## The Family

> Religare introduction: *This research area deals with personal status and family affairs. Given that secular systems still contain religiously-based institutions (e.g. the definition of «marriage»), it is no surprise that issues that call into question family models are under debate and give rise to lively polemics between religious and secular groups in several European countries. The issues investigated include religious marriages and divorces, as well as custody over children and the adoption of children when religious and formal legal prescriptions clash. The institution by some communities of parallel dispute settlement bodies to deal with family-related disputes is also investigated.*

The importance of the family as the context in which children are raised and introduced to society cannot be over-emphasised, but the nature of the family in which this is done should not be a matter of dogma or religious doctrine. it is undeniable that many unconventional families - with single parents or gay couples, for example - work well and that conventional families can be unhappy and damaging. The factors involved in their success or failure appear to have little or nothing to do with the formal nature of the family and everything to do with love, commitment and adequacy of resources.

We are disturbed by your apparent assumption that marriage is an institution based on religion. There are undoubtedly various religious models of marriage (some very different from the traditional Christian idea of a monogamous partnership between a man and a woman) but marriage is at base neither a Christian nor even a religious concept but an institution found in all societies and not by any means always seen as a sacramental relationship. In both Greece and Rome, marriages could be contracted in secular ceremonies. In modern times in Europe, marriages are normally contracted by civic registration, albeit often later blessed in a church ceremony. In the United Kingdom, one of a few states where no separate civic registration is required, religious ceremonies now make up a declining minority of the total.

The commonplace assumption is that the function of marriage is to provide a secure foundation for the nurture of children. This is undeniably socially its most important role, but religious rhetoric often ignores that it is not an exclusive or necessary role for the institution. Marriages of people well past the age of child-bearing are common and usually successful. Marriages of people unable to father or bear children are valid and valued.

Equally, single-sex marriages or partnerships are increasingly recognised, but have long been a feature of society. (They were lawful in ancient Rome until banned in 342 CE.) Nor is there any evidence that such marriages cannot provide a successful environment for bringing up children. Traditional religious prejudices against single-sex families are highly regrettable but we observe with pleasure their slow erosion and growing Christian acceptance of single-sex marriage.

The European Humanist Federation has a clear policy on the ways marriages are contracted as legal institutions:

Some people choose to live together and to found a family without marrying. This policy applies where legally-recognised marriage is concerned:-

1. Marriage is a voluntary and legal union between two people and commits them to sharing obligations with each other.

2. The right to marriage and divorce must be guaranteed and regulated by civil law.

3. The authorities must treat all who seek marriage or divorce equally, regardless of lifestance (whether religious or non-religious), ethnic origin, sexual orientation and gender.

4. The authorities must provide a neutral option, not based on a lifestance (again, whether religious or non-religious) for contracting marriages.

5. If they give legal recognition to religious ceremonies, they must equally give legal recognition to ceremonies based on a non-religious lifestance.

It is our view that adult couples, regardless of sexual orientation and gender, have the right to enter into a marriage or legally defined partnership. We favour the term marriage in both cases but partnership laws are and have been in some states a necessary intermediate step on the way to implementation of a common marriage law.

Marriage is a voluntary commitment, i.e. it should not be forced upon anyone. We accept that arranged marriages should remain lawful but we recognise that there is a point at which they cease to be voluntary and become forced: where this is the case they should have no legal validity.

Both marriage and divorce should be regulated by civil law, which should prevail so far as secular considerations are concerned over ecclesiastical or other religious law, such as Islamic sharia law. So far as the civil law is concerned, marriage must be a partnership of equals: traditional, often religious, concepts that women are to be subordinated to their husbands must have no place or recognition.

The state is responsible for providing as a public service a secular and neutral service for those who want to marry or enter a partnership. If (as in a few states) organisations based on a religion or belief have the right to perform legally recognised marriage or partnership ceremonies, then all religious and life-stance organisations must be treated equally and given the same right (which of course they should be free to decline). It is unacceptable that (as in England and Wales but not in Scotland and Norway) churches should be allowed to conclude legally recognised marriages but humanist organisations should be debarred. Either all marriages and partnerships should be formalised in a civic registration that is neutral as to religion or belief or else people of all religions and beliefs should be entitled on equal terms to have their unions formalised by an organisation representing their religion or belief.

Divorce should be available in cases where a marriage or partnership has irretrievably

broken down and legal proceedings should focus on breakdown, not on symbolic acts such as adultery. In cases of divorce primacy should be given to the interests of any children involved. Similarly, where children are offered for adoption it should be their interests that predominate: birth parents who give up their children should have no power to lay down discriminatory vetos over adoptive parents based on religion or sexuality.

Particular problems arise when religious institutions seek to regulate matters that are otherwise in the province of the civil law. Plainly there is no question that religious tribunals may rule on religious aspects of marriage or of other family questions, although it should be noted that this is not in practice unproblematic: for example, the dual jurisdiction over divorce of civil and religious authorities has called for special legislation in the United Kingdom to frustrate the gratuitous refusal of religious divorce where civil divorce has been granted[23].

But when religious authorities intervene in areas governed by civil law[24] serious difficulties are liable to arise. In principle there can be no objection to two parties agreeing to settle disputes or arrange their affairs in accordance with any procedure agreeable to them both, and this can often be more expeditious and less expensive than use of the civil courts. This is on the face of it the situation when disputes are referred to religious tribunals under (usually) Jewish or Islamic law. The problems arise when

(a) general principles of civil law are breached
(b) third parties are involved, often but not always children, and
(c) one of the principals, usually the woman, is under some measure of compulsion to accept the jurisdiction of the religious tribunal or agrees to it in ignorance of the possible consequences.

The first circumstance arises (for example) with shari'a law which discounts the evidence of women[25], or when exercise of personal freedoms to diverge from religious orthodoxy or to resort to civil law (even, for example, by involving the police in a crime within the community) is in effect penalised as a breach of religious duty.
The second arises when questions of custody and of inheritance are involved: shari'a law often differs from civil law, for example in laying down child custody reverts to the father at a preset age, even if the father is abusive, that women who remarry lose custody of their children even if the child has not reached the preset age;[26] and that sons are entitled to

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23 The Divorce (Religious Marriages) Act 2002 permits the court to refuse to finalise a divorce unless the parties have taken "such steps as are required to dissolve the marriage in accordance with those [religious] usages".

24 The occasional involvement of religious tribunals in criminal matters is in our view wholly unacceptable.

25 "The text (Surah Al-Baqara 2:282) which requires two female witnesses in place of one male witness, gives a clear reason for it i.e. 'if one of them forgets, the other reminds her.' Is this derogatory to the status of the women or is it a revealed secret about the nature of the women?" - On the Testimony of Women, Islamic Sharia Council: see http://www.islamic-sharia.org/general/on-the-testimony-of-women-2.html, accessed 9 January 2011 but no longer available on 6 April 2013.

26 http://www.islamic-sharia.org/children/what-age-is-it-suitable-for-children-to-live-with-the-fa-2.html, accessed 9 January 2011 but no longer available on 6 April 2013. .

inherit twice the share of daughters.[27]

The third problem is reportedly widespread and arises from intimidation related to the entrenched inequality of the sexes coupled with ignorance of the consequences of reliance on a religious tribunal. The problem is largely confined to certain communities that may be defined less by religion (though they in fact share a religion - usually Islam) than by the *mores* of the groups from which their (usually immigrant) members come (e.g., from rural villages in Bangla Desh). Men from such communities find it attractive to resort to sympathetic shari'a councils or tribunals that uphold patriarchal religious rules and attach little importance to violence against women. Women, in such situations tend to be dominated, even terrorised, and unable to exercise the free choice that would tend to legitimise such resort.

States that are committed to upholding human rights should therefore be very wary of positively supporting the use of such tribunals. Indeed, it is not only women and children whose rights are at stake but minorities of any kind - LGBT people, for example, or single parents, or religious dissidents. It is unacceptable therefore that religious communities should be given the (civil) legal right to impose religious law on "community members": this is a blatant transgression of the rights of individual citizens and relies on the pernicious fiction that the rights of individuals should depend on just one (religious) aspect of their identity. Granting rights to groups (that is, to the leaders of such communities, who are rarely accountable and even more rarely democratically chosen) means granting them the right to deny the individual human rights of minority or dissident members of the group.

Given, however, that religious tribunals can be the choice of the parties involved, the question arises whether the civil law should intervene to regulate or even prevent such resort in order to impose general legal standards and principles, in particular in the interests of women and children. This question needs to be set in the context of the State's obligations to ensure gender non-discrimination under Article 16 of the Convention for the Elimination of All Forms of Discrimination Against Women, and Resolution 1464 of the Council of Europe on women and religion, which stipulates that member States must guarantee the separation between the Church and the State which is necessary to ensure that women are not subjected to religiously inspired policies and laws (for example, in the area of family, divorce, and abortion law).

The European Humanist Federation does not have a detailed policy on the question but we are impressed by the abuse of the human rights of women and children involved in much of shari'a and (to a lesser extent) rabbinical law, and we are disposed therefore to favour regulation to limit the powers of such tribunals outside purely religious matters.[28] We are

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[27] " 'Allah commands you regarding your children. For the male a share equivalent to that of two females.' [Quran 4:11] . . . This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister, a son's son inherits twice as much as a son's daughter and so on. See http://www.islam101.com/sociology/inheritance.htm, accessed 6 April 2013.

[28] We realise that the whole question is fraught with difficulty and commend in general terms the report "When Legal Worlds Overlap: Human Rights, State and Non-State Law" (2009) from the International Council on Human Rights Policy - see http://www.ichrp.org/files/reports/50/135_report_en.pdf, accessed 6 April 2013.

reinforced in this opinion by the uncertainty of much shari'a law, which lacks codification or uniformity but depends excessively on the personal judgements of individual imams or other presiding clerics.