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Interlegality, Agency and Empowerment. A Different Take on the Feminism *v.* Multiculturalism Conundrum*

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1. *Interlegal dimensions of the feminism v. multiculturalism conundrum: introductory remarks*

In the lively – and sometimes stormy – feminism *v.* multiculturalism debate, attention to the issue of legal pluralism has grown over time. In particular, a specific reflection focusing on the presence of non-state[1] mechanisms and institutions (customary, religious, or other types[2]) for the resolution of disputes and discussing the impact of such mechanisms and institutions on women's rights has gradually carved out its own space. The gender perspective has thus made its way into a field of study that had previously been mostly devoted to examining the coexistence and conflicts between Indigenous and colonial law outside the so-called Western world. In the field of political and legal philosophy, an analysis of these issues usually develops from a

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[1] Of course, the relevance of non-state mechanisms and institutions for dispute resolution is not limited to the forms of legal pluralism linked to multiculturalism. Many types of these mechanisms and institutions – with very different origins, functions and characteristics – operate within the general framework of so-called global legal pluralism (for instance, within the realm of the so-called new *lex mercatoria*). For obvious reasons, I will focus my attention here only on those mechanisms and institutions that are tied to cultural or religious groups.

[2] As has been correctly pointed out, «although the term 'customary law' remains very present in the vocabulary of the communities concerned and among researchers» and «such law is no doubt still vibrant, particularly in those communities where no individual or institution possesses the authority to declare or proclaim a legally enforceable commandment», nonetheless «the arsenal of non-State normative technology is varied, as can be seen in the current proliferation of Indigenous 'codes', protocols and 'charters'». See G. Otis, *The Management of Legal Pluralism. Processes, Parameters for Action and Effect*, in G. Otis – J. Leclair - S. Thériault, *Applied Legal Pluralism. Processes, Driving Forces and Effects*, Abingdon-New York, 2023, p. 16-17.

normative perspective that tries to determine the solutions more suited to grant the protection of women's rights in multicultural contexts. From this perspective, the fundamental question is: How could or should we grant the coexistence of different legal norms, customs, traditions and institutions without challenging women's rights? The more-or-less implicit premise of this question is the assumption that non-Western cultures are mostly illiberal and oppressive towards women.

However, while the debate on the tensions between feminism and multiculturalism has often remained anchored in the categories of the opposition between liberalism and communitarianism – thus falling into the same pitfalls – the entry of legal pluralism on the scene has not changed the perspective much; in many cases, it has simply shifted from the question «Is multiculturalism bad for women?»[3] to the question *Is customary/religious law/justice bad for women?* With few significant exceptions[4], the tendency towards a certain degree of cultural essentialism and ethnocentric paternalism has remained almost unchanged[5]. On the one hand, the mechanisms and institutions of non-state justice have been seen as means for the self-preservation of communities that are supposed to be characterised by static and homogeneous traits: that is, means through which cultural groups seek to protect their identity and live by their own rules, keeping themselves separate from the rest of society and isolated in cultural and legal enclaves. On the other hand, women from other cultures have mainly been seen as passive victims essentially devoid of agency and in need of protection.

In contrast to this approach, the present article aims to overcome the perpetuation of both cultural and gender stereotypes that fuel the feminism *v.* multiculturalism opposition (§ 4) by looking at the possible tensions between legal pluralism and women's rights in a different way. To this purpose, it abandons the static perspective of a certain way of thinking about legal pluralism – that is, as the coexistence of distinct (closed and independent) legal systems within the same social field – to embrace the dynamic perspective of interlegality that focuses on the interactions between different legal spheres (§ 2). Moreover, it does not look at women simply as vulnerable subjects to be protected but rather calls attention to the strategies of agency and empowerment that they enact in contexts of interlegality (§ 3).

[3] S.M. Okin (1997), *Is Multiculturalism Bad for Women?*, in *Boston Review*, 1997. See also S.M. Okin, *Feminism and Multiculturalism: Some Tensions*, in *Ethics*, 1998, p. 661 ff.

[4] For instance, think of A. Shachar, *Multicultural Jurisdictions. Cultural Differences and Women's Rights*, Cambridge, 2001; S. Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton, 2002; A. Phillips, *Multiculturalism without Culture*, Princeton, 2007.

[5] On the debate generated by Okin's theses, see, among many others, J. Cohen – M. Howard – M.C. Nussbaum (eds.), *Is Multiculturalism Bad for Women?*, Princeton, 1999.

2. *On interlegality: some (conceptual) clarifications*

In general, the concept of interlegality refers to situations in which different legal *spheres* intersect and interact[6]. It rests on two main premises. The first is that state law coexists with various other types of law, such as international, supranational, transnational, customary and religious law. The second is that different legal spheres are not discrete and separate but instead overlap, intertwine and compete in many ways in the regulation of social facts and conflicts. Beyond this common core, however, the term interlegality covers heterogeneous studies that may adopt an empirical, theoretical or normative perspective to investigate diverse issues ranging from the endless debate about the concept of law (what law is and how it works) to the analysis of how people (social actors and/or legal professionals, primarily judges) use or should use legal norms in the contemporary world[7]. At the same time, these issues have been studied under different labels[8]. Therefore, it seems appropriate to clarify how the concept of interlegality is understood in this article and why this term was chosen over others.

I adopt an empirical perspective focused on social actors. More specifically, I refer to the concept of interlegality in its original meaning proposed by Boaventura de Sousa Santos, who first introduced this term. Through it, Santos aimed to call attention to what he considered the «phenomenological counterpart» of legal pluralism, focusing on the condition of social actors, which – living in the «network of legal orders» that characterises the contemporary globalised world – are «forced to constant transitions and trespassings» from one «legal order» to another[9]. In this sense, the concept of interlegality takes on a «subjective perspective that foregrounds the social actor and the norms of different origins that influence his or her actions and choices»[10]. This allows attention to be paid to *how people use the law* with reference not only to forum

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[6] By 'legal sphere', I mean the ambit of influence of a given set of legal rules. In its vagueness, this term makes it possible to include legal regimes that do not fall under the notion of a legal order in the technical sense (i.e., a closed set of hierarchically ordered rules that is intended to be characterised by unity, coherence and completeness). Moreover, compared to the term 'legal space' – increasingly used in the literature, including by me in previous articles – it has a less direct connection to the idea of a spatial and/or territorial dimension, opening up functional and personal dimensions.

[7] For an in-depth analysis, see P. Parolari, *Diritto policentrico e interlegalità nei paesi europei di immigrazione. Il caso degli* sharī'ah councils *in Inghilterra*, Torino, 2020, ch. 2.

[8] Many analyses continue to use the term legal pluralism. See, for instance, P.S. Berman, *Global Legal Pluralism. A Jurisprudence of Law Beyond Borders*, Cambridge, 2012. See also, with specific reference to cultural minorities within the state, P. Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law*, London, 2005. Nonetheless, new expressions have recently been proposed, such as «entangled legalities» or «intertwinement of legal spaces». See, respectively, N. Krisch, *Entangled Legalities in the Postnational Space*, in *I•CON*, 2022, p. 476 ff.; D. Burchardt, *The Concept of Legal Space: A Topological Approach to Addressing Multiple Legalities*, in *Global Constitutionalism*, 2022, 1 ff.

[9] B. de Sousa Santos, *Law: A Map of Misreading. Toward a Postmodern Conception of Law*, in *Journal of Law and Society*, 1987, p. 279 ff.

[10] L. Mancini, *Introduzione all'antropologia giuridica*, Torino, 2015, p. 41 (my translation).

shopping strategies but also to what has been named «discourse shopping»; that is, the practices through which social actors move among different «legal repertoires», renegotiating their meanings and determining their hybridisation[11].

To be sure, such an actor-oriented approach is common to several studies that have investigated the interactions between different legal spheres within the same social context, regardless of whether they refer to Santos or specifically use the notion of interlegality[12]. In particular, since at least the 1980s, many anthropological and socio-legal analyses have applied a similar approach to the analysis of legal pluralism in both Western immigration countries and postcolonial ones. These studies are central in understanding how legal norms of different natures and origins mutually condition and influence each other in multicultural societies. Indeed, they have shown that – far from being parallel legal enclaves that simply reproduce legal traditions transplanted from their place of origin – «minority legal orders»[13] are actually hybrid laws. Similarly, they have shown that the community-based bodies that are supposed to enforce such «minority legal orders» are neither closed realities nor reproductions of traditional bodies for the resolution of disputes but are innovative solutions, adapted to the context in which they are conceived and implemented.

Therefore, anthropological and socio-legal literature on legal pluralism offers plenty of empirical and theoretical investigations that radically challenge a culturally essentialist conception of «minority legal orders». Such literature undoubtedly underlies the reflection proposed here. Nonetheless, Santos' approach to interlegality adds something important to the analysis of women's agency and empowerment, because he specifically focuses on the role of social actors in unleashing the empowerment potential of intersecting and interacting legalities, especially when these social actors are marginalised people. Indeed, in his search for «a new legal common sense»[14], Santos

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[11] A.J. Hoekema, *Multicultural Conflicts and National Judges: A General Approach*, in *Law, Social Justice & Global Development*, 2008, p. 4. This approach distinguishes Santos' use of the term interlegality from other uses of the same term. For instance, Jan Klabbers and Gianluigi Palombella have recently proposed an «objective legal notion» of interlegality as opposed to the «subjective sociological» notion introduced by Santos, aiming to shift the «epistemic perspective» of lawyers and legal scholars from the idea of law as a system to the idea of law as a comprehensive and composite reality, the texture of which is given by the interplay between a plurality of different legalities. In this case, interlegality is not defined as the «phenomenological counterpart» of legal pluralism, as it is by Santos, but it indicates the opposite of legal pluralism, which is understood as a theory according to which different legal orders are assumed to coexist as discrete and separate systems. Within this paradigm of interlegality, the attention is focused on judges, who are called upon to consider all norms relevant to the solution of the case, whatever legal system they belong to. From this perspective, forum shopping becomes an unnecessary practice. See J. Klabbers – G. Palombella, *Introduction. Situating Inter- Legality*, in J. Klabbers – G. Palombella, *The Challenge of Inter-Legality*, Cambridge, 2019, p. 1 ff.

[12] See above, fn. 8.

[13] M. Malik, *Minority Legal Orders in the UK. Minorities, Pluralism and the Law*, London, 2012.

[14] B. de Sousa Santos, *Toward a New Legal Common Sense. Law, Globalization, and Emancipation*, Cambridge, 2002.

was mainly interested in those subjects on the margins of society and the way in which they make use of the tools offered by different legal spheres[15], combining them in creative ways in their own struggles for emancipation. This is exactly the case with women belonging to cultural groups who, as a paradigmatic example of «minorities within minorities»[16], are particularly disempowered subjects, both as women *and* as part of a cultural minority. For this reason, in the next section (§ 3) I will focus precisely on the dynamic relation between interlegality, agency and empowerment, arguing that interlegality can create spaces for the exercise of women's agency and, at the same time, this exercise of agency allows interlegality to release its potential for empowerment.

3. *Women's agency and empowerment strategies*

3.1. *Autonomous agency in interlegal contexts*

An important issue within the feminism v. multiculturalism debate concerns the dispute over the ability of women from cultural minorities to express autonomous agency, that is, to act on the basis of autonomous choices. Indeed, Western (liberal) feminists tend to think of women from other cultures as lacking autonomy due to the patriarchal and oppressive social contexts in which they live. Therefore, any choice that appears to be at odds with (supposed) Western values is discredited as the result of false consciousness or an expression of «adaptive preferences»[17]. For this reason, postcolonial feminists have charged Western (liberal) feminists with paternalism, ethnocentrism and gender essentialism, calling attention to the differences that may distinguish women from different cultural or religious backgrounds.

Underneath this contention somehow lies the old question of the definition of the very concept of autonomy.

Attention to the social context in which individuals are embedded is central to the criticisms that some feminists – as well as communitarians, although from a different perspective – have addressed to the traditional liberal concept of autonomy and, more generally, to the abstract, rationalist and atomistic conception of the self that this concept of autonomy presupposes. These criticisms argue that there is no metaphysic, pre-existent and self-sufficient individual that can be separated from its (widely understood) social relations. Nonetheless, postcolonial feminists accuse Western (liberal) feminism of adopting a mistaken «methodological universalism» that

[15] I use 'sphere' for the reasons explained in fn. 6, although Santos would have probably said «order» or «space».

[16] A. Eisenberg – J. Spinner-Halev (eds.), *Minorities Within Minorities. Equality, Rights and Diversity*, Cambridge, 2005. Of course, in the case of women, being a minority should not be understood in terms of numbers but in terms of power.

[17] On the concept of «adaptive preferences», see J. Elster, *Sour Grapes. Studies in the Subversion of Rationality*, Cambridge, 1985.

moves from the characterisation of women «as a singular group on the basis of a shared oppression»[18] (within the men/women dichotomy) and arrives at «the construction of 'Third World Women' as a homogeneous 'powerless' group that is often located as implicit victims of particular socio-economic systems»[19]. In this way, as clearly stated in the seminal article *Under Western Eyes* by Chandra Mohanty, Western (liberal) feminists end up neglecting the fact that «the specific meaning attached to [a] practice varies according to the cultural and ideological context»[20], so that «superficially similar situations may have radically different, historically specific explanations, and cannot be treated as identical»[21].

To be sure, feminist studies on relational autonomy have tried to pay attention to how «agents' identities are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender, and ethnicity»[22]. They have tried to do so without giving up the concept of autonomy, understood as an important tool for «feminist attempts to understand oppression, subjection, and agency»[23]. According to these studies, attention must be paid to how social (but also legal) norms, institutions, practices and relationships may affect «the range of *significant* options» available to the agent[24]. However, the argument of postcolonial feminists is even more radical, as Mohanty's statements paradigmatically exemplify[25]. She claims, first, that women are not «already constituted as sexual-political subjects prior to their entry into the arena of social relations», but rather, they «are produced through these very relations as well as being implicated in forming these relations»[26]; second, that «the category of women is constructed in a variety of political contexts that often exist simultaneously and overlaid on the top of one another»[27]; and, third, that «it is only by understanding the contradictions inherent in women's location within various structures that effective political action and challenges can be devised»[28].

Therefore, the question is how the concept of autonomy must be «refigured»[29] to account for the social embeddedness of individuals without falling into the pitfalls denounced by postcolonial feminists.

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[18] C.T. Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, in *boundary 2*, 1984, p. 337.

[19] Ivi, p. 339.

[20] Ivi, p. 346.

[21] Ivi, p. 348.

[22] C. Mackenzie – N. Stoljar, *Introduction: Autonomy Refigured*, in *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*, Oxford, 2000, p. 3-4.

[23] Ibidem.

[24] Ivi, p. 22.

[25] C.T. Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, cit.

[26] Ivi, p. 340.

[27] Ivi, p. 345.

[28] Ivi, p. 346.

[29] C. Mackenzie- N. Stoljar, *op. cit.*, p. 3 ff.

I think that the first step in this direction should be to not only consider, on the negative side, «the specific ways in which oppressive socialization and oppressive social relationships can *impede* autonomous agency»[30], as the theorists of relational autonomy mostly stress, but also, on the positive side, what *creates* significant options for the agent in the specific context in which she is embedded, including interlegality. Indeed, socialisation in interlegal contexts inevitably influences both the «formation of an agent's desires, beliefs, and emotional attitudes» and the «development of the competencies and capacities necessary for autonomy», thus contributing to shape the agent's «ability to act on autonomous desires or to make autonomous choices»[31]. This is confirmed by the growing number of investigations – especially, but not only, within socio-anthropological studies devoted to the relationship between culture and human rights[32] – that demonstrate that women are able to choose their battles and to find their own ways to struggle for spaces of choice and liberty in virtually any social, political, cultural and religious context[33]. These studies also show that, as I will discuss in the next section (§ 3.2), navigating interlegality may often be part of women's strategies for empowerment[34]. Indeed, people who need to come to terms with different and intersecting sets of social, cultural, religious and legal rules learn to deal with them in new and unexpected ways.

3.2. Empowerment strategies: the case of Muslim women's access to justice in Europe

Since the way women deal with interlegality may vary depending on many factors, this section will specifically focus on Muslim women in European countries.

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[30] Ivi, p. 22 (emphasis added).

[31] These are the three levels in relation to which relational autonomy must be investigated according to C. Mackenzie – N. Stoljar, *op. cit.*, p. 22.

[32] For an analysis of the relationship between culture and human rights, see, among others, E. Messer, *Anthropology and Human Rights*, in *Annual Review of Anthropology*, 1993, p. 221 ff.; A.B.S. Preis, *Human Rights as Cultural Practice: An Anthropological Critique*, in *Human Rights Quarterly*, 1996, p. 286 ff.; R.A. Wilson, *Human Rights, Culture and Context: An Introduction*, in Id. (ed.), *Human Rights, Culture and Context. Anthropological Perspectives*, London, 1997, p. 1 ff.; J.K. Cowan – M.-B. Dembour – R.A. Wilson, *Introduction*, in Id. (eds.), *Culture and Rights. Anthropological Perspectives*, Cambridge, 2001, p. 1 ff.; J.K. Cowan, *Culture and Rights After* Culture and Rights, in *American Anthropologist*, 2006, p. 9 ff.; S.E. Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, in *American Anthropologist*, 2006, p. 38 ff.; M. Goodale, *Introduction: Human Rights and Anthropology*, in Id. (ed.), *Human Rights: An Anthropological Reader*, Oxford, 2009. p. 1 ff.

[33] At the time of writing this article, for example, a peaceful but tough and firm protest is underway in Iran against the oppression of women imposed by the theocratic regime. As is well known, this protest exploded when Mahsa Amini was killed by the moral police after being arrested for not wearing her headscarf in the correct way. It began as a feminist protest, but it soon turned into a fight for democracy and human rights for all the Iranian people.

[34] For another significant example, see the article by Chiara Correndo in this Special Issue.

Several studies have shown that these women often move back and forth between the different but overlapping legal spheres defined by state and Islamic law. In several circumstances, they also prove to be prone to navigate the sea of international human rights law to challenge one or the other of these legal spheres. For instance, Muslim women who have turned to the European Court of Human Rights have sometimes done it to challenge rules of state law and at other times, to challenge the application of Islamic law. Examples of the first hypothesis are the applications against the prohibition of wearing of the Islamic veil, either the headscarf or the full veil, introduced in several European countries[35]. A significant example of the second hypothesis is the case of *Molla Sali v. Greece*[36].

Therefore, an investigation of the issue of Muslim women's access to justice in Europe requires an examination (without prejudice and preconceptions) of how these women exercise their agency in deciding whether to turn to community-based bodies, state courts or even international human rights courts. In particular, the alternatives of community-based and state-based justice should not be interpreted as an opposition between identity and rights, respectively. On the contrary, identity reasons and strategic considerations often represent the two poles of an ambivalent relationship within which different combinations and points of balance are possible. Indeed, as Pascale Fournier pointed out, «the religious and secular spheres are *not* experienced by [...] Muslim women as two mutually exclusive domains, but rather as one highly complex battlefield that distributes differentiated costs and benefits»[37]. Therefore, Muslim

[35] An overview of the most relevant judgements of the European Court of Human Rights on the issue of Islamic veil can be found in the factsheet on religious symbols and clothing, at https://www.echr.coe.int/Documents/FS_Religious_Symbols_ENG.pdf. Add to this the cases brought before the Court of Justice of the European Union challenging the violation of European anti-discrimination rules in the workplace. See, for instance, ECJ, 14 March 2017, C-175/15, *Achbita*; ECJ, 14 March 2017, C-188/15, *Bougnaoui.*

[36] The case arose out of an inheritance matter. The applicant Chatitze Molla Sali was the sole beneficiary of her husband's will, drawn up before a notary according to the rules of the Greek civil code. However, the deceased's sisters contested the will and argued that since their brother (as well as his wife and themselves) belonged to the Thracian Islamic minority, the applicable law was the sharia and not Greek civil law. At the end of a long and complex court case, the Greek judges ruled in favour of the deceased's sisters and declared the applicability of Islamic succession rules. Deprived of three-quarters of the estate that her husband had bequeathed to her in his will, the widow then turned to the European Court of Human Rights claiming the violation of her rights under Article 14 of the ECHR (principle of non-discrimination) in conjunction with Article 1 of Protocol No. 1 of the ECHR (right to property). For a commentary on this judgement, see, for example, M.C. Locchi, *La minoranza musulmana di Tracia tra protezione dell'identità religiosa, divieto di discriminazioni e diritto all'auto-determinazione*, in *DPCE on line*, 2019, p. 909 ff, www.dpceonline.it. On the legal status of the Thracian Islamic minority in Greece, see Y. Sezgin, *Muslim Family Laws in Israel and Greece: Can Non-Muslim Courts Bring About Legal Change in Shari'a?*, in *Islamic Law and Society*, 2018, p. 235 ff.

[37] P. Fournier, *Please Divorce Me! Subversive Agency, Resistance and Gendered Religious Scripts*, in E. Giunchi (ed.), *Muslim Family Law in Western Courts*, London, 2014, p. 32.

women choose between different venues for dispute resolution by balancing the advantages they feel they can gain in one or the other.

Think of the issue of Islamic divorce. On the one hand, it has been argued that «the outcome of divorce is often perceived and played out [by Muslim women] as a conflict over the economic distribution» of resources between the parties[38]. On the other hand, it must be considered that turning to a sharia-based body to obtain an Islamic divorce that state courts cannot grant may be quite a meaningful and rational option for a Muslim woman in Europe. Indeed, according to Islamic law, while Muslim men can repudiate their wives, Muslim women cannot divorce without either their husband's consent or the intervention of an Islamic judge (*qadi*). However, there are no Islamic judges in European countries and state judges do not have jurisdiction and authority to dissolve Islamic marriages. Therefore, should their husbands deny them Islamic divorce, Muslim women in European countries would not be able to go on with their lives, enter into new relationships or eventually remarry without violating Islamic law. They would be «chained wives»[39]. Even if their civil marriage were dissolved, they would still be trapped in a limping marriage[40]. In this scenario, sharia-based bodies may be a way to fill the denounced gap in the protection of Muslim women's freedom of choice as to how and with whom they spend their lives.

This does not exclude the possibility that Muslim women may choose to turn to state courts in other circumstances or in relation to other issues (for example, economic claims connected to the Islamic divorce). There have been cases in which aspects of the same Islamic divorce have been brought before sharia councils, while other aspects have been brought before state courts[41]. This might not sound new to

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[38] Ivi, p. 39.

[39] On the issue of «marital captivity», understood as «a situation wherein someone is unable to terminate his or her religious marriage, i.e., keeping a spouse 'trapped' in a marriage against his or her will», see S. Rutten - B. Deogratias – P. Kruiniger (eds.), *Marital Captivity: Divorce, Religion and Human Rights*, The Hague, 2019. The notion of marital captivity is not limited to religious marriages but may, in fact, include any situation in which one or both spouses cannot end their marriage, either because the law (including sometimes state law) does not allow it or because factual conditions prevent it or make it extremely difficult.

[40] 'Limping marriage' is an expression borrowed from the doctrine of private international law, which is used to indicate marriages that are dissolved according to one legal system but still valid according to another.

[41] For example, in *Uddin v. Choudhury*, an English judge was called upon to resolve property disputes related to an Islamic divorce pronounced by a sharia council. The first instance judgement has not been published, but the salient aspects of the case are reconstructed in the decree that rejected the request for permission to appeal. This decree is available at http://www.casas.org.uk/papers/pdfpapers/uddinvchoudhury.pdf. For an analysis of this case, see J.R. Bowen, *How Could English Courts Recognize Shariah?*, in *University of St. Thomas Law Journal*, 2010, p. 411 ff. Also interesting is the case of *Akhter v. Khan* in which an English judge who was called upon to dissolve a religious-only Islamic marriage argued against the appropriateness of defining Islamic marriages as «non-marriages». The text of the judgement is available at http://www.bailii.org/ew/cases/EWFC/HCJ/2018/54.html. For an analysis of this case, see P.

those familiar with the idea of «transformative accommodations» proposed by Ayelet Shachar in her analysis of «multicultural jurisdictions»[42]. Her aim is precisely to stimulate positive changes in the living conditions of women belonging to cultural or religious minorities through the provision of institutional mechanisms based on structural competition between state courts and community-based bodies. Her model of transformative accommodation is based on identifying for each legal issue: a) a division of competences between state courts and community-based bodies and b) reversal points that allow people to switch from one justice system to the other if they feel their rights are not adequately protected. The main difference seems to be that in Shachar's proposal, the system of transformative accommodation is conceived as a complex institutionalised mechanism, predetermined and regulated in detail, whereas in interlegal practices, everything happens on the unpredictable initiative of individuals or groups according to changing dynamics and balances.

The issues linked to Muslim women's access to divorce have been much discussed in the United Kingdom (UK) in connection with the spread of several sharia councils issuing Islamic divorces. Many scholars and women's rights activists have argued that sharia councils should not be tolerated because, by applying sharia law, they do not respect women's rights and gender equality. Moreover, critics of sharia councils think that women who seek their intervention instead of going to a state court do so only because of pressures from their families and communities. However, these arguments seem to ignore two main findings of the numerous empirical studies conducted on the legal practices of Muslims in the UK and, specifically, on the activities of the sharia councils.

The first finding concerns the hybrid nature of what has been named «angrezi shariat» (that is, «the emerging Muslim law applied by the Muslim communities living in the United Kingdom» that may be defined as an «expedient combination of Muslim and English law»)[43]. Indeed, while this is not the occasion to consider the complex and plural character of Islamic law – which is far from being as monolithic and static as its critics portray it to be – it must at least be emphasised that Muslim minorities in the UK have developed a new version of it and that the relation of sharia (councils) with English law and (judicial) institutions is very multifaceted and complex (at least in the law in action if not in the law in books)[44].

Parolari, Legal Polycentricity, *intergiuridicità e dimensioni 'intersistemiche' dell'interpretazione giudiziale. Riflessioni a partire dal caso inglese* Akhter v. Khan, *DPCE online*, 2019, p. 2109 ff, www.dpceonline.it. On the notion of non-marriage, see R. Probert, *The Evolving Concept of 'Non-Marriage'*, in *Child & Family Law Quarterly*, 2013, p. 314 ff.; R. Probert – S. Saleem, *The Legal Treatment of Islamic Marriage Ceremonies*, in *Oxford Journal of Law and Religion*, 2018, p. 376 ff.

[42] A. Shachar, *op. cit.*

[43] D. Pearl – W. Menski, *Muslim Family Law*, 3 ed., London, 1998, p. v and 277.

[44] See, among many others, F. Sona, *Giustizia religiosa e* islām. *Il caso degli* Sharī'ah Councils *nel Regno Unito*, in *Stato, Chiese e pluralismo confessionale*, 2016, p. 1 ff; P. Parolari, *Diritto policentrico e interlegalità*

The second finding is that it is not necessarily the case that women who turn to sharia councils do so only because they are forced to by a patriarchal cultural and religious context. It cannot be ruled out that women freely turn to sharia councils to obtain an Islamic divorce either for genuine religious reasons or other strategic reasons, or a combination of both.

In this respect, it is very interesting to examine those studies that have focused on the plurality of ways in which women exercise their agency in deciding whether, when and on what terms to turn to sharia councils[45]. These studies have found that Muslim women's choices of the norms with which to conform and which institutions to entrust with the resolution of their disputes are not to be exclusively read in identity terms, and it would be simplistic to think that women who approach sharia councils are segregated in (religious, cultural, and legal) enclaves, isolated from the rest of society. Indeed, as Rehana Parveen pointed out, «as important as religion is, Muslim women living in the United Kingdom do not experience the breakdown of their [marriage] relationship in a purely 'Islamic' or religious context»; rather, «they navigate that breakdown within the context of English civil law, their own understanding of Islamic law, their social and family ties, and the customary practices of the cultural heritage to which they belong», and «these multiple social fields cannot be isolated from one another»[46].

Sharia councils are, therefore, at the centre of complex dynamics in which religious affiliation coexists with a plurality of other affiliations; legal universes intermingle as a result of discourse shopping processes; and women's agency is expressed (also) through forms of forum shopping (not only between sharia councils and state courts but also between different sharia councils[47]). These dynamics condition the interactions between Islamic law and state law, contributing to a process of renegotiation of the meanings of one and the other. For this reason, the activity of sharia councils cannot be understood independent from the context in which the matrimonial disputes in which they are called upon to intervene arise and develop. Symmetrically, even certain decisions of the English courts on cases of marriage and divorce between Muslim spouses cannot be understood without taking into account

nei paesi europei di immigrazione. Il caso degli sharī'ah councils *in Inghilterra*, cit.; A. Rinella, *La* shari'a *in Occidente. Giurisdizioni e diritto islamico: Regno Unito, Canada e Stati Uniti d'America*, Bologna, 2020.

[45] See, in particular, S. Bano, *Muslim Women and Shari'ah Councils. Transcending the Boundaries of Community and Law*, Basingstoke, 2012. For an overview of other relevant literature, see P. Parolari, *Diritto policentrico e interlegalità nei paesi europei di immigrazione. Il caso degli* sharī'ah councils *in Inghilterra*, cit., especially ch. 4.4.

[46] R. Parveen, *Do Sharia Councils Meet the Needs of Muslim Women?*, in S. Bano (ed.), *Gender and Justice in Family Law Disputes: Women, Mediation and Religious Arbitration*, Waltham, 2017, p. 143.

[47] Sona F. 2014, *Defending the Family Treasure Chest: Navigating Muslim Families and Secured Positivistic Islands of European Legal Systems*, in P. Shah – M.C. Foblets – M. Rohe (eds.), *Family, Religion and Law. Cultural Encounters in Europe*, Farnham, p.133.

the presence of sharia councils and, more generally, of Islamic «minority legal orders» in the UK.

In this scenario, it would be neither accurate nor correct to say that state justice is the venue for the protection of rights as opposed to community-based justice devoted only to the protection of (patriarchal) traditions to the detriment of women. On the contrary, each of these *fora* can play an important function in the construction of the empowerment strategies that Muslim women, as endowed with agency, from time-to-time choose to implement according to their concrete goals. As has been pointed out, informal sharia-based dispute resolution practices produce «a myriad bargains and outcomes, shaping agency and bindingness in ways that require empirical assessment, diverging as they do from the classical Islamic law model»[48].

All of this is interlegality. As a source of (new) significant options, it may create margins of agency within which women's empowerment strategies can be conceived and implemented. Of course, the relation between interlegality, agency and empowerment cannot be simply taken for granted. For instance, one could actually argue that interlegality does not necessarily produce spaces of agency and forms of empowerment, because the absence of an univocal and uncontested legal order may generate a sense of bewilderment and conflict, or undermine the certainty of law and the principle of equality, thus amplifying power imbalances within society. It could also be argued that interlegal empowerment strategies are not common practices, that they are the exception rather than the rule, and that they are at best a prerogative of the most privileged women. Further extensive empirical research would be needed, worldwide, to clarify these issues. For sure, the conditions for the exercise of women's agency are multiple and complex, go far beyond interlegality, and are still largely compromised in many cases, especially in less developed countries. But still, within its own limits, interlegality represents a potential seed for change.

4. *Beyond gender and cultural stereotypes: benefits of a cross-fertilisation between gender studies and interlegality studies*

The empowerment strategies mentioned in § 3.2 challenge the intersectional (cultural *and* gender) stereotypes[49] according to which Muslim women (or more

[48] P. Fournier, *op. cit.*, p. 38.

[49] According to Ghidoni and Morondo, gender stereotypes are constitutively intersectional: «Both patriarchy and its precipitates or products (including stereotypes) are constituted in a way that already condenses multiple hierarchical levels, according to the combination of axes, so that within the same system of oppression there will be a greater or lesser degree of invisibility of the other axes, determined by the crossing and positions of greater or lesser 'privilege' in relative terms» (See E. Ghidoni - Morondo Taramundi, *Análisis contextual, interseccionalidad y función justificativa de los estereotipos en el derecho: una réplica*, in *Discusiones*, 2022, p. 117-118, my translation). I am inclined to think that a similar argument can be made in relation to cultural stereotypes.

generally in Mohanty's words, «third world women») are simply passive victims who need to be saved from their patriarchal religion, family and community. Such strategies call us to pay more attention to the heterogeneity of the ways in which women may relate to the plurality of their affiliations and to the rules that each of these affiliations brings with it, focusing on the margins of agency that women carve out in their lives and, thus, avoiding both paternalism and ethnocentrism. At the same time, the plurality of ways in which Muslim women use state and Islamic laws as well as state courts and sharia councils show that, in contexts of interlegality, «what is plural is not only normative orders and sources of law but also *pathways to decisions, strategies and outcomes*»[50].

In this scenario, cross-fertilisation between gender studies and interlegality studies can bring many benefits. On the one hand, the gender perspective helps legal pluralism studies to get rid of cultural essentialism and to stop thinking only in terms of homogeneous identities and enclaves, because it draws attention to minorities within minorities and how autonomy and agency – understood in relational terms – can go beyond the alternative between liberalism and communitarianism. On the other hand, the focus on the interlegal dimensions of multicultural societies helps feminist studies to avoid gender essentialism. By introducing (normative and) legal complexity into the framework of analysis, interlegality reminds us that women are not only shaped by the (cultural, religious, social, political and) legal context in which they live but actively contribute to shaping it through choices and practices that make use of this complexity as a tool for empowerment.

In other words, the cross-fertilisation between gender studies and interlegality studies calls us to take note that the point is not to decide *a priori*, once and for all, what jurisdiction is more respectful of women's rights, thereby denying legitimacy to any other mechanism or institution for dispute resolution. Rather, the point is to look at the concrete practices implemented by women for managing the legal complexity in which they are immersed, trying to figure out how to foster their empowerment through the maximisation of their margins of agency.

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ABSTRACT: Abstract: By looking at the strategies of agency and empowerment enacted by women in contexts of interlegality, the article attempts to overcome the uncritical perpetuation of both cultural and gender stereotypes that still fuel the feminism v. multiculturalism debate, arguing that, on the one hand, interlegality creates spaces for the exercise of agency and, on the other hand, the exercise of agency unleashes the empowerment potential of interlegality.

[50] J. Halley, *Forward*, in P. Fournier, *Muslim Marriage in Western Courts. Lost in Transplantation*, Farnham, 2010, p. xvi.

RIVISTA DI
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ABSTRACT: Osservando le strategie di *agency* ed *empowerment* messe in atto dalle donne in contesti di interlegalità, l'articolo tenta di superare la reiterazione acritica degli stereotipi sia culturali che di genere che ancora alimentano il dibattito femminismo v. multiculturalismo, sostenendo come, da un lato, l'interlegalità crei spazi per l'esercizio dell'*agency* e, dall'altro, l'esercizio medesimo dell'*agency* sprigioni il potenziale di *empowerment* dell'interlegalità.

KEYWORDS: interlegality – multiculturalism – gender – agency – empowerment.

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