

## Government, Religion, and the Courts: a Complicated *Marriage à Trois*

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On July 2006, two young people got married in the north of France. They were Muslims. The bride assured the groom that she was a virgin, but on their wedding night, he discovered that she had lied. He rejected her and went to court, seeking an annulment of the marriage. Like in many religions, virginity is an important value in Islam. Even though the couple could have divorced by mutual consent, they did not consider the option, as divorce is not well-accepted in Muslim communities.

According to Article 180 of the French Civil Code, a marriage can be nullified if a party proves there is an error in the “essential qualities” of the other party. However, the law fails to define what these “essential qualities” are. In this case, the husband claimed that virginity was one of them. France is a secular country where there is a clear separation between the church and the state.

There are two possible ways to interpret the concept of “essential qualities.” First, from an objective point of view, a person must have certain qualities to enter into marriage (e.g. be a woman or a man, be willing to be married, etc.). Second, from a subjective point of view, certain qualities are essential for some people but irrelevant for others. For example, forbidding individuals to live their faith is a violation of the freedom of religion and right to privacy. Moreover, French courts have nullified marriages on the basis of a newlywed’s past, such as prostitution, AIDS, or incarceration.

On April 1, 2008, the *Tribunal de Grande Instance* of Lille<sup>1</sup> (“the Court”) nullified this marriage on the basis that the above-mentioned bride had lied about her virginity. The legal basis of the judgment is surprising, because under French law, there is a maxim: “in marriage, deceive who you can.” This means that the newlyweds do not have to reveal everything about their past and should not be subject to an annulment for withholding information. In fact, the Court clearly did not want to decide whether virginity was an “essential quality”—particularly because this is a value associated with religion. The Court knew that ruling on this issue would mean “opening a Pandora’s box,” especially since it is common for Muslim husbands to seek annulment and not divorce. However, women who see their marriages annulled are often rejected from their communities and families anyway, which leads to exclusion and poverty. The Court wanted to avoid ruling on a bride’s absence of virginity so that it would not become convenient grounds for annulment in future cases.

After this particular marriage was annulled, many politicians, feminist groups and women’s organizations protested the judgment as a “retrogression of women’s rights.” The most famous organization for the protection of Muslim women, *Ni Putes Ni Soumises*, called this judgment “a fatwa against the emancipation of women.”<sup>2</sup> Initially, France’s Minister of Justice, Ms. Rachida Dati, stated that a marriage annulment was a good way to protect young Muslim girls who are forced into marriage. Ms. Dati has North African origins and was raised a Muslim. She had her own marriage annulled when she was younger, but on other grounds. After her position was attacked, she ordered the prosecutor to appeal against the judgment.

On appeal by the prosecutor, the Court of Appeal of Douai overturned the young Muslim couple’s annulment on November 17, 2008.<sup>3</sup> The Court ruled that virginity could not be accorded such a degree of importance, because “its absence has no repercussion on matrimonial life” and that virginity could not be considered an “essential quality.” The couple, now considered “remarried” pursuant to the invalidation of the annulment, failed to appeal the decision, and thus the issue was not ruled upon by the French Supreme Court. Because the Supreme Court did not rule on this case, jurisprudence for virginity as an essential quality has not been universally established in France.

Those who supported the marriage annulment are disappointed because they think that religious freedom has not been respected and that the government should not get involved in such private matters. They even invoked the right to privacy found in Article 8 of the European Convention on Human Rights. On the other hand, those who were opposed to the annulment think the decision by the Douai Court of Appeal rightly underlined the secular nature of marriage in France. Many organizations feared that allowing such annulments would unfairly undermine the right of Muslim women to marry in France; and moreover, the unscientific checking of white sheets to ensure a bride’s virginity might lead young Muslim women to turn to pre-marital surgery in order to avoid humiliation and rejection from their communities.

In the end, this case is a good example of the Executive and Judicial powers in France acting in concert to protect individuals. However, in order to do so, the separation of powers was not respected, and the solution was not really in conformity with established jurisprudence. The French

Government and the courts have sent a strong message that marriage in France is a secular institution and it wants to keep it that way. The Government is willing to go out of its way to protect individuals, and especially women, who are affected by religious traditions.

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1 TGI Lille, 1er avril 2008, available at <http://blog.dalloz.fr/blogdaloz/files/Lille.pdf>.

2 Le Point, *Rachida Dati défend l'annulation d'un mariage pour cause de non-virginité*, May 30, 2008, available at <http://www.lepoint.fr/actualites-politique/rachida-dati-defend-l-annulation-d-un-mariage-pour-cause-de-non/917/0/249404>

3 CA Douai, Nov. 17, 2008, available at [http://www.droitdesreligions.net/pdf\\_ca/cadouai\\_17112008.pdf](http://www.droitdesreligions.net/pdf_ca/cadouai_17112008.pdf)