the very foundation that the legal act is based upon, must comply with general gender equality principles, does not however, prevent that, on the side of the legally binding part of the marriage conclusion itself, is agreed or expressed faith based views that not necessarily regard the spouses as equal.

Our interviews indicate that the authorities conceive of an authorized faith community's marriage solemnization as a dual or split construct. There is no prohibition against a religious ceremony in addition to the civil one, and the authorities do not interfere as long as the two parts are kept separate. The marriage parties are free to agree on *mahr* (dower), dowry, or other economic transactions as long as such arrangements are not part of 'the legal act itself.' In this framework, the *mahr* and other religious ingredients belong to the realm of religious freedom, which by definition is outside the remit of state intervention. As a public official explained: 'What we are concerned with, is the marriage ceremony itself, what goes on during the legal act itself. The other stuff is not our business.' However, there seems to be a certain confusion and ambiguity among the public officials, as to the language in which this 'other stuff' is distinguished from 'the legal act itself.' Some talked about the civil and the religious *parts* of the ceremony, while others seemed to conceive of two ceremonies. Quite a few of the public servants drew on the distinction between a marriage ceremony and marriage blessing, which is established language within the Church of Norway.²⁰

Thus, it is clear that the Norwegian state concept of marriage authorization is based on a separation of the civil act and the religious act. This aims to delineate and protect the civil act from religious 'contamination.' The civil part should not be 'tainted' by the religious part. At the same time, it is also about delineating and protecting religious practices from

²⁰ The Church may offer a blessing of marriage to a couple who has already married in a civil ceremony, and it was previously offered to same-sex couples before the Church accepted same-sex marriage in 2016. Such a blessing is often translated as intercession in English.

interference by the state. The religious ceremony belongs to the area of religious freedom. This perspective seems to be based on an assumption of a clear and unambiguous split between law and religion. In other words, the state has a *perspective of difference and separation* which renders a *nikah*-only marriage a non-marriage and therefore not the state's business.

A *nikah* marriage may, however, also be a suspect marriage or even be an illegal act. Some media have focused on unregistered marriages contracted in Norwegian mosques, giving the impression that such practices are illegitimate or even prohibited by Norwegian law. In a few cases the County Governor's office had been notified and had issued a written warning to mosques that had performed *nikah*-only marriage ceremonies. As explained above, there is, however, no law against *nikah*-only marriage in Norway, as these are considered to belong to the realm of religion. Still, if a written document or certificate is issued by the mosque, some legal problems may arise as this could create the impression that the marriage is legally contracted according to Norwegian law. This distinction was not made clear in the letters of warning that we reviewed, and it seemed to be a complicated issue for the civil servants involved, as illustrated here by a County Governor official:

These questions are not clarified. It's really a complex conundrum of rules. Perhaps they do not really have any solution. The problem with this mosque was that they say that, 'it is only a religious ceremony. We have just tried to help some people solve their problem.' While we on our part say that, 'you have tried to conclude a marriage.'

In other words, we noted that there is considerable confusion as to the legality and status of *nikah*-only marriages, also among public officials. The common misunderstanding that

unregistered Muslim marriages are prohibited as such clearly influences and is influenced by the media discourse. Muslim marriages were constructed as suspect marriages.

Mosques administrators' discourse of unity and compatibility

If the state employs a perspective of difference and separation, while also holding somewhat ambivalent views about the status of unregistered marriages, what perspectives do the administrative leaders of mosques present? Our interviews indicate that while they were influenced by the public suspicion of Muslim marriage, they also used more internal, religious arguments to explain their positions.

Our study included both mosques with and those without marriage authorization. In the case of the latter, one mosque had previously performed Muslim marriages but had gotten into trouble with the County Governor, while another one said that they were new and too small to take on such tasks. The administrative leaders of other mosques said that they might do religious marriage but only after the couple had marriage in a civil ceremony. This was the case for those of the Turkish and the Bosnia-Herzegovinian mosques, who explained their position with reference to the system of civil marriage in their countries of origin. Even one of the authorized mosques only offered *nikah*-only ceremonies after a civil marriage had been concluded.

The other authorized mosques, which represent the largest and most established mosques, had decided to only officiate marriages that are valid according to civil law. Their administrative leaders stated that they only perform what we will call the double ceremony. From time to time they are approached by couples or family members who want a *nikah*-only ceremony, but such requests are invariably dismissed. In other words, we found a clear

preference for registered marriage, and our interviewees insisted that *nikah*-only marriage was mainly contracted outside mosques.²¹

Our informants gave several reasons for their stance. To start with, they underlined that the mosque prefers to have their things in order, to avoid legal grey areas, confusion, and misunderstandings. This argument was apparently directed at relations with the state. As an interviewee from a Moroccan mosque pointed out: ‘As long as one lives in Norway, one should adhere to Norwegian law.’ A former administrative leader of a Somali mosque explained that he is ‘on the authorities’ side’:

If someone came and only wanted a religious marriage, I would refuse. I’m on the authorities’ side. There are some who do it, do *nikah* without the registration, but not the mosques. The other [*nikah*-only] is legal in terms of the religion, Islam, but because the mosques have the permit to do civil marriage, we only do that. We gave a clear message that they must have the certificate of no impediment first. I also gave a speech during Friday prayer, so everybody knew how we did it. Those who didn’t want to register the marriage probably would not come to me in the first place.

Another administrative leader, from a Pakistani mosque, elaborated, explaining that the mosques feel that they as Muslim institutions have to be especially careful:

²¹ The administrative leaders further emphasized their own responsibility for marriage conclusion, explaining that the imam may conduct the ceremony, while the administrative leader makes sure that the mosque fulfills the civil regulations. One administrative leader, when prompted to expand on this information, said that he could not say what the imam did outside the official remit of the mosque.

Most mosques have become more strict, at least the Pakistani ones that I know. It is important for us to have everything in order. If one church gets into trouble, that trouble will not implicate other churches but if one mosque gets bad publicity . . .

It is clear that representatives of Muslim institutions feel a particularly strong need to be perceived of and accepted as law-abiding citizens. The mosques may even be seen as unnecessarily cautious or over-zealous in this quest for legitimacy. They are not only abiding by the law following the rules when concluding a civilly valid marriage. They also refrain from performing religious-only marriages, even if they are aware of the fact that to do so is not legally prohibited. Thus, the mosques are keenly aware of the discourse of suspicion of Muslim marriages, and their policy of only offering a double ceremony is explicitly justified by the dangers of being accused of doing something wrong.

The preference for registered marriages is however not only a result of external pressure and suspicion. The interviewees also present other arguments for their position. First, they tend to associate *nikah*-only ceremonies with intentions to circumvent law and regulations, which they will not be part of—both for reasons of state control but also based on their own moral and religious convictions. They typically refer to women who want to claim or maintain social benefits as single mothers or to men who want to enter into polygamous marriages. Also, they point to Islam's requirement that marriage be openly publicized, which several of our informants equated with civil registration. Moreover, they raised concerns about the insecurities and risks involved in unregistered marriages, in particular for the weaker party. An interviewee of Moroccan descent explained:

To be on the safe side we say that you should marry both religiously and civilly. You never know what happens tomorrow and women in particular are vulnerable. You get

into a danger zone, a grey zone. Women are the ones that loose out. Therefore, we refuse. All sensible religious leaders agree. We do not want to open the door for it.

Next to this, there are some examples of bad experiences from religious-only marriages performed in the past. For instance, the mosque that only performs religious marriage after civil marriage, told about previous incidences of people who did not understand or did not want to understand that the marriage was not registered and valid, even if they had been thoroughly informed that they would be seen as cohabitants according to Norwegian law. After a few years, the woman came back and demanded that he confirm that the marriage was civilly valid. She wanted to leave her husband and had only then realized the implications of not having access to Norwegian family law rules on marriage dissolution. Our informant was confident that he had informed her thoroughly at the time of marriage, but she denied this and made serious complaints about him. This example illustrates a reasoning shared by several of the interlocutors, based on the need not only to be on safe ground in relation to the state but also to avoid trouble with and hassle from their own members.

A more substantive or theological line of argumentation pertains to the attitude to the two types of marriages in themselves. On the one hand, it was an argument of similarity, as our interviewees insisted that Norwegian civil marriage is in fact, with some small exceptions, the same as a Muslim marriage. On the other hand, there was a certain tendency to delegitimize religious-only marriages. Let us take the latter set of arguments first.

Here we sensed that our interlocutors had to tread gently, as they did not want to risk being accused of going against Islam. Typically, they first emphasized that an Islamic marriage in principle only needs two witnesses to be valid. They explained that as in Islam it is vital to only engage in a sexual relationship within the framework of marriage, a low threshold for marriage is needed. Then they went on to convey a more critical stance with

reference to the Norwegian context, referring to young people who enter into a religious marriage in order to have ‘halal sex’ (Bøe 2012; Emblem 2009). They presented examples of couples who married not only informally but in private and secretly without their parents’ knowledge or consent, with an explicit aim to make their sexual relationship halal in the eyes of Allah and their peer network (Bøe 2012). Some sunni mosques even mentioned *nikah mutah*, temporary marriage, which is associated with Shia Islam and with the *Salafi* group The Prophet’s Ummah (Bangstad and Elgvin 2017). Other, more legitimate examples included couples who married religiously with the consent and participation of their parents. Sometimes they did not cohabit but would go on holidays and share hotel rooms together. Our interlocutors’ skeptical attitude to *nikah*-only marriages was related both to the norm of parental consent and to Islam's norm of publicizing the marriage. In a modern society where registering your marriage with the State is the common way of publicizing the marriage, there is no religious reason why you should not, they contended. In sum, informal religious-only marriages tended to be seen as something potentially dubious outside the control of mosques and of parents.

The most forceful internal arguments in favor of double marriage ceremonies, was however based on a more positive take. Muslim administrative leaders emphasized what they see as similarities between a civil or Norwegian marriage and a Muslim marriage ceremony. In their perspective, they perform a civil marriage ceremony that is also valid according to Islam, as this administrative leader of a Somali mosque explains: ‘The Norwegian marriage ceremony is like in Islam, husband and wife and two witnesses. In this case, the two systems help each other forward.’

In contrast to the authorities’ perspective of separation, the mosques seem to adhere to a *perspective of unity and compatibility*. At the same time, the interviews with administrative leaders clearly demonstrate that a *nikah* marriage departs significantly from the principles of

the civil marriage, for example, in terms of the stipulation of *mahr* as a condition for validity, and rules about a legal guardian, *wali*, for women, although such criteria vary among the law schools. However, our interlocutors tended to downplay such differences for the benefit of a general picture of unity and sameness between the religious and civil marriage. A full civil-and-religious marriage is not only possible and legitimate, according to Islam, it is even preferred over a religious-only marriage.

The argument of unity and sameness is strengthened by the fact that these mosques do not issue a Muslim marriage contract on the grounds that the civil marriage certificate in itself is sufficient. As one of the administrative leaders put it: ‘90% of the nikah is like the Norwegian marriage.’ In other words, they go far in constructing the civil marriage as authoritative, not solely because it is Norwegian law but also because they consider it as *de facto* the same as a Muslim marriage: ‘We only use the Norwegian marriage certificate. We don’t have a nikah contract. Because it’s the same.’

Some argue that the civil contract makes the Muslim contract superfluous and they leave it to the spouses and families to organize a contract if they feel they need it. In other mosques, the civil form is not altogether replaced but supplemented by a more informal contract, as this administrative leader explains:

If we were in Somalia, we would need to register the marriage at the courts. It is one form just like in Norway. Here we fill out two things. First, the public marriage form. Then we take a sheet of paper where we write and give to them. It is not necessary and many do not take it with them. But it is good to have for those who do not want to register, who do it by tradition. In that way they have a document that says who was the imam who wedded them, the parents who were present, the date and the witnesses. It is not a form, just an ordinary sheet of paper.

What about mahr?

Yes, that is required and it is written in the traditional agreement. It is something that the woman is required to get from the man, and she should say how much she wants.

Today it is usually not so much.

We have not investigated whether this practice has decreased the use of Muslim marriage contracts overall or only moved the contracts out of the formal marriage conclusion setting. It is to be noted that our findings raise the question about possible issues at stake when there is not a formal Muslim marriage contract. One consequence would be that women do not have the possibility to register conditions in the contract. The delegation to the wife of the right to divorce herself, may be of particular importance, both for women with attachments to countries with Islamic courts and for those where no Islamic authority is present to grant an Islamic divorce. At the same time, if the argument of compatibility is followed through, the question is also whether this would apply to the question of divorce. If the Norwegian marriage certificate is sufficient in the eyes of Islamic authority figures, is the Norwegian civil divorce then also sufficient? As the issue of divorce was not a central topic in our study, this would need to be further investigated. Moreover, empirical research among Muslim men and women would be helpful to explore their perceptions and strategies in the area of marriage conclusion, both outside and within organized religion.

Concluding remarks

This article has addressed Muslim marriages at the interface of state regulation of civil marriage and the non-regulation of religious marriage. It has explored the role of mosques in the patterns and dynamics of marriage registration in Norway.

As we have seen, the state is concerned to keep the civil legal act apart from the religious ceremony. Critics of the double-track system of marriage authorization argue that such separation is not possible, as the one is 'tainted' by the other. Their solution is to remove civil marriage completely from the religious realm, to establish a one-track system of a 'purely civil marriage,' referring religion to a 'purely private ceremony.' The analysis in this paper indicates that these critics are right in the sense that the idea of two separate ceremonies is an illusion. However, the findings suggest that the distribution of power between secular and religious forces is more complex.

The main mosques of Oslo who hold the right to perform marriage have decided to restrict themselves to state-registered marriages only. They not only refuse to perform *nikah*-only ceremonies, they also argue that the Norwegian civil certificate is sufficient in terms of documentation as they consider it also Islamically valid. These mosques claim that Norwegian civil marriage and Muslim marriage are almost the same. Obviously, this reasoning purposely overlooks differences between Norwegian marriage law and Muslim marriage law, in particular with respect to differences in rights and obligations of men and women. What is interesting is that this reasoning actually results in Norwegian marriage certificates replacing or suppressing the Islamic marriage contract, although agreements on *mahr* are still made more informally. In other words, in a sense the mosques challenge the state principle of keeping civil and religious marriage apart. Contrary to state concerns, though, it seems as if the civil marriages have affected the religious, rather than vice versa. Thus, our findings suggest that there has been a secularizing effect.

These lines of argumentation of the administrative leaders of mosques are obviously related to the presence of a discourse of suspicion, involving both Muslim marriages, mosques and Islam in general, both in the media, public discourse and state scrutiny of Muslim institutions. When they highlight unity and compatibility, this should be seen as an effect of

both external and internal forces. Islamic leaders may seek to downplay the adjustment and concessions to the state by legitimizing them in terms of religion. Yet the position taken by mosques to only perform legal marriage also indicates that they consider the Islamic marriage contract as less important than the civil marriage in the Norwegian context. More generally, our findings suggest that the mosques' conception of the relation between civil and religious marriage challenges the state perspective of separation as a condition for secular governance of marriage.

References

Lov 1969-06-13 nr 25: Lov om trdomssamfunn og ymist anna 1969 (Act relating to Religious Communities, etc. 1969). The English version retrieved from the University of Oslo <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19690613-025-eng.pdf> 18 June 2018. The translation is unofficial and may not be fully updated.

Asad, Talal (2003). *Formations of the Secular: Christianity, Islam, Modernity*. Stanford: Stanford University Press.

Bangstad, Sindre (2011). En norsk sekularisme? In Bangstad et al. (eds.), *Sekularisme med norske briller*. Oslo: Universitetsforlaget.

Bangstad, Sindre and Olav Elgvin (2017). Norway. In *Yearbook of Muslims in Europe, Volume 9*. Brill.

Bøe, Marianne (2012). Fornyng og videreføring av midlertidig ekteskap i sjia-muslimske minoritets- og majoritetsposisjoner. [Renewal and continuation of temporary marriage in Shia Muslim minority and majority positions]. *DIN, tidsskrift for religion og kultur* 2012 (1).

Bøe, Marianne (forthcoming 2018). Lived experiences of Norway's regulation of mahr (the Muslim dower). *Nordic Journal of Religion and Society*, 31(1), pp 58-74.

Bowen, John (2016). *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*. Princeton: Princeton University Press.

Bredal, Anja (2005). Tackling forced marriages in the Nordic countries: Between women's rights and immigration control. In Welchman, Lynn and Sara Hossain (eds.), *"Honour" - Crimes, Paradigms and Violence Against Women*, pp. 332-353. London: Zed Books Ltd.

Bredal, Anja and Camilla Vislie (2017). Familierettede tjenester i et flerkulturelt samfunn. Erfaringer fra familievernet og andre hjelpeinstanser. *NOVA Rapport 5/17*, Oslo: NOVA.

Bredal, Anja and Tone L. Wærstad (2014). *Gift, men ugift. Om utenomrettslige religiøse vigsler*. [Married but unmarried. On unregistered religious marriage]. ISF-rapport 2014:006. Oslo: Institutt for samfunnsforskning.

Emblem, Linda K. (2009). *Samlivspraksiser blant muslimer i en norsk kontekst. Religion – Identitet – Fellesskap*. [Living arrangements among Muslims in a Norwegian context. Religion – Identity – Community]. Masteroppgave i sosialantropologi ved Sosialantropologisk institutt, Oslo: University of Oslo.

Ferrari de Carli, Eli (2008). Religion, juss og rettigheter: Om skilsmisse, polygami og shari'a-råd. [Religion, law and rights. On divorce, polygamy and sharia councils]. *Rapport 2008:005*. Oslo: Institute for Social Research.

Furseth, Inger (2017). The return of religion in the public sphere? The public role of Nordic faith communities. In Engelstad, Fredrik, Håkon Larsen, Jon Rogstad, and Kari Steen-Johnsen (eds.), *Institutional Change in the Public Sphere: Views on the Nordic Model*, pp. 221-240. De Gruyter Open.

Jänträ-Jareborg, Maarit (2014). On the cooperation between religious and state institutions in family matters: Nordic experiences. In Shah, Prakash, Marie-Claire Foblets, and Mathias Rohe (eds.), *Family, Religion and Law: Cultural Encounters in Europe*, pp. 79-101. Surrey: Ashgate.

Lefebvre, Solange and Patrice Brodeur (eds.). (2017). *Public Commissions on Cultural and Religious Diversity: Analysis, Reception and Challenges*, Routledge; 1 edition (May 10, 2017).

Liversage, Anika and Tina G. Jensen (2011). *Parallele retsopfattelser i Danmark. Et kvalitativt studie av privatrettlige praksisser*. [Parallel legal concepts in Denmark. A

qualitative study of private law practices] København: Det nationale forskningscenter for velfærd.

Løvdal, Lene (2008). Private international law, Muslim laws and gender equality.

Kvinnerettslig skriftserie 78: 2008.

Ministry of Culture (2012). Forstandere i trossamfunn. Veileder [Administrative leaders of faith communities: A handbook]. Oslo

https://www.regjeringen.no/contentassets/871d823dbc294e57bcf31d84f0c3cbac/forstandere_i_trossamfunn_v-953b_feb2012.pdf Retrieved 18 June 2018

Moors, Annelies (2013). Unregistered Islamic marriages: Anxieties about sexuality and Islam. In Maurits Berger (ed.), *The Application of Sharia in the West*, pp. 141–164. Leiden: Leiden University Press.

Mustasaari, Sanna and Mulki Al-Sharmani (2017). *Between “Official” and “Unofficial”*: *Discourses and Practices of Muslim Marriages Conclusion in Finland*. Unpublished paper at the symposium Unregistered Muslim Marriages – Regulations and Contestations, De Montfort University, Leicester, UK, 24-25 April 2017.

Norwegian Official Reports (2013). Norges offentlige utredninger 2013:1. Det livssynsåpne samfunn. En helhetlig tros- og livssynspolitikk. Utredning fra utvalg oppnevnt ved kongelig resolusjon 25. juni 2010. Avgitt til Kulturdepartementet 7. januar 2013. [Norwegian Official Reports 2013:1; A society open to religious and worldview diversity]

Roald, Anne S. (2009). *Muslimar i nya samhällen. Individuella eller kollektiva rättigheter?* [Muslims in new societies. Individual or collective rights?]. Stockholm: Daidalos.

Wærstad, Tone L. (2015). *Protecting Muslim Minority Women’s Human Rights at Divorce: Application of the Protection against Discrimination Guarantee in Norwegian Domestic Law,*

Private International Law and Human Rights Law [PhD dissertation in Law, University of Oslo].